



# Assessment of the liability of state administration

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## Audit report

Assessment of the liability of state administration

Performance audit “Assessment of the liability of state administration employees”

15 August 2023

The audit was performed based on audit schedule No 2.4.1-12/2022 of the Second Audit Department of the State Audit Office of Latvia of 21 April 2022.

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The cover design includes an image from website <http://depositphotos.com>. *Protected money concept*, author ANAHIT58, ID: 422192034

## Dear Reader,

We have concluded an audit aimed at assessing whether preconditions were created to assess the liability of public sector employees to facilitate responsible conduct in the performance of public functions. During the audit, we focused mainly on the legal regulation of disciplinary liability and civil liability and its application in direct state administration. At the same time, the analysis of the broad legal framework of responsibility carried out within the scope of the audit applies equally to local and regional governments and other derived public entities, as well as intermediate administrative institutions.

Although we conclude that prerequisites have been created for the assessment of the responsibility of public sector employees in general, and state administrative institutions ensure the assessment of responsibility mostly, we have detected a series of legal framework deficiencies during the audit that can prevent a full and qualitative assessment of the circumstances of violations and the responsibility of the parties involved. The largest proportion of public sector employees is made up of those employed in legal employment relations, but the regulation established by the Labour Law is unsuitable for assessing the disciplinary liability of public sector employees. Assessing the disciplinary liability of employees should not be a race against time to assess all the circumstances related to the violation within one month and apply a penalty, or to search for creative solutions to balance on the edge of compliance with the regulation in order to prevent greater damage to the state administration or to not jeopardize the possibilities of applying liability.

Although it has been known for more than 10 years that the regulation on disciplinary liability issues established by the Labour Law is ineffective and does not ensure proper assessment of liability in all cases, the regulation

has still not been improved. We

hope that the results of this audit will be an incentive both to sort out the issues of assessing the disciplinary responsibility of public sector employees and to return to the issue of a unified state service finally, in which the assessment of responsibility does not depend on the type of employment relationship and strengthens public trust in the state administration.

Regarding the application of civil liability to public sector employees, we have found during the audit that those losses that do not arise from the claims of private individuals are compensated (for example, damaged property, incorrectly paid compensations), but we did not find a single case in the audited period (2020 - 2022) when a public sector employee would have compensated the losses caused to an individual in administrative process, administrative violations or criminal proceedings. Civil liability is not applicable in these cases because none of the prerequisites for compensation of damages have been established such as unlawful culpable conduct, damages, and a causal connection between the two mentioned.

Since the assessment of civil liability is a legally complicated task that requires a lot of resources, collecting and analysing the application practice are essential by identifying both shortcomings and best practices. The State Audit Office of Latvia also continues to develop the practice of applying civil liability in relation to losses caused by illegal actions detected during audits.

We thank the colleagues of the State Chancellery and the Ministry of Justice for their cooperation in the audit.

Respectfully  
Ms Kristīne Jaunzeme  
Department Director



## Summary

### Main conclusions

A survey conducted by the Organisation of Economic Cooperation and Development in 2021<sup>i</sup> on public trust in public institutions generally shows a decrease in the level of trust in administrative institutions among OECD member states. Although the decrease in trust level may be related to the collection of data during the COVID-19 pandemic, the results of the survey are worth noting. The results of the population survey indicate that only every fourth (24.5%) resident of Latvia trusts the government. The survey results in Latvia also show a lower level of trust in the civil service than on average in OECD countries (35.2% in Latvia; 50.2% in OECD countries on average), in the legislature (20.7% in Latvia, 39.4% in OECD countries on average), in the judicial system (44% in Latvia, 56.9% in OECD countries on average), in political parties (11.4% in Latvia, 24.5% in OECD countries on average). Despite low trust in public administration (civil service), satisfaction with state services is close to the average OECD level (63.8% in Latvia, 66.5% in OECD countries on average).

