



GRANTING CONSTRUCTION PERMITS AND COMPLIANCE OF CONSTRUCTION PROCESS TO THE SET REQUIREMENTS

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SUMMARY

The Importance of Audit

The European Commission names the construction sector as making a great impact with its activity results on the development of economics; in the recommendations submitted for Lithuania, the OECD highlighted the importance of it as well¹.

The state control of construction encompasses the issue of construction permits and the performance of construction finishing procedures. In order to ensure the lawfulness of construction, the state supervision of construction is carried out and when the structures are completed - the supervision of the use of the structures is performed. In the period of 2015-2018, in Lithuania, approx. 17 thousand of construction permits were issued annually, while 10.9 thousand of structures have been completed². When performing the state supervision of construction during the audited period (2015-2017), 2.4 thousand of inspections were performed, 41% of them were in regards to the lawfulness of granting construction permits.

There are no doubts regarding the importance of the effectiveness of the construction sector, because long and complex construction process negatively impacts not only the safety of interests of the public and potential investors, but also the productivity of the

¹ <http://www.lacc.lt/sites/default/files/0679780001454519865.pdf>; https://read.oecd-ilibrary.org/governance/regulatory-policy-in-lithuania_9789264239340-en#.

² The information about the structures being completed is submitted in accordance to the IS "Infostatyba" data; the information accumulated by the IS is only in regards to the finishing procedures, which were performed by the Inspectorate and experts. IS "Infostatyba" does not accumulate data about declarations and construction completion, which the construction workers have written-down in accordance to the cases determined in Article 28 Part 4 of the Law on Construction and directly submitted to the State Enterprise Center of Registers (in this case, the construction permit was not necessary).

construction sector. In order to ensure the transparency of construction process, decrease administrative burden for potential investors and provide preconditions for lawful construction, the Law on Construction is being amended periodically and the installments for arbitrary construction are being made stricter, however problems of the construction sector still remain.

During the audited period (2015-2017), 1.3 thousand cases of arbitrary construction (18% of all performed inspections) and 196 cases (7% of all performed inspections regarding the lawfulness of the issue of permits) when the construction workers were building by having the construction permit issued by the municipality, but the Inspectorate deemed the construction unlawful, were determined. Based on the data of researches performed in 2007, 2011, 2014 and 2016, Lithuanian citizens and business representatives attributed the construction process and institutions associated with it as corrupt³.

The identified cases of unlawful construction due to the actions of state and municipal institutions decrease the trust of society in them and their lawful expectations, infringes the public interest, harms the environment and harmonized development of territories. Based on the final court decisions, during 2015-2018, the builders were awarded from the state and municipalities 2,017.00 thousands of euros in damages.

The European Court of Human Rights⁴ indicates that in the case of unlawful construction, the level of fault of state institutions regarding the issue of documents necessary for the construction permit and the issue of construction permit, structure's registration, non-revocation of the issued permit and non-contesting of it must be determined and the determined culprits must cover the expenses for the elimination of construction outcomes.

In order to evaluate whether when developing and supervising the construction process (the issue of permit, construction completion and the use of completed structures) the issues of the lawfulness of construction are being solved, the Supreme Audit Institution performed the audit of granting construction permits and compliance of construction process to the set requirements.

The Objective and Scope of the Audit

The objective of audit - to evaluate whether institutions are oriented towards protection of legitimate public interests when issuing documents permitting construction and approving its completion, as well as performing the supervision of construction and the use of completed structures.

The main issues of the audit:

- Whether the process of issuing construction permits ensure that a permit will be lawful;
- Whether the construction completion process ensures that the completed structures comply with the requirements indicated in the construction permit;

³ Lithuanian Corruption Map, <https://www.stt.lt/lt/menu/tyrimai-ir-analizes/>.

⁴ <http://liteko.teismai.lt/viesasprendimupaieska/tekstas.aspx?id=2e1adc4b-ae3a-42a5-b87b-36a116e04c05>.

- Whether the state supervision of construction ensure that the construction works would be performed lawfully;
- Whether it is ensured that the completed structures would be used according to their purpose.

The audited entities - the Ministry of Environment of the Republic of Lithuania and the State Territorial Planning and Construction Inspectorate under the Ministry of Environment.

