

GROUP ACTION FOR THE PROTECTION OF THE PUBLIC INTEREST IN  
LITHUANIA

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**Summary.** An institute of group action is new in the legal system of Lithuania and has not been widely researched. The Code of Civil Procedure of the Republic of Lithuania of 2002, Article 49, part 5 provides that in order to defend the public interest the group action can be brought. However, none of such actions have been brought so far. The reason for this is not only a lack of experience, but also insufficient procedural regulation of group action. The Code of Civil procedure of the Republic of Lithuania provides for an individualistic model of litigation. This model is limited, since it enables to defend in court only individual rights or interests. This determines certain problems to establish the institute of group action in the Lithuanian legal system.

A classical procedure of group actions is primarily intended for the protection of the interests of large groups. However, the public interest may also be successfully defended by group actions. Such a way of protection of the public interest is chosen also in Lithuania. The author considers that the procedure of group actions may protect the public interest more effectively and more expansively. However, private parties in Lithuania do not have a possibility to defend the public interest since this may be done only by a prosecutor or another authorized institution. Therefore, such regulation of the protection of the public interest does not reflect the whole potential of the institute of group action to protect the public interest.

This and other issues of the institute of group actions could be resolved by introducing a classic model of group action to the Lithuanian legal system, which would not be limited to the protection of the public interest, but would also enhance the protection of private interests of an entire group of individuals.

**Keywords:** group action, class action, public interest.

## INTRODUCTION

Group actions emerged in the law of civil procedure of the Republic of Lithuania on February 28, 2002, when the Parliament of the Republic of Lithuania adopted the new Code of Civil Procedure (“CCP”), which came into effect on January 1, 2003 [1]. Being based on the most progressive ideas of a social model of civil procedure as well as on the civil law traditions of civil procedure, the new Code of Civil Procedure has substantially reformed the civil procedure in Lithuania and established not only the group action, but also many

other novelties that provided for a more active role of a judge in the court proceedings [2].

Group actions have attracted the attention of the Lithuanian doctrine of civil procedure only very recently. Although inclusion of the group action is a positive development, it raises many problems that are discussed even in the countries where this institute is most frequently applied. An idea to establish the institute of the group action was raised during the drafting process of the new CCP, when the Committee on Legal Affairs of the Seimas of the Republic of Lithuania drew its attention to the fact that “<...> *the international experience demonstrates that there are many areas where the so called collective and diffuse interests prevail. These interests are protected by respective public organizations that represent them. These organizations must be*

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*entitled to institute the proceedings for this protection to be effective. Therefore, the institute of collective (group) action must be established in the CCP” [3].*

Compared with the institute of group action operating in foreign countries, the Lithuanian model possesses some peculiarities. The Lithuanian legislator has tied the subject matter of the group action with the protection of the public interest, since paragraph 5 of Article 49 of the CCP provides that the group action may be instituted to protect the public interest [4]. It means that the Lithuanian institute of the group action may be solely used for the protection of the public interest. What has determined such regulation of the group action in Lithuania?

The object of this research is the institute of group actions within the framework of the Lithuanian legal system. The article aims to assess the compatibility of the models of civil procedure with the group actions, identify the advantages of the group actions procedure compared with the individual procedure, reveal the concept of public interest defense in Lithuania, assess the significance of the group action in the public interest defense, explore the issues of implementation of the group actions institution within the framework of the law of civil procedure in Lithuania, as well as suggest the ways to resolve these problems. For this purpose, such research methods as logical, analytical, synthesis, comparison, system analysis, semantic analysis, document analysis, content analysis, generalization, and other have been applied.

## **1. COMPATIBILITY OF CIVIL PROCEDURE MODELS WITH GROUP ACTIONS**

The Lithuanian civil procedure doctrine differentiates between two models of civil procedure: the liberal civil procedure and the social civil procedure [5, p. 30–42]. The limits of a judge’s activity in trial are the hallmark of these models.

In other countries where group actions are extensively applied in practice, the individual civil procedure model and the collective (or group) civil procedure model are distinguished [6]. The major hallmark between the two is the significance of the will of the interested persons when they bring an action in court. Following the classical doctrine of group action, a legal action is brought by a person who, defending his rights and interests may also protect the rights and interests of persons situated in the similar factual or legal circumstances in the absence of a prior consent of all persons constituting a group. The court’s judgement in a case instituted by a group action will produce legal consequences for all members of the group.

