



Executive summary of the public audit report

SECURING THE FUNDS OF THE
NATIONAL BUDGET AFTER THE
COMPENSATION OF DAMAGE CAUSED
BY OTHER PARTIES IN CASES PROVIDED
FOR IN THE LAWS

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DEFINITIONS AND ABBREVIATIONS

CC: Civil Code.

CCP: Code of Civil Procedure.

Statutory institutions: institutions, activities of which are regulated by statutes (Statute of the Internal Service of the Republic of Lithuania, Statute of Service in the Prison Department under the Ministry of Justice of the Republic of Lithuania, Statute of Service in the Customs of the Republic of Lithuania, Statute of the Special Investigation Service of the Republic of Lithuania).

Police Department: Police Department under the Ministry of the Interior.

Ministry of Justice: Ministry of Justice of the Republic of Lithuania.

Prison Department: Prison Department under the Ministry of Justice of the Republic of Lithuania.

Children's Maintenance Fund Administration or Fund Administration: Children's Maintenance Fund Administration under the Ministry of Social Security and Labour.

State Tax Inspectorate: State Tax Inspectorate under the Ministry of Finance of the Republic of Lithuania.

AW: average wage.

MSF: minimum subsistence figure (now, basic social benefit, EUR 38 as of 01/01/2015¹).

Limitation period: a period of time provided for in the laws, during which a person may defend their violated rights by bringing a claim. According to the CC (Art. 1.125, p. 8), abridged three-year limitation period shall be applied with respect to claims for the compensation of damage.

Terms the **right of recourse** and **right of claim** are used interchangeably in the report.

¹ Resolution No. 924 of 10/09/2014 of the Government of the Republic of Lithuania on approving the sum of the basic social benefit

SUMMARY

Compensation of damage plays an important role in the protection and defence of interests of individuals. Normally, damage has to be compensated by a person who caused it or a person responsible for the actions of the injuring party. Seeking to fulfil its international obligations and defend interests of persons who incurred damage, the state has undertaken to compensate damage caused by other persons in certain events. Conditions under which the state is required to compensate damage caused by other persons are defined in the Law on Compensation for Damage Inflicted by Public Institutions and Representation of the State and the Government of the Republic of Lithuania, the Law on Compensation for Damage Inflicted by Violent Crimes of the Republic of Lithuania, the Law on the Children's Maintenance Fund of the Republic of Lithuania, and the statutes governing the activities of the statutory institutions.

Once the state compensates damage caused by other persons, it acquires the right to request that persons liable for the damage repay the amounts paid for them (the right of recourse). In the exercise of the right of recourse, the state is represented by the Ministry of Justice of the Republic of Lithuania, the Children's Maintenance Fund Administration under the Ministry of Social Security and Labour, the statutory institutions and public institutions, the actions (acts) of which resulted in the damage.

Over the course of the audit, we assessed whether the right of recourse is properly exercised once the state has compensated for damage caused by other persons:

- The Ministry of Justice has compensated for damage inflicted by violent crimes;
- The Ministry of Justice has compensated for damage inflicted by unlawful actions of public institutions;
- The Children's Maintenance Fund Administration has paid out child benefits;
- The statutory institutions have paid out compensations in case of damage to health or death of statutory officers.

The audit results show that over 2013–2015, the state spent nearly 51 million euros to compensate for damage caused by other persons. Public institutions representing the state exercised the right of recourse and recovered only 1.6 million euros from the persons liable for the damage. The debt to the state is growing every year. On 31/12/2015, the debt to the state comprised of child benefits was 108 million euros. Other public institutions made no calculations of the amounts that are likely to be recovered, thus accurate amount of debt is not clear. Failure to rearrange the process of exercise of the right of recourse shall reduce the chances of the state to recover old debts, while the debt will only increase in the future.

The following conclusions and recommendations were drawn upon the assessment of the audit findings. If properly implemented, they will ensure higher efficiency of recovery of the debt to the state at a lower cost.