Public trust in state administration is essential for the successful implementation of various state policies and increasing citizens' involvement in decision-making and implementation. Although the indicators of trust in state administration are not separated from the indicators of trust in other state institutions and branches of state power, a part of the lack of trust in state administration could be related to public perceptions of the ability of those working in state administration to take responsibility, assess, and admit mistakes, as well as to perceptions about the existence or absence of individual responsibility for the quality of work, the compliance of decisions and actions with the requirements of laws and regulations, and public interests. Therefore, it is important that in situations where violations are detected in the actions of public sector employees, consistent actions of a state institution follow, that is, violations are examined comprehensively and impartially, a fair decision is made, a proportionate punishment is determined for the violation, and the necessary actions are taken to improve the internal control environment of the institution.

**The audit findings evidence that prerequisites have been created for assessing the liability of public sector employees in general; however, the conditions for assessing and applying disciplinary liability depend on the type of legal employment relationship and the legal framework for assessing liability is fragmented. Thus, it is not always possible to ensure timely and complete clarification of the circumstances of a violation and appropriate decision-making by promoting the liability of public sector employees for their actions and identifying the necessary measures for improving the internal control environment of institutions.**

#### The regulation of disciplinary liability of public sector employees is ineffective

The disciplinary liability of public sector employees is closely related to a type of legal employment relationship, and each type of legal employment relationship has its own legal framework for the assessment and application of disciplinary liability. The biggest differences in the legal framework for assessing the liability of public sector employees are civil servants and employees of the state civil service. At the same time, the distinction between civil servant and employee status does not always comply with the legal framework in practice, and the boundaries between positions with the

status of employees and civil servants and the respective types of employment in the state administration are blurred. Although the status of a civil servant position is associated with greater responsibility because civil servants develop and coordinate sectoral policy, develop laws and regulations, and control their compliance, handle state budget funds, and make decisions related to individual rights, the status of employees can be determined and is also determined for positions, which are positions of civil servants by nature and to which the legal framework intended for civil servants should apply.

The audit findings allow us to conclude that the job characteristics included in the job descriptions of employees and civil servants such as job complexity, management function, responsibility for work results, responsibility for decisions, etc. are similar and it is not always possible to define clear boundaries in practice. The liability of an employee is determined only for the violation of the established work order or an employment contract<sup>ii</sup> in contrast to a civil servant, who is assigned a higher level of liability, for example, for failure to fulfil the duties of the position or negligent performance, including managing financial resources that does not comply with the law, as well as for an activity that exceeds the scope of the position limits of authority, etc.<sup>iii</sup>

Although it has been known for a long time that the regulation provided for in the Labour Law for the assessment of disciplinary liability of public sector employees in legal employment relationship is ineffective, and precisely those employed in legal employment relationship constitute the most significant part of public sector employees, these shortcomings have still not been eliminated and the legal regulation has not been improved. For those employed in the state administration in legal employment relationship, the one-month period for the assessment of disciplinary liability provided by the Labour Law can be an obstacle to a qualitative investigation of disciplinary liability and the application of disciplinary liability, especially in complicated and large-scale cases related to the use of public entity's financial resources or managing property. Also, the regulation of suspension, types of disciplinary punishments and trade unions in relation to public sector employees in legal employment relationship does not contribute to a comprehensive assessment of liability and proper application of liability for committed disciplinary violations.

Differences in the gradation of disciplinary punishments for public sector employees also create risks of different attitudes in situations where several employees who are in different employment relationships are involved in committing one disciplinary violation. While the Labour Law basically provides for two types of punishments for violations committed by employees, that is, a reproof and a reprimand, civil servants have a much wider gradation of disciplinary punishments, which also provides for the possibility of reducing a monthly salary, demotion for a certain period, dismissal from the position or dismissal from the position without the right to apply to a position in the state administration for one year. Likewise, the limitation periods for criminal convictions, the jurisdiction of dispute cases, and the procedural order of court cases also vary.

