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Lithuania: Civil Society Report

by Transparency International Lithuania

An input to the UNCAC Implementation Review Mechanism: First year of review of UNCAC chapters III and IV

-Executive Summary-

This is the executive summary of a Transparency International Lithuania report¹ that reviews Lithuania's implementation and enforcement of selected articles in UN Convention against Corruption (UNCAC) Chapters III (Criminalization and Law Enforcement) and IV (International Cooperation). The report is intended as a contribution to the UNCAC peer review process of Lithuania covering those two chapters.

The UNCAC articles that receive particular attention in the report are those covering bribery (Article 15), foreign bribery (Article 16), embezzlement (Article 17), money laundering (Article 23), liability of legal persons (Article 26), witness protection (Article 32), whistleblower protection (Article 33), and mutual legal assistance (Article 46).

In general, implementation of the UNCAC in Lithuania has been successful, and many recent legislative amendments have been introduced to ensure an even higher level of national legal system compatibility with the UNCAC. However, deficiencies still need to be addressed.

Assessment of the review process

Conduct of process

Lithuania's focal point for the UNCAC implementation review is the Ministry of Justice. The following table provides an overall assessment of transparency, country visits and civil society participation in the UNCAC review of Lithuania.

Table 1 Transparency and CSO participation in the review process

Did the government make public the contact details of the country focal point?	Yes
Was civil society consulted in the preparation of the self-assessment?	No
Was the self-assessment published on line or provided to CSOs?	No
Did the government agree to a country visit?	Yes
Was a country visit undertaken?	Yes
Was civil society invited to provide input to the official reviewers?	No
Has the government committed to publishing the full country report	Yes, but it is yet to be confirmed

¹ The full report is available at <http://www.uncaccoalition.org/en/uncac-review/cso-review-reports.html>. Its authors are Neringa Mickeviciute and Ruta Mrazauskaite, Transparency International Lithuania. The final report will be used for continuing the dialogue and engagement with the stakeholders including the government beyond the first round country review process.

Availability of information

Although TI Lithuania did not need to file any official requests to the government during the preparation of this report, the availability of information in general deserves specific attention, as it directly correlates to transparency. In general, freedom of information (FOI) legislation seems to be adequate in Lithuania. TI Lithuania recently carried out a legal analysis of the national legal framework that revealed no legal obstacles for citizens to file FOI requests.

Accessing information about criminal law enforcement in the country is not difficult for citizens or civil society organizations in Lithuania. A variety of statistics are provided by the Lithuanian Department of Statistics, databases of the Ministry of the Interior and the National Courts Administration. All case material is publicly accessible via the public search engine LITEKO, and judgments of the Supreme Court and Constitutional Court are also published on their websites (www.lai.lt; www.lrkt.lt). All of these sources also provide some information on corruption-related crimes.

When it comes to corruption-related crimes, however, there is no separate emphasis on these in any of these sources. Hence, statistics for these crimes sometimes lack detail. (see Table 2: Statistics on cases) and there is a lack of systematic public data on corruption-related cases. As a result, it is difficult to systematically analyse the situation and measure the effectiveness of anti-corruption programmes.

Findings on implementation and enforcement of the UNCAC

All mandatory provisions of the UNCAC have largely been implemented in the national legislation of Lithuania. The review revealed, however, some deficiencies in the legal framework, including regarding UNCAC Articles 15, 16, 23, 32, and 33.

Furthermore, regarding Article 21 legislation criminalising corruption in the private sector seems to be vague. There is no autonomous definition of corruption in the private sector. Although national officials claim that bribery in the private sector is criminalised by the same provisions as bribery of public officials, act of bribery of those who have entrusted powers but no equivalent status and, most importantly, bribery among two private entities would not fall under the scope of current legislation. It remains unclear whether effective sanctioning of legal persons is sufficiently ensured. Most importantly, neither existing legal regulation nor safeguards offered by established channels of reporting provide sufficient protection for reporting persons.

Also, regarding UNCAC Article 26, although existing legislation establishes liability of legal persons, case law analysis reveals that in practice, sanctions for legal persons are often inadequate. Available evidence suggests that fines are the most common sanctions and are usually rather low, as courts tend to take into account many factors that potentially reduce the final fine imposed (such as the share of the authorised capital of the natural person, the potential aggravation of the situation of employees of a legal person, the benefit obtained from a criminal act).

On the enforcement side, the coordination of investigating corruption-related offences seems to be adequate; special departments in the Police, Public Prosecutor's Office and the FCIS ensure that institutions normally do not experience major obstacles while sharing operational information. However, some experts have raised concerns that the judicial system may be vulnerable due to inadequate financing and a lack of human resources, as well as a lack of training for enforcement institutions.

Recommendations for priority actions

This report provides several recommendations for future reforms:

1. A detailed analysis of the case law on liability of legal persons could help detect potential problems and address this issue.

2. It is essential to establish adequate protection for reporting persons. Despite attempted reforms since 2003, there has been no visible success. As this report reveals, there is a need to strengthen the framework – both legal and institutional – for the reporting of alleged corruption cases. Currently, there are no laws in Lithuania explicitly covering the issue of whistleblower protection, no relevant terminology and no special guarantees for whistleblowers in the national regulation. TI Lithuania strongly believes that without a specific legal framework for whistleblower protection and with only scattered, general norms in place, potential whistleblowers are not yet offered substantial protection from harassment and reprisals. Moreover, it was revealed during the preparation of the parallel review that although the legal framework for the protection of witnesses, experts and victims in corruption-related cases seems to be sufficient, problems may arise when applying protection in practice due to rather strict application of criteria. There are no special provisions related to protecting witnesses, experts and victims in corruption-related cases; the protection system is analogous to the general system in criminal law.
3. Existing regulations that criminalise corruption in the private sector are insufficient as they do not cover all forms of corruption. More legal regulation in this area is required. There is no autonomous definition of corruption in the private sector. Although national officials claim that bribery in the private sector is criminalised by provisions for bribery of public officials (the Criminal Code provides a definition of “a public servant or a person of equivalent status”), bribing those who have entrusted powers but no equivalent status, most importantly, bribery among two private entities, would not fall under the scope of current legislation.
4. Finally, it is necessary to strengthen the current enforcement mechanism by ensuring adequate material and human resources, and providing effective training for enforcement officers. For example, amendments of the Criminal Code (“CC”) criminalising illicit enrichment and establishing extended confiscation are completely novel to the Lithuanian legal system, however, they were not followed by proper training for law enforcement officers.

The full Transparency International Lithuania review report can be found at <http://www.uncaccoalition.org/en/uncac-review/cso-review-reports.html>