The Ministry of Environment is responsible for the shaping of policy and organization, coordination and control of its implementation in the field of construction and its supervision. According to the procedure established by the Ministry, municipalities issue the construction permitting documents; the coordination process includes participation of 8 state institutions, according to their competence, the owners, operators or users of engineering networks and communications, to which the engineering networks and communications of the plot of land are connected. The State Territorial Planning and Construction Inspectorate (hereinafter - the Inspectorate) performs the state supervision of construction.

We gathered the data from municipalities, as they issue construction permits. We have communicated with representatives of the associations of Lithuanian real property development, Lithuanian construction, Lithuanian municipalities and Lithuanian design companies, to whom the public auditors are grateful for sharing their insights. We participated in the discussion organized by the Special Investigation Service “Ensuring the Immunity to Corruption when Performing the Supervision of Economic Entities in the Area of Construction”.

The audited period: 2015-2017. In order to evaluate the changes and compare the data, in some cases, the 2018 data were used.

The audit was performed in accordance with the Public Auditing Requirements and international standards of supreme audit institutions. The scope of the audit and applied methods are more thoroughly described in Annex 2 “The Scope and Methods of the Audit” (page 52).

The Main Results of the Audit

We have identified, that the existing procedures for issuing the construction permitting and completion acceptance documents, as well as the state supervision of construction, do not always ensure that construction will be lawful, whereas the supervision of the use of structures - that the completed structures will be used in accordance to their purpose determined in the construction permit. After the constructions are deemed unlawful, the builder, society, environment and the state incur damage, because the protection of their interests is not ensured.

1. The Process of Granting Construction Permit does not Ensure that the Permit Will be Lawful

- The Ministry of Environment established the requirements for the documents necessary to be submitted along with the request to obtain construction permit, however, it did not systematize the requirements; builders submit not all the necessary documents and the municipalities do not require them. In 2015-2018, 34% (82 out of 239 permits were issued unlawfully) of cases were established when the builders did not submit all the necessary documents, however, the municipalities (22) still issued construction permits. The permits were deemed unlawful. Furthermore, if all of the necessary documents are not submitted for the first time, the procedure for issuing the construction permit takes from a couple of months to a year (Sub-Chapter 1.1, pages 15-17).
- The municipalities demand that the builder submit the documents, which they themselves could get from the databases of other institutions (out of the 18 necessary documents, 4 could be obtained from the Center of Registers and the websites of other state institutions), which is why the municipalities not always receive the up-to-date information and avoid errors. In 2015-2018, 6% (14 out of 239 established unlawfully issued permits) of cases were identified when the municipalities (10) issued the construction permit to a builder, who did not have the right to carry out construction. Furthermore, the Law on Public Administration defines, that the requirement to submit the documents and information, which are in the state registers or in other state information systems, is deemed bureaucracy (Sub-Chapter 1.1, pages 15-17).
- The Law on Construction defines that the project manager supervises and is responsible that the structure design would comply with the set requirements, but the responsibility is transferred on to the municipality, because it inspects all of the structure's documents when reviewing the request to receive the construction permit. Almost half (29) of municipalities do not have certified design inspection specialists - this is one of the reasons why they perform the functions of permit issue ineffectively. In 2015-2018, 31% (73 out of 239 established unlawfully issued permits) of cases were identified when the builders complied with the set requirements, submitted all of the necessary documents, the municipalities appointed all of the institutions participating in the coordination of the issue of the permit and these institutions submitted inspection conclusions, however the municipalities (21) performed all of the mandatory inspection functions ineffectively, which is why the permits were deemed unlawful (Sub-Chapter 1.2, pages 17-21).
- The Law on Construction defines, that 8 state institutions and the representatives of engineering networks and communications in accordance to their competence must participate in the process of the issue of construction permit. In 2015-2018, in 16% (38 out of 239 established unlawfully issued permits) of cases, 17 municipalities did not appoint all of the required institutions, which is why the permits were deemed unlawful (Sub-Chapter 1.3, pages 21-23).
- The 2017 citizens survey, which was carried out on behalf of the Inspectorate, revealed that only 5% of respondents are reliably informed about the processes of territorial planning and construction. A vast majority of citizens (95%) lack such information. On average, in 2015-2016, 96% of public meetings were held; in 2017-2018 - 65%. Due to the lack of information, the public is involved into the process of territorial planning and construction rather ineffectively. Furthermore, disputes regarding the legality of constructions are raised when the construction permit is issued without coordinating the planned construction with the public (Sub-Chapter 1.4, pages 23-24).