### Legal framework does not provide solutions for assessing the disciplinary liability of heads of institutions

Neither with regard to civil servants nor with regard to employees, the legal framework provides for solutions for assessing liability in situations where an impartial assessment of disciplinary liability within the institution is not possible, that is, if an alleged disciplinary violation has been committed

or has involved a state secretary or a head of state institution that has not any supreme institution, or a number of employees of such an institution, including management officials of the institution. In order to ensure an impartial, comprehensive, and independent investigation of the case in such instances without involving such officials in the assessment of liability whose own actions or inactions would be subject to assessment, or who work under the authority of such officials or are interested in the results of the assessment of liability, it is necessary to look for ad hoc solutions by outlining the assessment of disciplinary liability outside the relevant institution and entrusting it to an independent disciplinary liability assessment commission. The lack of regulation and the uncertainty about how to act in such a situation create risks for an independent assessment of liability and may hinder a comprehensive and impartial assessment thereof.

### State institutions assess disciplinary violations in most cases, but not in all cases

The information provided by state institutions on violations and initiated disciplinary cases and decisions during the last three years (2020-2022) shows that the state institutions assess the violations of public sector employees within the framework of internal review and/or disciplinary case by finding out whether there was a violation and whether liability is applicable for it. However, the audit also found cases where, within the framework of the projects co-financed by the Structural Funds of the European Union (hereinafter - the EU) and the Cohesion Fund, inconsistencies were found and inappropriate expenses were made in the relevant project, as a result of which the amount of expenses originally planned for the project from the EU fund was reduced and the project implementation expenses in such cases were covered from the budget of the institution or a local or regional government but the liability of the employees who committed violations has not been assessed. Out of 33 non-compliance cases included in the audit sample, the reasons for the non-compliance and the actions of the responsible employees have not been evaluated in 17 cases. In the assessment of the State Audit Office, it is essential to assess each case of improperly performed expenses and committed violations both to assess the liability of employees for the committed violations and to identify and eliminate the deficiencies of the internal control environment by preventing the recurrence of similar violations in the future as much as possible.

A head of state institution is responsible for legal, effective, and continuous work of the institution<sup>iv</sup> and the liability of the head of the institution is to create such an internal control system that ensures this. When making a decision on the establishment or improvement of an internal control system, the head of the institution must assess whether and how detailed internal regulation is necessary in a particular institution. During the audit, we established that out of 167 state administrative institutions included in the audit scope, 105 institutions or 63% have elaborated a separate internal regulation, which determines the procedure for conducting an internal review, initiating, and investigating a disciplinary case, making a decision in a disciplinary case, or whether such regulation is provided for in the rules of the institution's internal arrangement. With the help of internal regulations, uniform conduct in similar situations is established in state administration, thereby facilitating legal certainty, uniform, and predictable conduct, and establishing a clear order of action. The participants of the focus group discussion organized during the audit<sup>v</sup> pointed out that each institution evaluated itself according to the specifics of its activity whether it needed particular internal regulation, and also drew attention to the fact that developed and implemented clear procedures for the assessment of violations

contributed to the institution's consistent and quick action in cases of investigation of violations and transparent process in assessing the liability of employees.

### The practice of applying civil liability is still being developed

According to the Law on the Structure of State Administration<sup>vi</sup>, if an official, while performing his or her duties, has caused material losses to a public entity intentionally or due to gross negligence, the public entity demands that the official compensates the losses in accordance with the procedures specified in the laws and regulations. The Law on the Prevention of Squandering of the Financial Resources and Property of a Public Entity stipulates the obligation of both an official and an employee to compensate for losses caused to a public entity or state-owned or municipal enterprise by the actions of that official or employee due to gross negligence or malicious intent<sup>vii</sup>.

