**Questionnaire 2016 Oxford-Leuven Collective Redress Project**

**Lithuania**

**Renata Juzikiené**

*Part A* (maximum 5 pages)

1. What mechanisms does your country have to resolve mass disputes? For example:
	1. compensation orders that may/must be made by a criminal court;
	2. mass redress powers that may be exercised by a public regulator or enforcer, either through a court order or individually;
	3. ADR, ombudsmen or compensation schemes;
	4. private enforcement mechanisms like representative actions, class actions or group actions?
	5. voluntary or negotiated schemes;
	6. something else?

In relation to each of the above mechanisms, please:

1. Give a general description of how the mechanism works.
2. State when were the mechanism was enacted. was it part of a larger/broader legislative reform or stand-alone initiatives?
3. State its scope: sectoral or generic/trans-substantive?
4. State what remedies are allowed: injunctive, declaratory, compensatory, or a combination?
5. State who has standing?
6. State, where relevant, whether it is based on an opt-out or opt-in system.
7. State any specific rules on case management, or whether the general rules apply.
8. State any specific rules on funding and financing these mechanisms, or whether general rules apply.

**Response.**

In Lithuania there are currently four mechanisms to resolve mass disputes:

1. traditional procedural mechanisms such as joinder of claims and claims in intervention regulated by the Code of Civil Procedure. Usually these techniques are not used for resolving mass disputes as they are designed for litigation process with a small number of parties, with involvement of each person in the proceedings with all procedural rights and obligations.
2. representative action, aiming to protect the public interest;
3. group action in civil proceedings;
4. test case in administrative proceedings.
5. **Representative actions** have such common characteristics:
	* 1. standing is granted to public authorities and certified organizations (such as associations, other non-profit public entities);
		2. the cause of action has to correspond with the statutory aim (in case of public authority) or the establishment aim (in case of certified organizations);
		3. these actions can only be used for injunctive or declaratory relief, the compensatory relief as a remedy is not available;
		4. the types of remedies and criteria for certified organizations are laid down in different acts of legislation on substantive law (statutes) (e. g. Law on Consumer Protection, Law on Competition, Law on Environment Protection, Law on Financial Instrument Market, etc.).
		5. the members of public whose interest is being protected by the action are not parties of the proceedings;
		6. procedure is self-funded. According to the Article 83 (Subparagraph 5, Paragraph 1) of the Code of Civil Procedure plaintiffs in cases when an action for protection of public interest is brought are exempt from payment of stamp duty;
		7. there are no special procedural rules on hearing cases initiated for protection of public interest.

**Examples of the regulation.**

1. According to Article 30 on the Law of Consumer Rights Protection the right to protect consumers’ public interest has State Consumer Rights Protection Authority and consumers’ associations which satisfy the following criteria:

1) are registered in the Register of Legal Entities of Lithuania;

2) the aim of operation, stipulated in the instruments of incorporation, is representation and protection of consumer rights and legitimate interests;

3) have not less than 20 members. In case when members of association at the same time are other consumer associations, the common number of members in both associations should be not less than 20;

4) are independent from the business and others interests not related with consumer right protection.

The defence of consumers’ public interest is described by law (Paragraph 2, Article 30 of the Law of Consumer Right Protection) as lodging a complaint or an application for the purpose of protection of consumers’ public interest, which seeks recognition or change of legal relationship, prohibition (termination) of certain actions (omissions) of a seller or service provider whereby legitimate common interests of consumers are being infringe upon and which are unfair or are not in compliance with the fair business practice or are in conflict with the provisions of the Lithuanian Civil Code, the Law on Consumer Protection of Lithuania or other legal acts.

2.According to the Paragraph 2 of Article 7 of the Law on Environment Protection the public concerned has a right to apply to court in order to protect public interest by seeking to review the procedural and substantive legality of the decisions, acts or failure to act in the sphere of environment and its protection or exploitation of natural resources.