CONCLUSIONS

1. In 2013–2015, the Ministry of Justice spent a total of 2.4 million euros to compensate damages caused by violent crimes and recovered only 23.7 thousand euros (about 1 percent of the compensated amount) from the identified liable parties. The ministry failed to determine the likelihood of recovering the compensations paid out and accounted for the amounts to be recovered only after courts passed the relevant decisions on the claims based on the right of recourse. The right of recourse is exercised in an ineffective and inefficient manner, since:
 - 1.1. in 2013–2015, the ministry brought to the courts only about one fifth (19.9 percent) of the claims based on the right of recourse within the applicable three-year limitation period, because it did not have sufficient information necessary to exercise the right of recourse and did not have sufficient control over the process of lodging the claims. On expiry of the limitation period, the risk of losing the chance to recover the compensated amounts reduces (Subsection 3.1);
 - 1.2. for more than ten years, the process of exercising the right of recourse has remained complicated and unreasonably burdening the Ministry of Justice and courts. The ministry failed to initiate and consider the possibility to initiate amendment to the Law on Compensation for Damage Inflicted by Violent Crimes of the Republic of Lithuania, granting a status of an enforcement document to the decision of the ministry on the compensation for damage inflicted by a violent crime (Subsection 3.1).
2. As the number of decisions on the compensation for damage inflicted by violent crimes increases every year, the need for the national budget funds necessary to compensate for damage also grows; however, the ministry failed to take adequate action to:
 - 2.1. make sure that the penal measure imposed by courts in all cases, i.e. payment to the Fund for Compensation to Crime Victims, is always made within the period prescribed by the court. On 31/03/2016, 64 percent of debtors who have missed the deadline for the payment more than one year ago. Therefore, payments in the fund programme accounted for less and less every year: 34 percent in 2013, 26 percent in 2014, 19 percent in 2015 (Section 1);
 - 2.2. to identify the reasons why courts usually impose the payment of the minimum amount payable to the Fund for Compensation to Crime Victims, since the average amount of the payment imposed by the courts in 2013–2015 was only 6 MSF (courts may impose payments in the amount from 5 to 25 MSF). (Section 1).
3. In 2013–2015, the Ministry of Justice spent 4.2 million euros on compensations for damage inflicted by unlawful actions of public institutions. The institutions representing the state exercised the right of recourse and recovered 3.4 thousand euros (about 0.08 percent of the funds spent) during the period. The right of recourse is improperly implemented, because:
 - 3.1. following the compensation for damage awarded by court decisions and court settlements in the amount of 1.8 million euros, in 97 percent of the analysed cases, public institutions representing the state failed to determine whether persons whose actions caused the damage were subject to civil liability. Unlike the procedure of determining liability in case of breaches of administrative duties, the process of determining liability in this case has not been regulated (Subsection 3.2);

- 3.2. statutory limitations of civil liability in case of damage inflicted by unlawful actions provided for in the criminal procedure reduce the possibility to recover the amounts paid. Compensation for damage inflicted by actions of pretrial investigation officers and prosecutors can be recovered through the exercise of the right of recourse only if it has been proven that the actions were intentional. During the audit period, about 370 thousand euros were paid out as a result of unlawful actions in the criminal proceedings; however, the issue of civil liability of the aforesaid officers has not been raised (Subsection 3.2);
- 3.3. no actions have been taken to ensure that institutions responsible for the exercise of the right of recourse are always informed of the fact of payment to persons who incurred damage and the likelihood of recovering the amounts paid, and duly include the amounts to be recovered in the accounting as well as take action to exercise the right of recourse (Subsection 3.2);
- 3.4. there is a lack of publicity of damage inflicted by unlawful actions of public institutions and the exercise of the right of recourse. Out of 28 analysed cases, only one court decision stating that unlawful actions of an institution resulted in damage was published in accordance with the legal acts; not once has the information on measures taken for the exercise of the right of recourse been published (Subsection 3.2).
4. In 2013–2015, the Children's Maintenance Fund Administration spent 43.3 million euros on child benefits, while only 1.4 million euros (about 3 percent of the amount paid out) were recovered through the right of recourse. The debt to the state was growing every year; on 31/12/2015, the amount to be recovered, including interest, was 108 million euros. The Fund Administration failed to efficiently represent the state in the recovery of amounts paid out as child benefits, since:
 - 4.1. it has failed to pass timely decisions on the recovery of benefits paid out from the fund from the debtor. Over 2013–2015, decisions on the recovery of debt were passed only against 13 percent of the debtors, of which most of the decisions (95 percent) were passed regarding debts that occurred back in 2008–2009 (Subsection 3.3);
 - 4.2. it has failed to recover debts from debtors who left Lithuania, even though the necessary legal conditions were ensured (Subsection 3.3);
 - 4.3. it has failed to ensure that all information necessary for the exercise of the right of recourse is obtained, since it has not completed developing the information system of the Children's Maintenance Fund Administration established in 2012 ensuring automatic receipt of data from the Population Register and Bailiffs' Information System. The information system is being developed without compliance with the requirements of the relevant legal acts, i.e. without a technical specification; therefore, there is a chance that coordinated operation (receipt and use of the data) of the information systems and registers may not be achieved (Subsection 3.3).
5. In 2013–2015, statutory institutions paid out 1 million euros in compensations in cases of damage to health or death of statutory officers and recovered about 164.9 thousand euros (about 16 percent of the funds spent) through the exercise of the right of recourse. Having paid out the compensations, the statutory institutions failed to determine the likelihood of recovering the funds and accounted for the amounts to be recovered only after courts passed the relevant decisions on the claims based on the right of recourse. When applying to the courts asking to adjudge the compensations paid out, these institutions failed to collect and deliver evidencing supporting the actual amount of the inflicted damage.