The obligation to assess the civil liability of officials and employees for the damages incurred arises when a state institution ascertains the damages caused (regardless of the claim of an individual) or from the claim of an individual if the loss/damage was caused by an illegal administrative act or illegal actual conduct of a state administrative institution (official)<sup>viii</sup> or in criminal proceedings or administrative violation in the record keeping due to illegal or unjustified actions of a state institution, prosecutor's office or court (official)<sup>ix</sup>. For an employee in state administration to have the obligation to compensate for damages, it is necessary to establish an unlawful culpable conduct, the damages caused because of it (specific property loss that would not have occurred if the unlawful culpable conduct had not been allowed) and a causal connection between the unlawful culpable conduct and the damages. The prerequisites for culpability (deliberate illegal conduct/ malicious intent or gross negligence) and the limitation periods for the recovery of damages differ depending on the nature of the illegal conduct.

The audit findings show that the civil liability for the damages caused to a state institution, which do not arise from an individual's claim (for example, damage to the institution's property, loss, unreasonably paid compensations, etc.), is assessed and the employees compensate the damages voluntarily or the damages are recovered in the recourse procedure. In the audited period from 2020 to 2022 (inclusive), it was established that out of 167 state administration institutions, the employees of 40 institutions had caused and compensated the state for damages for the total amount of 261,672 euros due to their illegal culpable actions under 574 loss compensation cases.

While auditing, not a single case was found during the last three years when an employee in state administration compensated for losses arising from an individual's claim due to an illegal administrative act or illegal actual action of a state administrative institution in a criminal proceeding or administrative violation due to an illegal or unjustified action of the institution. The audit sample findings reveal that civil liability is assessed as part of the assessment of the liability of employees for a violation, but no prerequisites for its application have been established (mainly no prerequisites of culpability have been established, as well as the occurrence of losses due to the illegal actions of the employees), therefore the officials have not been requested to compensate the losses. Based on the decisions of Latvian courts and decision-making bodies, over the last three years, the state has paid compensations to individuals and legal entities in the amount of 2.92 million euros, of which 2 million euros were paid in compensation to one foreign legal entity based on the ruling of an international arbitration court.

It was established during the audit that no institution collected information on compensations paid by the state. Institutions that have paid compensations present them in their annual and quarterly reports, which is not a convenient and easily accessible way of presenting information to the public. Likewise, no institution collects information about the findings in cases of civil liability assessment, which would allow analysing the application of civil liability of employees in state administration, identifying the problems of application or legal framework and best practice.

The participants of the focus group discussion held during the audit indicated that the state institutions were cautious about the application of civil liability because it required a lot of resources, the cases were legally complicated, and there was no guarantee of a favourable outcome for the country. In the focus group discussion, it was also emphasised that no institution analysed the challenges of applying the existing regulation and did not collect practices, therefore the institutions also did not have access to support in conducting loss recovery cases.

Regarding the right of the State Audit Office of Latvia to recover losses caused by illegal actions with financial funds or property, found in audits commenced after 1 August 2019, one should note that so far, the Council of the State Audit Office of Latvia has initiated 19 cases on the initiation of recovery of the losses detected during audits because of illegal actions of 199,633 euros. There are 66,280 euros recovered to the state budget during the three initiated proceedings, ensuring the recovery of funds for the audited entities. The assessment of liability in 14 cases for clarifying the obligation to compensate for damages and for the recovery of losses is carried out by the audited entities or their supreme institutions in accordance with the procedures set out in the State Audit Office Law<sup>x</sup>, while the recovery of losses takes place in criminal proceedings and civil proceedings in two cases. Similarly, in 14 cases, the losses caused by illegal actions in the amount of more than 16,500 euros detected during the audits of the State Audit Office were recovered to the state and municipal budgets without initiating the compensation proceedings. In no loss recovery case initiated by the Council of the State Audit Office of Latvia, the State Audit Office has so far taken the place of an audited entity and recovered losses in the amount of property reduction because the audited entity or its supreme authority does not ensure the recovery of losses. Therefore, the State Audit Office of Latvia also continues to build practice in the implementation of the loss recovery function granted by the amendments to the State Audit Office Law in 2019.

