



Executive summary of the public audit report

ORGANISING THE PROTECTION OF THE PUBLIC INTEREST

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EXECUTIVE SUMMARY

The protection of the public interest is the constitutional duty of the Prosecution Service of the Republic of Lithuania¹ and one of its priority functions.

Prosecutors defend the public interest in cases when a law infringement has been identified breaching lawful interests of a person, society, public law, and legitimate interests, and such violations is considered to be a breach of the public interest, and when state or municipal institutions in the activity area of which the violation had been committed did not take measures to remove it, or when there is no such competent authority².

At the time of the audit, 19 state institutions had the right to go to court concerning the protection of the public interest in cases prescribed by the law: State Territorial Planning and Construction Inspectorate under the Ministry of Environment, Cultural Heritage Department under the Ministry of Culture, Information Society Development Committee under the Ministry of Transport and Communications, National Commission for Energy Control and Prices, Authority for Audit and Accounting, Competition Council, Bank of Lithuania, Public Procurement Office, State Consumer Rights Protection Authority, Government Representative Offices (in ten counties). Since 1 January 2014, the right to go to court concerning the protection of the public interest in cases prescribed by the law has also been granted to the National Land Service under the Ministry of Agriculture and to the State Forest Service under the Ministry of Environment.

In cases that are not specified in the law, the above-said state institutions, as well as other state institutions that have identified potential violations of the public interest, shall apply to the Prosecution Service with a request that the prosecutor go to court to defend the public interest.

Divisions of protection of the public interest were established at the Prosecutor General's Office in 2012 for carrying out the public interest protection function. Following the establishment of these divisions, prosecutors of regional prosecutor's offices, who filed almost 80 per cent of all claims of the Prosecution Service over the period 2010–2011, have no longer been performing the public interest protection function since May 2012. In 2013, the number of claims (applications, requests) filed with the court by prosecutors of the divisions of protection of the public interest of the territorial regional prosecutor's offices in 2013 went down by 54 per cent as compared to those filed by regional prosecutor's offices in 2011.

The Prosecution Service does not have summary information on how many court decisions taken following prosecutors' claims, applications, requests have been implemented, i.e. how many violations of the public interest have been eliminated.

The objective of the audit was to assess the adequacy of organising the protection of the public interest, by answering the following questions:

- do state institutions and the Prosecution Service apply the same interpretation as to what law infringement is considered to be a breach of the public interest;

¹ Constitution of the Republic of Lithuania, Art. 118(2) (as amended by Law No. IX-1379 of 20 March 2003, which entered into force on 21 April 2003).

² Law on the Prosecution Service, No. I-599, 13 October 1994 (as amended by Law No. IX-1518 of 22 April 2003), Art. 19(1) (as amended by Law No. IX-1562 of 30 June 2011).

- do state institutions promptly determine possible violations of the public interest and inform the Prosecution Service thereof;
- do state institutions have sufficient powers to apply to the court concerning the protection of the public interest;
- did prosecutors apply effective public interest protection measures;
- do state institutions properly represent the state in the execution of court decisions.

The audit was conducted at the Prosecution Service of the Republic of Lithuania, National Land Service under the Ministry of Agriculture, State Territorial Planning and Construction Inspectorate under the Ministry of Environment, Government Representative's Office in Vilnius County, and State Tax Inspectorate under the Ministry of Finance. During the audit, information was collected from other state institutions, including surveying suppliers.

The audit covered the period 2010 to 1st half of 2013. Certain data of a later period was also used for analysing changes.

The audit did not address the issues of the legality and validity of the decisions taken by prosecutors, courts, and state institutions.

The following public audit conclusions and recommendations were drawn upon the assessment of the audit findings.

CONCLUSIONS

1. State institutions find it difficult to identify what law infringement should be considered a breach of the public interest. Infringements are often differently interpreted by state institutions and prosecutors because legislation contains insufficient definitions of the public interest in the areas of activity of state institutions. As a result, human resources are not also efficiently used to protect the public interest and thus violations of the public interest may remain unidentified or may be identified incorrectly.
2. State institutions in the activity areas of which the largest number of violations of the public interest is identified have the power to go directly to court in order to defend the public interest, however, according to their mandate, only in the cases set forth by the law. Therefore, they applied to the Prosecution Service of the Republic of Lithuania (rather than the court) twice more often over the period 2010-2012, requesting that the prosecutor go to court concerning the protection of the public interest. This resulted in longer public interest defence processes and inefficient use of human resources to protect the public interest.
3. State institutions do not always ensure prompt identification of violations of the public interest in their respective activity areas and preparation of appeals to the Prosecution Service concerning the protection of the public interest. In some cases in 2013, the National Land Service under the Ministry of Agriculture and State Territorial Planning and Construction Inspectorate under the Ministry of Environment appealed to the Prosecution Service asking to apply to the court for protecting the public interest in respect of violations which had been committed more than ten and more years ago. It can be difficult to collect evidence and to protect the public interest in a proper manner after such period of time.
4. The Prosecution Service does not evaluate whether or not the measures to defend the public interest applied by prosecutors were actually effective, i.e. whether state and municipal

institutions did eliminate the law infringements as requested by the prosecutors. The said institutions do not always inform the Prosecution Service thereof, because the Law on the Prosecution Service obligates them to provide information only on the decision as such taken at the prosecutor's request but not on its implementation results.