In respect of the above it could be stated that an individual model of civil procedure has been and remains anchored in Lithuania. An individual model of civil procedure is limited, since it enables only an individual to defend his rights or interests in court. Such a situation brings certain problems while establishing the institute of the group action in the Lithuanian legal system. Since

the day the CCP has come into effect, no group actions have been brought.

## **2. DEFICIENCIES OF THE MODEL OF INDIVIDUAL CIVIL PROCEDURE**

Could application of the individual civil procedure model established in Lithuania be at least theoretically justified when protecting rights and valid interests, which are not individualized, i.e. which do not belong separately to a particular claimant? It should be conceded that an outcome of the traditional individual civil procedure may in fact transcend the limits of the protection of an individual right and may affect rights and valid interests of persons who are not involved in the proceedings. However, the *res judicata* power of courts’ judgements in the traditional doctrine of civil procedure affects only those involved (subjective limits of *res judicata*). The systemic analysis of social relationships, including legal ones, demonstrates that the actual social effect of a court’s judgement may be considerably broader. Nevertheless, a judgement rendered in one case and not possessing any prejudicial power in other cases instituted on the same grounds against the same defendant, only by a different plaintiff may still have an effect on both the court and the parties to the proceedings (factual precedent). Such attitude is based on the assumption that a defendant will respect the preceding judgement of the court, will not contest in other cases the facts established in the first case, and therefore will settle with the claimants.

However, the traditional conception of the protection of the public interest – the conception which usually establishes a right of public institutions to bring an action in the individual procedure – is still insufficient because such institutions may not be very interested in bringing actions to protect the public interest even in those cases where one may really think that the public interest or right is infringed [7, p. 126]. Such omission may encourage further infringements of the public interest.

Other practical deficiencies of the traditional individual procedure defending the public interest may also be briefly mentioned. The abovementioned factual precedent is not binding, it is rather a moral imperative the realization of which depends exclusively on the good faith of a defendant, and therefore it may not produce the abovementioned legal consequences. An individual often may not have enough resources to proceed with litigation against a defendant whose possibilities to obtain the professional legal assistance sometimes may be virtually unlimited. In addition, when the same unlawful actions affect mass interests of many persons, their defence should not be just a personal matter of each of them individually and protection of such interests violated should not be left adrift [8, p. 155–156].

### 3. ADVANTAGES OF GROUP ACTIONS COMPARED WITH THE INDIVIDUAL PROCEEDINGS

Consolidation of separate actions of the traditional individual procedure in a form of the joinder of parties also ensures a right of a representative claimant to represent a great number of persons whose subjective right or valid interests have been infringed. Such litigation is more effective and more economical than the one when separate individual actions are brought [9, p. 29–34].

The procedure of group actions is more advantageous than a simple joinder of parties. In the latter case, a right infringed as well as the claims are divisible and parties act independently in the proceedings. In case of a group action, both the interests of a group of persons and the group itself are perceived in their entirety. It is especially important when seeking to protect the public interest. Such characteristics of the procedure of group actions enable to overcome limitations and deficiencies of the traditional individual civil procedure while protecting the public interest [8, p. 156].

From the point of view of scale economy, a group action resolves a problem of compensation of damages for a large group of persons, i.e. consequences of unlawful activity of a defendant are eliminated by one action, while an individual action could not be so perspective, especially in cases of small monetary claims. Here, the public interest is manifested in the fact that a group action prevents unjust enrichment, and income or other property received unlawfully is fully exacted from an offender, even if would not have been possible by individual actions. It is very important in order to ensure legitimacy.

Thus, a group action is a much more effective preventative tool than individual actions and various forms of their joinder.

### 4. CONCEPTION OF THE PROTECTION OF A THE PUBLIC INTEREST IN LITHUANIA

The often-criticized liberal individualistic model of civil procedure in fact seeks to protect private interests of separate individuals [10, p. 646–648.]. The contemporary legal doctrine aimed at coherent interaction of a society and individual pays more and more attention to public interests and their protection. The social model of civil procedure was chosen as a basis for the Lithuanian Code of Civil Procedure in order to ensure the balance between the protection of private and public interests.

