Executive Summary of the Public Audit Report

DOES THE INVOLVEMENT OF THE STATE AND MUNICIPALITIES IN THE MANAGEMENT OF PUBLIC INSTITUTIONS ENSURE THE BENEFIT TO THE SOCIETY

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ABBREVIATIONS AND DEFINITIONS

Public institution – it is a non-profit public juristic person of limited liability established in accordance with the Law on Public Institutions and other legislation which purpose is to meet public interests by implementing activities of education, training and science, culture, health care, environmental protection, sport development, social or legal assistance, as well as other activities for public benefit[1].

A partner of a public institution – a partner of a public institution is a natural or legal person, who, in accordance with the procedures established by the Law on Public institutions and the Articles of Association, transferred a contribution to a public institution and according to the Law on Public Institutions and the Articles of Association has the rights of a partner, as well as a person to whom the partner rights are transferred under the Articles of Association or by legislation[2]. Founders are usually the partners of a public institution, who transferred a contribution to a public institution in accordance with the legislation and the Articles of Association.

The Owner of a public institution – if a partner of a public institution is one person, he is called the owner of a public institution[3]. The Law on Public Institutions shall apply to both, partners and the owner.

State/Municipality-owned public institution – a public institution in which the state/municipality has acquired the partner rights.

Public institution controlled by the state/municipality – the state-owned or municipality-owned public institution, or when the rights of the partner of a public institution provide the qualified majority of votes, set forth in the Articles of Association, to the state or municipality during the General Meeting of the Partners.

Public institution uncontrolled by the state/municipality – a public institution when the rights of the partner of a public institution acquired by the state or municipality do not provide the qualified majority of votes, set forth in the Articles of Association, during the General Meeting of the Partners.

Public service – the activities of legal persons controlled by the state or municipalities when providing social services for individuals, as well as services in the fields of education, science, culture, sports and other services indicated by laws. Other persons may also provide public services in the cases and according to the procedures established by laws[4].

Administration of the provision of public services – activities of entities of public administration when determining the rules and arrangement for the provision of public services, establishing public institutions or issuing authorizations for the provision of public services to other persons as well as supervision and control of the provision of public services[5].

Public administration – activities of entities of public administration regulated by laws and other legal acts, which are intended for the implementation of laws and other legal acts: adoption of administrative decisions, control of the implementation of laws and administrative decisions, provision of administrative services established by laws, administration of the provision of public services and internal administration of an entity of public administration[6].

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[1] The Republic of Lithuania Law on Public Institutions of 3 July 1996 No. I-1428, Articles 2, 7.

[2] Ibidem, Article 7.

[3] Ibidem, Article 7, Part 3.

[4] The Republic of Lithuania Law on Public Administration of 17 June 1999 No. VIII-1234, Article 2, Part 1.

[5] Ibidem, Article 2, Part 20.

[6] Ibidem, Article 4, 2, Part 1.

Non-governmental organisation – a public legal entity, independent from the state and municipal institutions and agencies, which acts on a voluntary basis for the benefit of society or its group, and which does not have the aim to seek political power or purely religious goals. A public institution, where the state or municipality has no more than 1/3 of the votes in the General Meetings of Partners, are considered as non-governmental organisation[7].

[7] The Republic of Lithuania Law on Development of Non-Governmental Organisations of 19 December 1999 No. XII-717, Article 2, Part 1.

SUMMARY

Public institution is one of the legal forms of legal person, in management of which the state or municipalities participate. In 2016, 668 state/municipality-owned public institutions operated in Lithuania: 131 state-owned public institutions, 548 – municipality-owned (in 11 of them the partner is the state and municipality together). Investments of the state and municipalities in public institutions – over 160 million euros. The highest number of state-owned and municipality-owned public institutions operate in the fields of health care and education, the other fields of activity are of wide range: from professional art and sports to public administration and provision of commercial services.

The purpose to provide activities beneficial to the society established by the Law on Public Institutions shall be applied to all the public institutions, regardless of whether the state/municipality is or is not involved in their management. The state audit was encouraged by the aim to identify the exclusive goals and benefits to the society that the state/municipality aims in establishing public institutions and participating in their management.

