

## Country Report

### Class Actions in Lithuania

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#### 1. *What year was the procedure adopted?*

Amendments to the Code of Civil Procedure, which consolidated the class action's institute, came into force from 1 January 2015. The Code creates only one type of collective procedures in the Lithuanian legal system: group legal action (*grupinis ieškinys*).

However, prior to 2015 group actions were *de jure* available under the law. According to article 49(6) of the Code of Civil Procedure (withdrawn from 1 January 2015), the group actions could be brought in case it was necessary to protect the public interest. In ruling Nr. 2-492/2009, the Court of Appeal of Lithuania concluded that the rights granted under article 49(6) cannot be realized, because there was no effective mechanism to implement group actions. This ruling became one of the major incentive for the government to approve the concept of group actions in 2011 and, thus, to appoint a working committee for the legislative instrument.

#### 2. *Is it authorized by statute, rule or judicial interpretation of an existing statute or rule? (Please include the formal citation and, if available, a link or attachment of an English language version.)*

Procedural rules concerning group actions are recognized in the Code of Civil Procedure (article 441<sup>1</sup> to article 441<sup>17</sup>).

#### 3. *What is the scope of the procedure? (Is it trans-substantive or is it limited to specific fields of law (e.g., consumer law, securities, ...?))*

Group action procedures adopted a horizontal approach, and its content therefore applies across a range of sectors. Yet a particular emphasis is placed on competition law, consumer protection and environmental protection.

#### 4. *Who has standing to initiate the procedure?*

Article 441<sup>4</sup> of the Code of Civil Procedure establishes a list of those that have standing to initiate the procedure.

First, a group action can be brought by a member of the group.

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Second, group proceedings may be instituted by an association or a trade union, if the legal relationship arises from the activities directly related to an association or a trade union action. Furthermore, there is a requirement that at least ten members of the group would be members of an association or a labour union.

Under article 441<sup>5</sup>, all group members act in the capacity of the plaintiffs, however their procedural rights and obligations are implemented through a group representative. In turn, the group is required to be legally represented by an advocate.

5. *What remedies are allowed? (Injunctive or declaratory relief; monetary compensation; other)*

Remedies for group actions are injunctive, declaratory and compensatory. This broad regulation aims to provide additional redress possibilities for victims.

Regardless of injunctive, declaratory or compensatory group actions taken place, these actions can only be brought if the following conditions are fulfilled:

- the group action is based on identical or similar facts and aims at the same remedies to enforce the group of natural or legal persons which are identical or similar substantive rights or legitimate interests;
- the group action is more economical, more effective and more appropriate way to resolve a particular dispute than individual actions;
- a pre-court dispute resolution procedure took place.

6. *Is the procedure opt-in or opt-out?*

Article 441<sup>3</sup> of the Code of Civil Procedure establishes a system of opt-in for group actions in Lithuania. Under the Code, group proceedings cover the claims of at least twenty natural or legal persons who in writing express their intention to be members of the group and to bring legal action. Each member of the group can withdraw from the group prior to the approval of the final list of group members (Article 441<sup>8</sup>). If an appeal takes place each member of the group can leave the action within the appeal deadline.

Final judicial decisions and settlement agreements authorized by a court are binding and conclusive (*res judicata*) on the members of the group, unless the member decides to withdraw from the group. In case of settlement agreements group members are allowed to withdraw from the group within two weeks from the date of information about the settlement.

7. *What are the applicable rules on funding and financing? (How is the lawyer for the class paid, and by whom? Who is responsible for adverse costs? Is third-party litigation financing allowed?)*

The applicable rules on funding and financing group actions are not directly defined by the Code of Civil Procedure. Thus, group action rules shall be subject to the common rules of the legal traditions.

As a general rule, the group lawyer should be paid on an hourly fee, agreed in advance with a group representative. According to the Order of the Ministry of Justice (Nr. 1r-85), there are no fixed lawyer's fees in Lithuania. These fees depend on a case-by-case basis. On the contrary to the current European Union's policy contingency fees are available in the group action procedure. Contingency fees are subject to negotiations between legal representatives and clients. Under Article 50 of the Law on Advocacy, the payment to the lawyer cannot contradict with the principles of lawyers' professional activities. The Court of Honour has a broad discretion to impose a disciplinary liability for the advocate's conduct which is contrary to law or professional ethics.

Articles 93 and 98 establish a general rule of costs allocation according to which the party that loses a case should reimburse the legal costs of the winning party. These costs are subject to the complexity of the case following the provisions of the Order of the Ministry of Justice (Nr. 1r-85).

The third-party litigation financing is allowed in the Lithuanian legal system, however it has never been used in practice in litigation.

8. *Please tell us about whether and how the procedure has been used? (About how many cases have been brought to date? How many cases annually? What types of cases? Who brought the cases? What have been the outcomes of the cases?)*

So far there was only one group action. Ukmergė district municipality brought a claim on behalf of seven thousands heat consumers (legal entities and individuals) alleging that the heat sector lessors (LLC "Energy Efficiency Centre" and LLC "Urban energy") sold the heat energy for a higher price than the lessors were committed to purchase by the public tender. The case was dismissed by the Court of Appeal stating that plaintiffs failed to comply with pre-court dispute resolution procedures (article 137 of the Code of Civil Procedure). This decision is final.