2. The Construction Completion Process does not Ensure that what is Built is Allowed to be Built

- The institutions participating in the processes of construction permit issue and construction completion are defined by law, however the 6 institutions participating in the completion procedures do not participate in the issue of construction permits, while the institution participating therein does not participate in the completion of construction. Due to these reasons, there are cases when the technical solutions important for the exploitation of the structure are not designed and implemented and when the shortcomings are established at the end of construction, the structure is deemed unfit for use, thus, the builder needs funds to eliminate the shortcomings (Sub-Chapter 2.1, pages 26-28).
- In order to approve the declaration on the completion of construction the Inspectorate officers perform only the inspection of the submitted documents and based on them decide whether there are any deviations from essential design solutions of the structure, exceeding the established norms. The Inspectorate officer may randomly inspect the compliance of the structure to other design solutions or the compliance of the design with the requirements defined by law. This way, the preconditions for abuse and infringement of construction requirements are created (Sub-Chapter 2.1, page 28).
- The Inspectorate plans and carries out the inspection of their own issued (approved) documents regarding the completion of construction - in 2015-2018, it established 16% (68 out of 417 inspections) of infringements. Thus, it must contest the lawfulness of the documents it has issued itself. The principle of good administration should not preclude the authorities from correcting their errors, even those errors that were made due to their own negligence, however, the practice when the institution, upon performing scheduled inspections or receiving complaints or information, inspects its own decisions is faulty. This way, the burden of redundant inspections is created and the reputation of the Inspectorate suffers (Sub-Chapter 2.1, pages 28-31).
- The Law on Construction envisages the alternative procedures for the construction completion than those carried out by the Inspectorate - the expertise performed by the private entity, on the basis of which, the structure must be registered in the Real Property Register. The construction completion procedures performed by the Inspectorate and the private person differ: when choosing the expertise, greatest attention is paid to the evaluation of the technical condition of structures, it is not inspected whether the deed on arbitrary construction was issued, neither it is inspected whether the structure is lawful when approving the declaration on completion. The private expertise pays little attention to the lawfulness of the structure; thus preconditions are created to register arbitrary construction and only the court may repeal the registration of the completed structure in the Real Property Register (Sub-Chapter 2.2, pages 31-32).

3. State Inspection of Construction has Shortcomings

- Supervision guidelines and OECD recommendations indicate that supervision actions should first of all be meant to eliminate the largest risk cases, however, the part of the inspections relating to the high-risk construction permits performed by the Inspectorate during the years of 2015-2017 decreased from 72% to 63%. The Inspectorate can inspect only a part of the high-risk construction permits, and not all

of them are included into the inspection schedules; it selects low or average risk cases for planned inspections, even if the information system for risk control proposes to monitor or ignore them. Unlawful construction of high-risk structures may cause significant consequences associated with financial losses, environment protection, the right of society to healthy and safe environment, which is why the state should pay its attention to high-risk structures (Sub-Chapter 3.1, pages 34-36).

- The Inspectorate has an obligation to apply impact measures for the identified infringements in the area of construction, however, 33% (53⁵ out of 160 selected) of cases were identified when liability was not applied due to statute of limitations. The auditors are of the opinion that this is one of the factors determining that there is an increase of infringements in the area of construction. The improperly organized control of to be inspected construction permits and non-applied administrative liability are the factors of the risk of corruption allowing the persons responsible for unlawfully issued construction permits to avoid liability and feel that they can continue with impunity (Sub-Chapter 3.2, pages 36-39).
- The Inspectorate motivates the compliance of the activity of supervised entities with set requirements not only by performing inspections, but also by making public the results of state supervision of construction, however, publication not in all cases creates preconditions to increasing the compliance with the requirements of legal acts or solve other issues of construction process. For almost half of the municipalities (25 or 42%) the information published by the Inspectorate is not enough, it is not useful or irrelevant, because answers to frequently asked questions are obscure, the information is complex and redundant. When publishing the information on the Inspectorate's website, orientation is made towards the number of identified infringements, but not to the reasons underlying them (Sub-Chapter 3.3, pages 39-41).