The Lithuanian CCP contains several important developments concerning the protection of the public interest in the civil procedure. These innovations have been determined not only by the novelty of goals and principles raised for the civil procedure and adaptation of the code to new market conditions, but also by the harmonization of the Lithuanian national law with the *acquis communautaire* of the European Union in the sphere of consumer rights protection.

It must be noted that the concept of public interest is differently perceived in different countries. In its broadest sense, a term “public interest” connotes certain common interests held by individuals as members of a society. The concept of the public interest is also used in the legislation of the Republic of Lithuania. However, it is not defined or its content is not otherwise concretized, although, for example, the Lithuanian CCP uses the concept “public interest” 17 times and the Civil Code uses it 14 times (including a concept “interest of the society”). While the concept “public interest” is so ambiguous, the resolution of the Constitutional Court of the Republic of Lithuania, dated on May 6, 1997, “On the compliance of Item 2 of Part 1 of Article 16 of the Law on the Officials of the Republic of Lithuania with the Constitution of the Republic of Lithuania“, where the concept of the public interest is linked with the one of the interest of society, is especially important since it is maintained therein that “*the implementation of the interest of society which is recognized by the state and is protected by law is one of the most important conditions of existence and evolution of society itself*” [11].

The European Court of Human Rights has noted that the notion “In the public interest“ is inevitably broad. The Court, bearing in mind that the opportunity of choice granted to the legislator who implements social and economic policy must be broad enough, will take into consideration the decisions of the legislator in defining “public interests” save the said decisions were unsubstantially grounded (the cases James and others against the United Kingdom (1986), Lithgow and others against the United Kingdom (1987)). It means that the legislative power is entitled to establish limits of the public interest in particular relations, while decisions concerning the definition of the public interest and the manner of its satisfaction must be realistically grounded and legitimate. It should be noted that in all cases a balance between a personal right and the public interest must be maintained.

Socially, the public interest is a constitutional value. The Constitutional Court of the Republic of Lithuania has noted in its Resolution dated on February 14, 1994, that “*if in case some circumstances aggravate the opportunity to exercise one’s right to legal protection or make it impossible at all, the declarativeness of said constitutional right would have to be recognized. Therefore, empowering of state institutions or their officials by law in order to help people in necessary cases to realize the protection of their constitutional rights, is expedient and justifiable but only on condition that it is in compliance with the Constitution*” [12]. The legislator is entitled to determine in particular relationships the limits of the public interest (the Resolution of the Constitutional Court, dated on May 6, 1997), therefore, laws may, without violating the Constitution, provide for cases and procedure under which the authorized institutions or officers may protect the public interest in court. Paragraph 3 of Article 5 of the CCP provides that a prosecutor or other authorized institution may file a

claim at court regarding the protection of the public interest on behalf of a state.

## 5. THE SIGNIFICANCE OF GROUP ACTION FOR THE PROTECTION OF THE PUBLIC INTEREST

The classical procedure of group actions primarily seeks to protect the interests of large groups. However, the public interest may also be successfully defended by means of group actions. Such a way of protection of the public interest is chosen also in Lithuania. We think that the procedure of group actions may effectively and more expansively protect the public interest because of the following:

1) It expands availability of the judicial protection (the principle of availability of the judicial protection) since the procedure of a group action may be used by these persons who would never bring an individual action due to economical, reasonableness, or other considerations, although their subjective rights or valid interests have actually been infringed;

2) The procedure of group actions is more concentrated, more effective, and more economical (principles of concentration and economy of the proceedings) than the joinder of parties. The joinder may be not sufficiently effective for settling disputes of large groups, since it is expedient to examine in one case many small claims when each claimant would not bring an individual action;

3) It ensures to the litigants the equality of procedural rights (the principle of procedural equality of litigants, the principle of adversary procedure) when not every claimant is capable to litigate effectively with large companies due to economical, organizational, or personal circumstances;

4) It enlarges the number of subjects who may defend the public interest since a right to defend it, held by a certain state and public institutions as well as by a prosecutor is supplemented by a new right held by private parties;

5) The procedure of group actions enables private parties to defend the public interest; therefore, its protection would not depend solely upon the willingness or reluctance of state or public institutions or of a prosecutor to initiate the procedure for the protection of the public interest;

6) A positive social effect is attained since both public and private interests are defended simultaneously [8, p. 153].