### Limitation periods for initiating claims for damages are insufficient

The audit found that the two- and four-year limitation periods for filing claims for damages might be insufficient for the application of civil liability if a dispute regarding the application of a disciplinary penalty was being considered in court, as well as in cases where liability was assessed in criminal proceedings. Since the legal framework does not provide for the suspension of limitation period for an employer's claims for damages, while an employee's liability for violations is assessed within the framework of disciplinary liability assessment or in criminal proceedings, but is linked only to the day the damage was caused, there is a risk for the employer to miss the deadline for filing a claim for damages unless the assessment of employee's liability is not started in parallel in several processes, which, in its turn, requires considerable resources of the employer and may also mean inefficient use of resources.

Since there is no minimum amount for recovery of damages in the laws and regulations, the obligation to compensate and recover damages starts from the first euro. However, this may be disproportionate, as the resources invested in recovery and the costs of recovery may be significantly higher than the sum of damages to be recovered. The audit also has established that the legal framework envisages a different attitude towards officials (investigators) of investigative institutions in the field of civil liability, compared to prosecutors, who also perform investigative functions in the cases specified in the Criminal Procedure Law. Taking into account that, while performing the investigative functions, a prosecutor is not financially liable for the damage caused because of illegal or unjustified actions, investigators should also not be subject to civil liability for the damages caused while performing this function.

#### The measures taken by the State Chancellery to improve the accountability system of employees in state administration are insufficient

Although the Cabinet of Ministers supported the establishment of a unified state service in 2013 by planning to prevent several specifically regulated employment relationships in state administration with different employment and liability regulations in this way, and the State Chancellery developed a draft Law on the State Service, the said draft law was rejected in the Saeima (Latvian Parliament) in 2018 and further progress to a unified state service, which would, among other things, eliminate the shortcomings of the existing regulation regarding the assessment of liability, has not happened. The current development planning documents do not set specific goals and tasks for the improvement of disciplinary liability and promotion of liability of employees in state administration. In the State Administration Modernization Plan 2023-2027, it is only indicated that when starting the implementation of the modernization plan, one of the essential tasks will be to organize extensive discussions and reach an agreement among various political and executive ‘players’ on the future role and scope of the civil service in the Latvian state administration by shaping the state administration as a single employer<sup>xi</sup>. The State Chancellery plans to develop a new state administration human resources development plan, but it is not yet known whether the plan will include measures for improving the liability assessment system of employees in state administration and facilitating accountability.

In the information system under the control of the State Chancellery<sup>xii</sup> “Remuneration and personal accounting system for officials (employees) of state direct administration institutions and other state and municipal institutions”, which also collects data on disciplinary punishments of state civil servants, the data is incomplete and the purpose of collecting this data is not clear.

At the same time, the opportunity offered by the School of State Administration to employees in state administration to increase their professional competence and improve their knowledge of the disciplinary proceedings and the assessment of the liability of officials is positively evaluated, which was also appreciated by the participants of the focus group discussion organized during the audit.

## Key recommendations

To facilitate the improvement of the system for assessing liability of public sector employees, the State Audit Office of Latvia has issued five recommendations and three proposals.

The State Audit Office of Latvia invites the State Chancellery to:

- ❖ Take measures to ensure uniform principles in the assessment and application of the liability of public sector employees (both civil servants and employees) (areas of the legal framework to be improved include mandatory investigation of disciplinary cases, deadlines for initiating disciplinary cases and making decisions, types/gradation of disciplinary violations and punishments, dismissal from office/work, the regulation of employees' criminal convictions in disciplinary cases and the handling of disputes);
- ❖ Assess the procedures for the coordination of employed positions<sup>xiii</sup> and, if necessary, initiate amendments to the law<sup>xiv</sup> to ensure the classification of positions according to job characteristics;
- ❖ Develop regulations for independent assessment of disciplinary liability in cases where an impartial and comprehensive investigation of a disciplinary case in an institution or department is not possible;
- ❖ When developing the human resources development plan of state administration, envisage measures for the improvement of the liability assessment system of public sector employees and the promotion of accountability;
- ❖ Determine the purpose of collecting data on disciplinary violations of state civil service officials in the information system "Remuneration and personal accounting system for officials (employees) of state direct administration institutions and other state and municipal institutions" and take measures to ensure data quality in accordance with the purpose.