4. Preconditions are Created to Use the Structures not in Accordance to their Purpose Indicated in the Construction Permit

- The municipalities are entrusted to perform the supervision of the use of structures, i.e., whether they are used in accordance to their purpose. 22 (19.5% out of 113 selected) cases were identified when residential one or two-room apartment houses were used as residential apartment blocks and non-residential buildings were used as residential. This way, public interest is violated, negative consequences are created, the owners of the buildings and neighbouring residents are faced with the lack of the most needed infrastructure, their quality of life is deteriorating. If the situation does not change, this may give rise to the greater number of legal disputes and this will have a negative impact on the territorial planning, as territories will be planned after the structures were built, but not before (Chapter 4, pages 41-46).

⁵ The corpus of cases is indicated when liability due to the statute of limitations was not applied for infringements when issuing the construction permit, construction completion deed and declaration regarding the finishing of the construction.

Changes During the Audit

The Inspectorate⁶, in order to address the problems relating to avoiding the liability for the infringements in the area of construction and to encourage the participants of construction to act honestly, has envisaged the following measures in its 2019 activity:

- The action plan envisages that inspection of the construction permitting documents which allow to build new structures and reconstruct the existing ones and are issued by municipality administrations will be carried out not later than within 6 months from the day of issue of those documents (when it is inspected not in accordance to the complaint or notice);
- The Legal Department plans to perform the analysis of the application of Administrative Offences Code in the Inspectorate during 2017-2018, by also having regard to the respect of the limitation period for imposing penalties and, upon necessity, submit respective proposals to the Head of Inspectorate;
- The 2019 Plan for the implementation of the measures established in the Corruption Prevention Programme for 2016-2019 envisages, without exceeding the competence of the Inspectorate, drawing up and publishing a list of unreliable economic entities by the end of 2019.

Recommendations

For the Ministry of Environment

1. In order to ensure that the construction permit would be lawfully issued:
 - 1.1. To put in place the measures to assist the entities evaluating the structure design to more precisely evaluate the planned structure and the entities taking part in the approval of the structure design (the first key result of the audit);
 - 1.2. To develop and implement the measures aimed at educating the society and increasing its awareness about the construction processes (the first key result of the audit).
2. In order to allow to use the completed structure without additional requirements, to put in place the measures, ensuring the limits of liability for the quality of structure design of the entities participating in the construction process (the second key result of the audit).
3. In order to prevent registration of arbitrary construction, to establish that inspection of the structure performed by the private entity would evaluate not only its technical condition, but also its lawfulness (the second key result of the audit).
4. In order to ensure that the completed structures would be used in accordance to their purpose, which is indicated in the construction permit:

⁶ 24-05-2019 Letter No. (1.6)-2D-7125 of the Inspectorate to the National Audit Office.

- 4.1. To put in place and implement the measures increasing the awareness of society about the issues, which are encountered in the non-residential purpose buildings when purchasing premises, in which people are planning to live, when purchasing the premises that have many co-owners (the fourth key result of the audit);
- 4.2. To prepare and submit for adoption the amendments of the existing legal regulation regarding permission to build more than one building in one plot of land without dividing it and without forming-up a new plot of land (the fourth key result of the audit).

For the State Territorial Planning and Construction Inspectorate

5. In order to increase the prevention of arbitrary construction and ensure that liability for the infringements in the area of construction would not be avoided by applying the statute of limitations, to organize the state supervision of construction inspections in such a way, that they would be performed before the end of the established period of limitations (the third key result of the audit).
6. In order to reduce the number of infringements in the area of construction, to develop and implement the measures for disseminating the results of the state supervision of construction, which would help avoiding errors in the processes associated with construction (the third key result of the audit).

The measures for implementing the recommendations and their terms are presented in the report section “The Plan for Implementing the Recommendations” (page 47).