However, after having analyzed present regulation of the protection of the public interest in the Lithuanian CCP, it should be noted that private parties do not have a possibility to defend the public interest since only a prosecutor or other institution so authorized by laws (paragraph 3 Article 5 of the CCP) may file a petition regarding the protection of the public interest on behalf of a state. Therefore, such regulation of the protection of the public interest does not display the potential of the

institute of a group action as well as the potential in the area of the protection of the public interest.

## 6. PROBLEMS PROTECTING THE PUBLIC INTEREST IN LITHUANIA

The broadest perception of the institute of group action is found in common law countries: it is a private group action intended primarily for meeting of property interests of the members of a large group. The institute of a group action enables one or several members of a large group to defend interests of such a group absent special authorizations of the entire group when at the moment a civil action is instituted the composition of such a group is unknown. Notably, the legal doctrine of the states where this model of group action is applied considers that a private group action simultaneously protects both the public (illegal actions of a defendant are prevented) and the private legal interests. (damages sustained by members of a group are recovered).

One of the peculiarities of regulation of group actions in Lithuania is the fact that a group action is mentioned only in the CCP and only in one sentence: "*A group action may be brought in order to protect the public interest*" (paragraph 5 Article 49 of the CCP). Undoubtedly, the only norm concerning a group action leaves the mechanism of its realization ambiguous and problematic, especially since the Lithuanian laws do not define the concepts of group action and public interest.

By interpreting the law systematically, one may maintain that a group action may be brought in Lithuania: 1) only in cases established by laws; 2) only by persons specified by laws; 3) only in order to protect the public interest.

However, group action is currently regulated insufficiently since no legislative act provides for criteria which would specify when it would be possible to bring a group action (paragraph 5 Article 49 of the CCP) as well as when it would be possible to bring solely an ordinary action for the protection of the public interest (paragraph 1 Article 49 of the CCP). Additionally, even after a group action is brought, procedural consequences as well as significance of such act are unclear since legislature does not provide for any special norms or exceptions concerning the admission and hearing of a group action. One may infer that the general provisions of the CCP should be applied in such case; however, here the question regarding distinction of an action intended for the protection of the public interest and a group action intended for the same arises once again. By taking into account the abovementioned, in Lithuania a possibility is considered to pass a separate law on the group action, which would discuss the subjects entitled to bring group actions as well as conditions and peculiarities of hearing thereof together with other exceptions to the general provisions of the CCP.

The emergence of the institute of group action in Lithuania is first related with the harmonization of national law with provisions of the Directive 98/27/EC of the European Parliament and of the Council of 19 May

1998 on Injunctions for the Protection of Consumers' Interest. Article 1 of the abovementioned Directive provides that the purpose of this Directive is to approximate the laws, regulations, and administrative provisions of the Member States relating to actions for an injunction aimed at the protection of the collective interests of consumers with a view to ensuring the smooth functioning of the internal market. Collective interests herein mean interests, which do not include the cumulation of interests of individuals. Under Articles 2 and 3 of the Directive, subjects competent to bring actions regarding the injunction of certain acts of a defendant include one or more independent public institutions and (or) organizations aimed at the protection of the collective interests of consumers [14].

Provisions of this Directive have been first implemented by the Law of the Republic of Lithuania on Consumer Protection [15] and Article 6.188 of the Civil Code of the Republic of Lithuania ("CC") [16]. The said Article of the CC provides that a consumer is entitled to challenge the validity of the terms of the consumer contract before courts, on the basis that they contradict the criteria of good faith; he is also entitled to address consumer rights protection institutions regarding such infringement provided that his interests are infringed due to the application of the unfair contract terms. The consumer rights protection institutions may control in the manner established by laws the standard contract terms as well as challenge before courts the unfair terms. Article 3 of the Law on Consumer Protection establishes a consumer's right to defend his rights infringed not only before the state or municipal institutions or courts, but also before consumer associations. Under the Law on Consumer Protection, the State Consumer Rights Protection Authority possesses most powers to defend consumers' interests by bringing an action before a court. In cases provided by law, this institution is authorized to apply to a court requesting termination or modification of various contracts concluded with a consumer as well as repayment of money paid to a seller or service supplier and compensation of damages sustained by a consumer. Consumer associations are also entitled to protect consumer rights, their economical and social interests at state and municipal institutions and agencies as well as to bring actions in court upon a consumer's request or by their own initiative. It is noted in the Resolution of the Judges' Board of the Civil Cases Department of the Lithuanian Supreme Court, dated on April 18, 2001, that "the protection of consumers is an underlying part of the state economical and social policy based on paragraph 5 of Article 46 of the Constitution of the Republic of Lithuania, which provides that the state shall protect consumers' interests" [17].