5. It is prosecutors who generally apply to the court concerning the protection of the public interest. They take part in the judicial proceedings and have information on court decisions, however, prosecutors are not charged with representing the state in the execution of court decisions taken according to their claims, applications, and appeals and providing such information to the institutions which are delegated with such task. Administrative courts issue recovery orders only upon the applicant's request. As a result, there is no guarantee that all recovery orders are promptly issued to the State Tax Inspectorate under the Ministry of Finance in cases where funds have to be recovered to the state budget according to court decisions.
6. State institutions authorised to represent the state in the execution of court decisions have been failing to always meet these functions in a proper manner:
 - 6.1. The State Tax Inspectorate under the Ministry of Finance, which is mandated to represent the state in cases of the recovery of funds to the state budget according to a recovery order, was not always performing its statutory duty to take an active interest in how bailiffs are executing the recovery orders. Because of its failure to follow whether bailiffs have taken all possible measures to execute the recovery orders, the State Tax Inspectorate under the Ministry of Finance did not have information on whether it should take decisions to accelerate the execution progress;
 - 6.2. The State Territorial Planning and Construction Inspectorate under the Ministry of Environment, which is mandated to represent the state in cases when court decisions to eliminate the effects of unauthorised construction and construction under an illegally granted construction authorisation have to be executed, was not always promptly performing its duty to organise the procedures for eliminating the construction effects according to court decisions because in some cases it checked whether the defendant implemented the court decision in good faith more than one year after the expiry of the time limit for implementing the decision;
 - 6.3. The National Land Service under the Ministry of Agriculture, which holds state land in trust, failed to ensure prompt application to the state enterprise Centre of Registers concerning the registration of the title of the Lithuanian state to the land lots recovered under court decisions with the Centre of Registers. This increased the risk that the state may lose the land lot returned thereto by the court decision because it may be transferred to other persons during that time.

Taking into consideration the fact that the State Territorial Planning and Construction Inspectorate under the Ministry of Environment has taken measures to eliminate the shortcomings indicated in Conclusion 6.2 (Procedure for organising elimination of the construction effects according to a court decision was approved by Order No. 1V-91 of the Head of the State Territorial Planning and Construction Inspectorate under the Ministry of Environment of 5 June 2013, which provides for that inspection of whether the defendant has executed the court decision observing the established deadline should be initiated in ten working days), therefore no recommendations have been issued thereto.

RECOMMENDATIONS

To the Government of the Republic of Lithuania

1. In order to ensure the efficient use of human resources for protecting the public interest and to create appropriate legal conditions for identifying violations of the public interest, legislative amendments should be initiated aimed at:
 - 1.1. extending the powers of the state institutions which are legally entitled to apply to the court for the protection of the public interest, so that they are able to effectively defend the public interest in cases when violations are identified in their activity areas;
 - 1.2. defining what constitutes the public interest in the areas assigned to the competence of the state institutions which are legally entitled to apply to the court for the protection of the public interest.
2. In order to ensure the prompt recovery of funds to the state budget according to court decisions, amendment of the Law of the Republic of Lithuania on Administrative Proceedings should be initiated, so that administrative courts, like courts of general competence, issue recovery orders to the State Tax Inspectorate under the Ministry of Finance without a request thereof.

To the Prosecutor General of the Republic of Lithuania

3. In order to ensure that the Prosecution Service obtains information necessary for taking decisions on the protection of the public interest, amendment of the Law of the Republic of Lithuania on the Prosecution Service should be initiated, so that state and municipal institutions inform the Prosecution Service not only about the decision taken in accordance with the prosecutor's request but also about the decision implementation results.
4. In order to ensure that the institutions representing the state in the execution of court decisions obtain information about the court decisions taken in accordance with prosecutors' claims, applications, requests to protect the public interest defence in a prompt manner, measures should be provided for to ensure that prosecutors forward the court decisions to these state institutions without any delay.

To the National Land Service under the Ministry of Agriculture and the State Territorial Planning and Construction Inspectorate under the Ministry of Environment

5. In order to ensure the protection of the public interest in the activity areas delegated thereto, control measures should be provided for so as to facilitate more prompt identification of public interest violations in their activity areas and to ensure taking immediate measures to eliminate these violations.

To the State Tax Inspectorate under the Ministry of Finance

6. In order to ensure the execution of a maximum number of court decisions to recover funds to the state budget, the Rules for registering, forwarding of execution and executing recovery orders approved by Order No. V-182 of the Head of the State Tax Inspectorate under the Ministry of Finance of 11 May 2006 should be revised to encourage taking active interest in court decision execution when representing the state in the court decision execution process and, if necessary, taking decisions on accelerating the recovery of the adjudged amounts to the state budget.

To the National Land Service under the Ministry of Agriculture

7. In order to prevent violation of state ownership of land lots recovered according to court decisions, implementation control measures should be established in respect of Order No. 1PAV-(1.8)-242 of the Director of the National Land Service under the Ministry of Agriculture of 30 May 2012 addressed to the heads of territorial units of the National Land Service under the Ministry of Agriculture concerning the implementation of final court judgments and orders.