According to the existing case law, sometimes, courts decide not to uphold claims of recourse based on mere fact of payment of the compensation (Subsection 3.4).

6. There is a lack of effectiveness in the organisation of representation of the state in the exercise of the right of recourse, since distribution of functions among public institutions representing the state does not correspond to the principles of improvement of the system of the executive government and fail to ensure proper exercise of the right of recourse:
 - 6.1. For more than a decade now, the Ministry of Justice has been implementing public policy by complying with the provisions of the Law on Compensation for Damage Inflicted by Violent Crimes of the Republic of Lithuania; however, the purpose of the ministry is to shape public policy, organise and coordinate its implementation in the areas within the purview of the minister. The Law on the Government of the Republic of Lithuania provides that functions of implementation of public policy may be entrusted to ministries only in cases provided for in the laws and only for a defined period of time. The law implemented by the ministry sets no deadline (Section 2; Subsection 3.1).
 - 6.2. In the exercise of the right of recourse, in the enforcement process, the state has been represented by public institutions, while the State Tax Inspectorate administers only part of the amounts recovered in favour of the state, even though in 2012, seeking to make the process of recovery on behalf of the state less complicated and less costly, the Government approved the Concept for the Rearrangement of Recovery on Behalf of the State, after the implementation of which the recovery process was supposed to be handled by a single administrator (Section 2).
 - 6.3. Sometimes, public institutions failed to submit to bailiffs the enforcement documents and failed to properly fulfil the duties of a debt-collector provided for in the law. Unlike the State Tax Inspectorate, they have no information systems allowing for the automation of the recovery process (Section 2, Subsections 3.1, 3.3 and 3.4).

RECOMMENDATIONS

To the Government of the Republic of Lithuania

1. To ensure proper distribution of functions of representation of the state in the exercise of the right of recourse and efficient recovery of debts at the lowest possible cost, the following decisions should be passed:
 - 1.1. on the redistribution of functions of representation of the state in the recovery process based on enforcement documents (conclusions 6.2 and 6.3);
 - 1.2. on the adjustment of regulation of the functions entrusted to the Ministry of Justice under the Law on Compensation for Damage Inflicted by Violent Crimes of the Republic of Lithuania or the assignment of these functions to other institutions (conclusions 6.1 and 6.2).
2. The existing legal acts should be amended in a way that institutions dealing with the internal affairs and other statutory institutions would have the possibility to collect proper and adequate evidence supporting the amount of damage, when exercising the right of

recourse after paying out compensations in case of damage to health or death of the officers (conclusion 5).

3. To improve the exercise of the right of recourse once the damage inflicted by unlawful actions of public institutions has been compensated, it would be necessary to:
 - 3.1. draw the attention of the heads of ministries and other institutions representing the state to the identified shortcomings in the application of civil liability, accounting of debts owed to the state, communication of information on the exercise of the right of recourse and to entrust them with the task of ensuring proper performance of these functions (conclusions 3.1, 3.3 and 3.4);
 - 3.2. pass decisions on the expedience of changes to the limitations of civil liability of pretrial officers and prosecutors provided for in the legal acts (conclusion 3.2).

To the Ministry of Justice of the Republic of Lithuania

4. To ensure effective and efficient exercise of the right of recourse, it would be necessary to:
 - 4.1. set up measures ensuring that, once the Ministry of Justice compensates damage inflicted by unlawful actions of public institutions, the latter are always informed in a timely manner of the right of recourse acquired by the state (conclusion 3.3);
 - 4.2. review the process of exercise of the right of recourse once damage inflicted by violent crimes has been compensated and pass decisions on the simplification thereof (conclusion 1.2);
 - 4.3. set up additional measures for internal control, which would ensure that claims of recourse are brought to the courts in a timely manner (conclusion 1.1).
5. To reduce the need of the national budget funds for the compensation for damage inflicted by violent crimes, it would be necessary to make every effort to increase the share of the penal measure imposed by the courts, i.e. payments to the Fund for Compensation to Crime Victims, in the special programme of the aforesaid fund (conclusions 2.1 and 2.2);

To the Ministry of Social Security and Labour of the Republic of Lithuania along with the Children's Maintenance Fund Administration under the Ministry of Social Security and Labour

6. In view of the inefficient recovery of the debts and the debt owed to the state for the payment of child benefits, which has not been recovered and continues to grow every year, we recommend:
 - 6.1. rearranging the organisation of the activities of the Children's Maintenance Fund Administration in a way that measures for the recovery of debts are taken as soon as possible (conclusions 4.1 and 4.2);
 - 6.2. taking measures to make sure that development of the information system of the Children's Maintenance Fund Administration meets the requirements provided for in the legal acts, and compatibility as well as integration of the information systems and registers are achieved, ensuring that the institutions receive information necessary to exercise the right of recourse (conclusion 4.3).

Measures and time frames for the implementation of the recommendations are presented in Annex 4, 'Plan for Implementing Recommendations'.