Paragraph 2 of Article 41 of the Lithuanian CCP establishes a court's duty to inform all persons whose rights could be concerned by the action brought for the protection of the public interest. No problems should arise in this case if an institution, which brings an action, possesses information about all persons whose interests it protects by applying to court and if a number

of such persons is not very large. However, hundreds or thousands of consumers whose rights are infringed for example by unfair consumer contract terms may be joint claimants in such a case. Besides, at the moment the court is addressed all persons whose rights and interests are infringed may be unidentified. This problem should be solved in accordance with Article 130 of the CCP by publishing a notification about a case in press. Such a notification may include not only information required by law on a civil case (court, type of a writ, addressee, date of a trial), but it also should indicate a possibility for persons concerned to join the proceedings. In fact, it is the only way to economically and expediently ensure implementation of the personal rights under paragraph 3 of Article 49 of the CCP. These Articles establish that persons may join as third parties without individual claims upon their own request or upon a request of a person who brought an action, or by the court's initiative. In this case, the court's initiative to join claimants should be considered as an exception to the principle of party disposition, since an instituted case concerns the protection of the public interest. However, the CCP does not contain any provision regarding the parties' possibility to secede from the proceedings and to institute a separate action.

The Lithuanian CCP equally does not provide for criteria entitling to determine when persons whose interests are protected by actions aimed at the protection of the public interest should join as third parties without individual claims and when they should take part in the proceedings as joint claimants. The third parties may be joined in the proceedings when a non-property action for the protection of the public interest is brought since in such a case one seeks to hold certain actions of a defendant illegal, to enjoin a defendant from doing certain actions, or to obligate a defendant to perform certain actions. Juridical facts established in a court's judgement under a non-property action for the protection of the public interest in respect of third parties will have a pre-judicial power in subsequent cases.

According to the former Lithuanian CCP, a person who brought an action for the protection of the public interest did not have a status of a claimant. It resulted in some ambiguity concerning the procedural status as well as various problems when renouncing a claim or when the parties decide to settle. A person possessing both substantive and procedural legal interest in the outcome of a case as well as acting on behalf of himself and in his own interest is considered a claimant in the legal doctrine of civil procedure [18, p. 549–559]. While a prosecutor and other persons who bring actions for the protection of rights and valid interests of the state and other persons are not interested in the outcome of a case since they do not protect their own rights and interests and a judgement will not affect their substantive rights and duties, the old CCP did not treat such persons as claimants, although the procedural rights and duties granted to them corresponded to those of a claimant [19].

Article 41 of the Lithuanian CCP expressly establishes a procedural status of persons who protect the public interest: An institution that has brought an action for the protection of the public interest is considered to be a claimant. Now the Lithuanian CCP classifies persons protecting the public interest as claimants, although substantially they are not claimants, i.e. they do not possess any legal substantial interest in the outcome of a case. Here, we encounter a special tool of the legal technique, namely a legal fiction [20, p. 28]. Legal fictions are a means of legislation when certain non-existent, fictitious things are entrenched. Such a type of legislature is primarily aimed at meeting practical needs. Although legal fictions define non-existent things, they are deemed to exist. Though legal fictions do not correspond to the truth, they nevertheless are equated to it. Such an assumption does not harm anybody; on the contrary, they are useful as a matter of legal technique.