According to the Law on Environment Protection, the public concerned is one or more natural or legal persons affected or likely to be affected by the decision, act or failure to act in the sphere of environment, its protection, exploitation of natural resources or those, who are concerned with the process of decision making. Associations and other public legal entities, which are established in accordance with the laws to promote environment proctection, are always deemed to be the persons concerned.

3. According to Article 18 (Subparagraph 6, Paragraph 1) of the Law on Competition the Competition Council can bring an action before the court for the protection of public interests safeguarded by the Law on Competition. Competition Council is responsible for the control of anti-competitive agreements, abuse of dominance, merger control, state aid, advertising, retail trade.

Organizations representing the interests of undertakings or consumers are entitled to bring a claim before the court on behalf of an undertaking or consumers, whose legitimate interests are violated by actions of unfair competition (Article 16 of the Law on Competition). Available remedies are:

1) termination of the illegal actions;

2) imposition of an obligation to make one or several statements of specific content and form, refuting the previously announced incorrect information or providing explanations as to the identity of the undertaking or goods it produces;

3) seizure or destruction of the goods, their packaging or other means directly related to unfair competition, unless the infringements can be eliminated otherwise.

4. According to Article 28 (Paragraph 2) of the Law on Advertising, organisations representing the interests of operators of advertising activity or consumers and self-regulatory advertising authorities have the right to bring an action before the court, when rights and interests protected by this law are violated by using the advertising prohibited under this Law with a claim on:

1) termination of the use of advertising;

2) obligation to publish one, two or more statements of a specific content and form refuting misleading advertising.

5.According to Article 71 (Subparagraph 13, Paragraph 1) of the Law on Markets in Financial Instruments the Central Bank of Lithuania is entitled to bring an action before court for the protection of public interests, representing investors’ interests.

**II.** **Group Action**. The provisions on group actions are stipulated in Chapter XXIV1 of the Civil Procedure Code (hereinafter: “CPC”). The group action is described as a dispute, when a claim, grounded on identical or similar factual circumstances and aimed at protecting identical or similar substantive rights or interests of natural persons’ or legal entities that form a group by the same remedy, is lodged. (Art. 4411 of the CPC). The provisions on group action were enacted by the law No. XII-77 1 on Amending Article 49 of the Code of Civil Procedure and Supplementing the Code with Article 2611 and Chapter XXIV1, which was passed on 13th March 2014 and came into force on 1st January 2015. The law was prepared on the basis of conception on group actions, which was approved by national Government Decree No. 885 on 13th July 2011. The conception emphasized the necessity to implement the collective redress mechanisms in civil and administrative proceedings. While the conception offered the sectoral approach by limiting the use of group action to disputes arising from the legal relationships when one of the parties is considered to be weaker, e. g. consumers, workers, small shareholders, nonetheless the law adopted by the Parliament provides no limitation on the scope of application of group action in civil proceedings with a possibility to use all kinds of remedies (injunctive relief, compensatory relief, declaratory relief). According to the group action model laid down in national regulation, the group is defined through an opt-in procedure. The right to initiate a group action has a group of at least 20 legal or natural persons. This group should be represented adequately. The representative may be a natural person (one of the members of the class with no special requirements) or a legal person (the association or trade union where the pleas laid in the group action arise out of legal relationships directly related to the aim and field of activity of the association or the trade union and where at least 10 members of the group are the members of the association or trade union. Members of the group may include not only the members of the association or the trade union and in the proceedings the association or the trade union may represent the interests of all members of the group). The regional courts (as courts of higher instance) have exclusive jurisdiction to hear cases of group actions. The law requires mandatory participation of an attorney-at-law during all the proceedings.