The goal of the audit – to evaluate whether the involvement of the state and municipalities in management of public institutions is beneficial to the society and ensure their effective operation. During evaluation we examined the following aspects:

- Whether the consistent state policy is formed regarding the issues of establishment and involvement in the management of the state/municipality-owned public institutions: whether the general strategic state provisions are determined regarding the state/municipality ownership (partnership) of public institutions; whether the general governance means of those public institutions are being implemented; and whether the involvement of ministries/municipalities in management of public institutions is related to the formation and implementation of the policy area allocated to them;
- Whether the management of state/municipality-owned public institutions ensure the implementation of goals set for them: whether the partners of the state/municipality-owned public institutions implement the requirements set forth in legal acts;
- Whether the public finances are managed properly: whether the state or municipality budgetary means are assigned reasonably and whether the partners of public institutions performs public procurements properly when buying services from public institutions.

During the audit, we collected data and information at the ministries, which implement rights and obligations of the owners (partners) of public institutions,[8] and at the municipalities. We collected a detailed information and audited 11 ministries and 31 municipalities, collected data and examined the management of 53 state-owned and 83 municipality-owned public institutions. We analysed the strategic state documents (State Progress Strategy "Lithuania 2030" for 2014-2020, the National Progress Programme, Programmes of 16th and 17th Government, etc.), protocols of Commission for Public Governance Development, strategic planning documents of the state and municipalities. In order to justify audit evidence we used internal legal acts of the state and municipalities, documents of public institutions.

The audited period – 2013-2016. In order to evaluate the changes, the data of previous periods and 2017 were also analysed.

[8] No public institutions are established in the fields governed by Ministries of Energy and National Defense.

During the audit we found out that:

There are no exclusive goals that the state/municipalities aim in establishing public institutions

Neither the state's nor the municipalities' institutions have set the exclusive and priority goals of the activities beneficial to the society, to implement which public institutions are necessary. Precisely those public institutions or their other partners, which are the private persons, are often interested in the state/municipality as a partner for the possibility to receive property, funding of the state or municipality and other privileges free of charge.

State/municipality-owned public institutions shall implement the following functions of the state/municipalities: to provide only public services and, in exceptional cases, to carry out functions of public administration; however their concept is unclear and the state institutions began to look for their concepts and content only during this audit. Currently, in order to implement the functions of the state/municipalities, the legal form of a budget institution, public institution or the state-owned (municipality-owned) institution is chosen subjectively, because there is no system based on general criteria of how to choose a concrete legal form of an institution. Usually a public institution is chosen instead of a budget institution and the arguments for this choice are more flexible labour relations and the possibility to pay higher salaries from the budgetary means.

There is no single authority responsible for the formation of overall public services and policy of public institutions

Decisions on establishment of public institutions and the necessity of involvement in their management, on their goals to reach and results and other relevant issues are assigned to each minister or for municipal council's to decide, because there is not a single institution in Lithuania responsible for the formation of overall public services and policy of public institutions. Information about public institutions is not collected, gathered and analysed; results of management and performance of institutions are not evaluated and compared nationally.

The management of public institutions should be improved

There is no aim to raise such operational goals that would correlate to the strategic goals of ministries, municipalities, so the targets set for public institutions are usually poorly related to the goals of the policy implemented by ministries. One third of the ministries does not take rational decisions on finance management of public institutions, because revenue from the commercial activity of some of these institutions would allow to reduce the subsidies for them and thus save the state budget expenditure, however, they do not make any related decisions. The funding of the state/municipality-owned public institutions and the purchase of their services through public procurement are not transparent.

A difficult withdrawal from participation in public institutions

The involvement of the state and municipalities in the management of public institutions is also complicated by the legal regulation of the state, because a withdrawal from the partners of a public institution, even when the state/municipality-owned institution has no interest in involvement in a public institution, is too difficult.

Taking into consideration the evidence collected, we provide findings of the state audit and recommendations.