## 7. PROBLEMS OF IMPLEMENTATION OF THE GROUP ACTION IN LITHUANIA

Article 5 of the Lithuanian CCP establishes an individual model of litigation, since it provides that rights and valid interests are to be defended only by a person having a personal interest. However, this is not to say that the entire CCP is based on a purely individualistic model of civil procedure because the CCP, the CC, as well as other sources of substantive law contain legal norms establishing a right of private and public persons to address the court in order to protect infringed or disputed rights and interests of others. For example, Article 17 of the Law on Competition establishes a right of organizations which represent interests of entities or consumers to bring an action before court regarding infringement of competition [21]; Article 52 of the Law on Securities Market establishes a right of the Securities Commission representing interests of investors to bring an action before court for the protection of the public interest [22]; the Law on Consumer Protection enables the State Consumer Rights Protection Authority as well as consumer associations to protect consumers' interests by bringing actions before court. However, it is admitted in the CCP that a civil case may only be initiated by persons who are substantially or procedurally interested (Article 5 of the CCP, "*each interested person...*"), i.e. when such person may think reasonably that its right or valid interests have been infringed. Judging from the way the group action is established in paragraph 5 of Article 49 of the CCP, it is just an exception to general norms of the civil procedure. Also, it may not be maintained that the CCP establishes a model of group (collective) litigation, which is undoubtedly a serious obstacle to the functioning of the institute of group action.

Is a legal norm established in paragraph 5 of Article 49 of the CCP sufficient to institute group action proceedings? We will try to analyze this situation.

In the doctrine of the traditional civil procedure a claimant, a defendant, and third parties are known and individualized. Instead, in certain cases the foreign doc-

trines of civil procedure not only do not require individualisation in case of an indefinite number of interested persons, but also permits to decide as to rights and interests of persons not participating in the proceedings. This is possible due to a group action. It may be maintained that in order to defend the public interest by a group action it is not necessary to establish interested persons; therefore, there is no practical need to join them as joint plaintiffs or third parties. On the other hand, such interested persons may be established, if it does not contradict the principle of economy of the procedure.

This procedure is especially important because it helps to understand what type of a court's judgement regarding the protection of the public interest may be rendered. One may bring a group action for the protection of the public interest if a court's judgement concerns inextricably rights, duties, and interests of all persons of a group, i.e. if it is not necessary to point out in a judgement what is awarded to each member of a group or what part of a judgement concerns them. It enables to conclude that group actions for the protection of the public interest may be brought only in such cases when an indefinite group of persons makes use of a court's judgement [8, p. 157].

The protection of the public interest is possible only by a group action since (1) one legal defence (2) embracing all members of a group may be applied. As a consequence the group actions for the protection of the public interest belong not to the category of actions seeking monetary award, but to the category of actions regarding admission or the category of actions regarding modification of legal relationships.

So we infer that in such a case it is not expedient to establish a group's composition since there is no practical need for this: court's judgements concerning claims for admission or modification of legal relationships do not require enforcement - they are self enforceable. If some enforcement is required, then a defendant by implementing a court's judgement will serve all members of the group, regardless of whether they have been or have been not identified during the proceedings. The prejudicial power of the court's judgements discussed would enable members of a group to bring subsequent individual actions for damages. In this case, the prejudicial power of a court's judgement, other than in the classical doctrine of civil procedure, should concern persons who have not participated in the proceedings. Such approach may be practically implemented only by interpreting the CCP systemically [23]. It follows from paragraph 2 of Article 182 of the CCP, which excuses persons participating in a case from a duty to prove circumstances established by a standing judgement in a previous case in which they have not participated. However, it is worthwhile noticing that the relation between Article 182 and paragraph 5 of Article 49 of the CCP is not so obvious. Therefore, it is not clear whether the prejudicial power of a court's judgement does in fact concern persons, who have not participated in the proceedings. Undoubtedly, the establishment of the *res judicata*

power of a court's judgement for persons who have not participated in a case is one of the most advanced developments in the Lithuanian civil procedure law. However, the present wording of Article 266 of the CCP, which prohibits without exceptions determination of rights and duties of persons not joined in the proceedings, is completely unsuitable for group actions. Therefore, this Article should be supplemented with a reservation regarding group actions.

## CONCLUSIONS AND PROPOSALS

1. Group action procedure can effectively and in wider extent fulfil the functions of public interest defense due to the following reasons: 1) It expands access to courts (principle of access to justice); 2) Group action procedure is more concentrated, effective and economical than the joinder of parties (the principles of procedure concentration and economy); 3) It ensures equal possibilities for the parties to use procedural rights when due to economical, organizational, or personal circumstances not every claimant is capable to litigate effectively with large companies (procedural equality, party presentation principles); 4) It expands the circle of subjects entitled to defend the public interest; 5) Public interest defense would not depend any longer upon state or public institutions or prosecutor as group action procedure grants this possibility to private persons; 6) Positive social effect is reached as both public and private interests are defended simultaneously.