The proceedings of a group action include two mandatory phases, which make theese proceedings different from general ones:

1. Mandatory pre-trial procedure, when a representative of a group is obliged to notify the respondent of the intention of the group to apply to the court for bringing a group action by sending a written claim by registered post mail by the address of the place of residence if the respondent is a natural person or by the address of the registered office if the respondent is a legal person. The claim shall specify the class members and their pleas and warn that if the pleas are not fulfilled within the period indicated in the claim, the class members may lodge a group claim in the court. A period of at least 30 days for fulfillment of the pleas of class members shall be set by the representative of the class. Should no response to the claim be received within the established period, it shall be deemed that the respondent failed to fulfill them (Article 4412 of CCP).
2. Certification phase, when the court is obliged to check the prerequisites for the group action (Article 4417 of CCP):
	1. The numerosity of the group, which should be at least 20 legal or natural persons.
	2. The adequacy of representation. In assessing this condition, the court evaluates honesty, competence, experience in group litigation (if any), procedural behavior, conflict of interests, financial capacity of representative.
	3. The effectiveness of procedure. The court has to assess whether a group action is a more expedient, effective and suitable mean for resolving the dispute than an individual action.
	4. The commonality of the claims (whether claims are based on identical or similar factual circumstances or identical or similar substantive rights or interest).

 After delivering the ruling on acceptance of the group claim the court shall set the term for extension of the group and make a public notice on the special Internet website by setting the term from 60 to 90 days to join the group and afterwards approve the final list of the class members by delivering a ruling.

There are no special rules on hearing on the merits of the case in the group action proceedings. The legislation is constructed in such a way that when there are individual pecuniary pleas of the class members the hearing of group action comprises two phases: a collective phase during which the common issues, concerning the factual circumstances, would be resolved and the preliminary ruling with *res judicata* in respect of all members of the group would be delivered, and an individual phase, during which the individual issues in respect of each member’s individual claim regarding the amount of the pecuniary damage would be dealt with following the preliminary ruling and delivering the individual ruling. Individual ruling can be enforced individually by a group member in respect of whom the ruling was delivered. In cases of injunctive or declaratory actions the court shall deliver the common ruling, which is common to all members of the group.

There are no special provisions regarding the funding of a group action assuming that the procedure will be financed in the same way as individual procedure, i. e. self-funded. There is no explicit prohibition on the third party financing as well. The general principle “loser pays” is applied. The representative has a duty in respect of litigation costs, group members are liable towards the representative for reimbursement of costs. The stamp duty for a class action shall be paid by the representative, as fulfillment of his rights and duties, and the amount of the stamp duty falling on each member of the class shall be collected from members of the class according to the rules on apportionment of litigation expenses, which shall be approved by the representative. These rules shall comprise detailed order of apportionment of litigation expenses among the members of the class action (Article 44116 of CCP). When the court awards litigation expenses to the other party from the class it shall be deemed that the expenses are awarded from the members of the class in equal parts, except in instances prescribed by law (in case of individual ruling and withdrawal of the member) (Article 44117 of CCP).

 **III. Test case proceedings** are regulated in Chapter 4 of the Law on Administrative Proceedings. The Law amending the Law on Administrative Proceedings No. XII-2399 was passed on 2nd June 2016 and came into force on 1st July 2016. According to Article 127 of the Law on Administrative Proceedings, test case proceedings may be used for homogeneous in law and facts cases regarding the legal consequences after declaring the regulatory act inconsistent with the Constitution of the Republic of Lithuania or other laws, when there are 20 or more such pending cases in one or more administrative courts. The test case proceedings can be initiated by the ruling of the President of the regional administrative court at the request of a judge or a panel of judges as well as by the ruling of the President of the Supreme Administrative Court at the request of a judge or a panel of judges. The test case shall be heard by a three judge panel at the regional administrative court or by the extended panel of seven judges or by a plenary session at the Supreme Administrative Court. After starting the test (model) case, hearing of other homogeneous individual cases shall be suspended and renewed after the delivery of the judgement in the model case. The renewed individual cases can be heard by one judge in a written procedure.