CONCLUSIONS

The state and municipalities are involved in the management of public institutions which activities have to be beneficial to the society. The results of the state audit reveal that so far not all the actions were taken to ensure the involvement of the state and municipalities in management of public institutions would bring the greatest benefit to the society:

1. The establishment of public institutions and involvement in their management is conducted at the national level without general provisions and general strategy (Section 1.1.):

   1.1. Issues of the establishment of the state/municipality-owned public institutions and their governance are not distinguished in any strategic documents of the state development, where the improvement of public services or public administration is planned, thus it is not clear how many of these institutions are needed and what services they must provide;

   1.2. There are no general criteria of how to choose a concrete legal form of an institution of the state set in the legal acts and it is not defined which of the legal forms are the most appropriate for the implementation of goals and functions of the state/municipalities, thus the legal form is chosen subjectively and public institutions controlled by the state and municipality do not have the essential differences between the budget institutions or state-owned and municipality-owned institutions;

   1.3. The state and municipality shall establish public institutions for the reasons of implementation of the functions of the state or municipality: only public services are provided and, in exceptional cases, the functions of public administration are performed, however the concept and the content of the public administration and public services, which are the part of these functions, are not even clear.

2. The formation of the policy for the establishment and management of public institutions is allocated to the Ministry of Economy and Ministry of the Interior; information about public institutions and their activities is not gathered and analysed. All the mentioned above do not give the reason to establish a better legal regulation for the establishment and management of the state/municipality-owned public institutions and their activities, and to solve the strategic issues of their further perspective (Section 1.2.).

3. The state has regulated the requirements for her and municipalities' representation of public institutions, their activities and funding, however they are not met or they are only implemented formally (Chapter 2).

4. The involvement of the state and municipality in the management of public institutions arose due to decisions made in the past which are no longer relevant. State-owned and municipality-owned institutions usually cannot clearly indicate the goals they reach in governing public institutions, and the withdrawal from these institutions is difficult due to requirements of applicable legal acts or due to lack of firm decisions (Section 1.3. and Chapter 3).

RECOMMENDATIONS

To the Government of the Republic of Lithuania

In order the involvement of the state/municipalities in the management of public institutions would benefit the society, public institutions would be established purposefully, and their management – effective, it is necessary to improve processes of decision making for the establishment and governance of the state/municipalities-owned public institutions.

1. To define the vision of the involvement of the state/municipalities in the management of public institutions in the state strategic documents, to plan concrete reasons when the state/municipalities shall establish or become the owner (partner) of public institutions engaged in a specific activity (Finding 1.1.).
2. To create a clear system for the functions of the state and municipalities, and institutions implementing them, to establish criteria in the legal acts, following which the state/municipality-owned institutions would chose the most appropriate legal form according to their activity that allow them to reach the best results (Finding 1.2.).
3. To appoint a single authority responsible for the formation of the policy of public institutions and provision of public services (Finding 2).
4. To appoint one institution to gather the information about the state/municipality-owned public institutions, analyse it and evaluate nationally (Finding 2).
5. To improve legal regulations:
    - 5.1. To specify the concepts of public administration and public services, so that they would be understood equally and would allow to relate the activities of state/municipality-owned public institutions with the implementation of the functions (public administration and public services) of the state/municipality (Finding 1.3.);
    - 5.2. To determine the state's possibility to establish new providers of public services only if other providers do not provide such services or cannot provide the services to the society in good quality and costs (Finding 1.3.);
    - 5.3. To determine in the strategic planning methodology that performance targets for public institutions and the meaning of their evaluation criteria would be related to strategic performance targets for the state/ municipality-owned institutions and their meaning (Finding 3);
    - 5.4. To establish requirements which would ensure the higher publicity of public institutions controlled by the state/municipality (Finding 3);
    - 5.5. To create more flexible conditions for the state/municipality to withdraw from public institutions that are inactive or when it is not purposeful to be involved in their activities (Finding 4).

Recommendations for municipalities

1. In accordance with the provision of the Local Self-Government Act stating that "the municipality establishes new public service providers only in exceptional cases", to review already established public institutions and to decide on the purpose to remain their owners or partners (Finding 1.3.).

2. To organise the implementation of the programs, funded from the municipality budget, in accordance with the procedures set forth in the Law on Public Procurement, to review the procedures of municipality funding of public institutions, so that they comply with the Law on the Budget Structure (Finding 3).