2. Private parties in Lithuania do not have a possibility to defend the public interest since only a prosecutor or other institution so authorized by laws may file a petition regarding the protection of the public interest on behalf of the state. Therefore, such regulation of the protection of the public interest does not fulfil the whole potential of the institute of group action including the potential to defend the public interest.

3. The prejudicial power of a court's judgement, other than in the classical doctrine of civil procedure, in the procedure of group action should concern persons who have not participated in the proceedings. However, the present wording of Article 266 of the CCP, which prohibits without exceptions determination of rights and duties of persons not joined in the proceedings, does not suit group actions at all. Therefore, a reservation regarding group actions should be made in this Article.

4. In Lithuania, the submission of the group actions is directly related to the public interest defense; therefore, the possibility to defend both the public and private interests at the same time by the means of group action is restricted. This and other issues of the institute of group actions could be resolved by introducing a classic model of group action to the Lithuanian legal system, which apart from serving the defense of public interest would also allow to defend private interests of the entire group of individuals.

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## GRUPĖS IEŠKINYS VIEŠAJAM INTERESUI GINTI LIETUVOJE

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### S a n t r a u k a

Lietuvos civilinio proceso teisės doktrinoje yra skiriami liberalusis ir socialinis civilinio proceso modeliai. Tuo tarpu kitose valstybėse, kuriose grupės ieškiniai ne tik įteisinti, bet ir plačiai taikomi praktikoje, civilinio proceso teisėje skiriami individualusis ir kolektyvinis (grupinis) civilinio proceso modeliai. Atsižvelgiant į tai galima teigti, kad Lietuvoje įtvirtintas individualusis civilinio proceso modelis. Individualusis civilinio proceso modelis yra ribotas, nes individui suteikia teisę teisme ginti išimtinai tik savo teises ir interesus. Tokia padėtis kelia tam tikrų problemų įtvirtinant grupės ieškinio institutą Lietuvos teisinėje sistemoje.

Klasikinis grupės ieškinių procesas pirmiausia skirtas ginti didelių grupių interesus. Tačiau grupės ieškiniams gali būti sėkmingai apginamas ir viešasis interesas. Viešasis interesas ginamas grupės ieškiniams ir Lietuvoje. Autorius mano, kad taikant grupės ieškinių procesą galima veiksmingiau ir platesniu mastu atlikti viešojo intereso gynybos funkcijas. Tačiau Lietuvoje privatūs asmenys neturi galimybės ginti viešojo intereso, nes pareiškimą teismui dėl viešojo intereso gynimo gali pateikti tik prokuroras arba kita įstatymų įgaliota institucija. Toks reglamentavimas neatskleidžia visų grupės ieškinio instituto galimybių, taip pat neatskleidžia ir grupės ieškinio instituto galimybės vienu metu apginti tiek viešąjį, tiek privatųjį teisinį interesą.

Grupės ieškinio procese teismo sprendimo prejudicinė galia, kitaip nei klasikiniame civilinio proceso doktrinoje, turėtų liesti ir nedalyvavusius byloje asmenis. Tačiau grupės ieškiniams visiškai netinkama dabartinė Lietuvos Respublikos civilinio proceso kodekso 266 straipsnio formuluotė, be jokių išimčių draudžianti teismo sprendime nustatyti neįtrauktų dalyvauti byloje asmenų teises ir pareigas. Šiame kodekso straipsnyje reikėtų numatyti išlygą dėl grupės ieškinių.

Lietuvoje grupės ieškinio pareiškimas tiesiogiai siejamas su viešojo intereso gynyba, taip yra ribojama galimybė grupės ieškiniu vienu metu apginti viešąjį ir privatų interesus. Ši ir kitos šiame straipsnyje keliamos grupės ieškinio instituto problemos galėtų būti sprendžiamos į Lietuvos teisės sistemą diegiant klasikinių grupės ieškinio modelį, kuris gintų ne tik viešąjį interesą, bet ir privačius visos grupės asmenų interesus.

**Pagrindinės sąvokos:** grupės ieškinys, viešasis interesas.

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