*Part B* (maximum 15-20 pages)

1. In relation to each mechanism that exists identified above:
2. How many cases have been brought to date? Or are brought annually?
3. Briefly describe the nature of cases (subject matter, facts, duration, costs, and outcome—what changed and who got what?). (If there is a small number, 5 to 10 lines per case; or, if there is a large number, give details of a small number of important or representative cases).
4. **Case studies**. Select one or two (preferably completed) cases and describe (in detail) the following issues:
	1. The underlying facts and how these were discovered (eg, via the media)
	2. Who initiated/started the claim (an individual, an association, a lawyer, a public body?)
	3. Who were the parties?
	4. Where was the claim brought?
	5. How was the claim funded/financed?
	6. How did the case unfold?
	7. How was the evidence obtained?
	8. How long did the case take?
	9. What was the outcome? What changed, and who got what?
	10. How were the victims compensated? What did they actually get?
	11. What were the costs of the case, and who paid and received what?
	12. How were the lawyers compensated, and how much?
	13. Where there appellate proceedings?
	14. Were there parallel claims in other jurisdictions? If so, did this influence the national court procedures? How?
	15. Were there parallel non-judicial, regulatory/administrative or judicial procedures? If so, how did either influence any other?
	16. How did the media report about the case? Did the media influence the case?

**Response.**

Due to the lack of time and absence of national statistics relating to the representative actions it is not possible to identify the quantity of cases related to this mechanism. Currently there are no test case proceedings initiated in the administrative courts as the test case regulation came into force on the 1st July in 2016. From the 1st January 2015, when the group action proceedings came into force, there were three group claims lodged (group actions were started) in national courts. None of them was deemed to satisfy the legal requirements in the certification phase. All the judgements were appealed and all the appeals were dismissed by the Court of Appeal of Lithuania. These decisions are final.

1) Group of claimants - the shareholders of an insolvent commercial bank - represented by investors’ association lodged a claim for damages from an auditing company for false and misleading report about the financial status and perspective of the bank, which was publicly available. The claimants alleged that this report made an essential impact on their decision to make investments and to buy shares of the bank. The shares were bought in 2011 and the bank became insolvent in 2013. The court refused to hear the lawsuit as a group action because the conditions for the group action were not met. The court stated that there was no commonality of claims because factual circumstances of members of the group were not identical or similar. Claimants had bought shares at different periods of time, some of them decided to buy shares, others - to hold on already acquired shares, their investment decisions were made for different reasons, and each investor had different investment experience, education, age. According to the court, it makes impossible to decide in common on the civil responsibility of the respondent in respect of all the claimants. In addition, the court pointed out that there was another case where the administrator of an insolvent bank claimed damages from the same auditing company.

2) Group of claimants (heat energy consumers: legal persons and individuals) represented by the district municipality claimed damages from the heat energy supply firms on the grounds of unjust enrichment. The group claimed for the part of payments received by the firms for energy supply (the heat sector lessors) because the heat was sold for a higher price than the lessors were committed to purchase by the public tender. The court dismissed the claim at the certification phase on the ground that the conditions for the group action were not met: first of all, the pre-trial procedure was not conducted correctly and the notification sent to the respondent was too abstract and unclear for respondent to identify the scope of the group and the amount of damages suffered by each claimant; secondly the representative did not have the power to lodge compensatory claims on behalf of each group member; and finally the court stated that there was no commonality of claims because factual circumstances were not identical or similar as the claimants based their claims on different contracts with the defendant.

3) Group of claimants (more than 1000 natural persons) represented by investors’ association claimed to declare their contracts on buying bonds of another insolvent commercial bank null and void as concluded under influence of mistake or misleading and to declare money transferred to the bank as deposits (this legal qualification has an essential impact on the amount of insurance payment, which is different depending on the status of the money). The court dismissed their claim at the certification phase on the ground that the conditions for the group action were not met. The court stated that there was no commonality of claims because factual circumstances were not identical or similar. Even though all claimants can be deemed to be non-professional investors, it was impossible to give common ruling decision in respect of all group members as each of them bought bonds at different dates, their investment decisions were made for different reasons, each investor had different investment experience, education, age. Since, the court would have to evaluate the circumstances in which every contract was concluded, including the preliminary negotiations of each agreements, there was no basis for the group action.