The State Audit Office of Latvia will call on the Cabinet of Ministers to:

- ❖ Assess and encourage amendments to laws and regulations by determining a minimum amount of compensation for loss or principles for starting loss recovery to ensure the proportionality of the funds invested in loss recovery cases with the amount of losses to be recovered;
- ❖ Evaluate the sufficiency of limitation period for claims for damages for the application of civil liability to public sector employees and to initiate relevant amendments to laws and regulations;
- ❖ Assess whether it is reasonable to establish a different regulation of civil liability for investigators compared to prosecutors, and if necessary to encourage revision of the regulation, taking into account the fact that the investigative functions performed by investigators and prosecutors in the cases specified in the Criminal Procedure Law are similar.

## References

- <sup>i</sup> OECD (2022), *Building Trust to Reinforce Democracy: Main Findings from the 2021 OECD Survey on Drivers of Trust in Public Institutions, Building Trust in Public Institutions*, OECD Publishing, Paris, pp. 35, 36, 38, available at [https://lvportals.lv/wwwraksti/TEMAS/FAILI/2021\\_OECD%20SURVEY\\_BUILDING\\_TRUST\\_TO\\_REINFORCE\\_DEMOCRACY.PDF](https://lvportals.lv/wwwraksti/TEMAS/FAILI/2021_OECD%20SURVEY_BUILDING_TRUST_TO_REINFORCE_DEMOCRACY.PDF), viewed on 5 June 2023.
- <sup>ii</sup> Section 90 of the Labour Law.
- <sup>iii</sup> Chapter VI “Disciplinary Violations” of the Law on Disciplinary Liability of State Civil Service Officials.
- <sup>iv</sup> Part one, Section 17 of the Law on the Structure of State Administration.
- <sup>v</sup> The focus group discussion organized by the State Audit Office of Latvia on 27 April 2023, in which representatives of the State Construction Control Office, the Nature Protection Board, the State Employment Agency, the Ministry of Justice, the State Labour Inspectorate, the State Forest Service, and the State Probation Service participated.
- <sup>vi</sup> Section 1.8 and Section 90 of the Law on the Structure of State Administration.
- <sup>vii</sup> Part three, four, and six of Section 15 of the Law on the Prevention of Squandering of Financial Resources and Property of a Public Entity.
- <sup>viii</sup> Law on the Compensation for Damages Caused by State Administrative Institutions.
- <sup>ix</sup> Law on Compensation for Damages Caused in Criminal Proceedings and Administrative Violations.
- <sup>x</sup> Chapter XIV of the State Audit Office Law “Decision on Recovery of Losses”.
- <sup>xi</sup> Paragraph 6.2 “Human resources Development” of the State Administration Modernization Plan for 2023-2027 (Approved by Cabinet Order No 240 of 8 May 2023 on the State Administration Modernization Plan for 2023-2027).
- <sup>xii</sup> Article 2 of Cabinet Regulation No 662 “Regulation on the System of Compensation and Personal Accounting of Officials (employees) of State Direct Administration Institutions and Other State and Municipal Institutions” of 7 November 2017.
- <sup>xiii</sup> Part one, Section 3 of the State Civil Service Law; Articles 16 and 17 of Cabinet Regulation No 1075 “Catalogue of Positions of State and Municipal Institutions” of 30 November 2010 (in force until 30 June 2022); and Articles 19 and 21 of Cabinet Regulation No 262 “Catalogue of Positions of State and Municipal Institutions, Procedure for Developing Position Classifications and Position Descriptions” of 26 April 2022 (valid from 1 July 2022).
- <sup>xiv</sup> Cabinet Regulation No 262 “Catalogue of Positions of State and Municipal Institutions, Procedure for Developing Position Classifications and Position Descriptions” of 26 April 2022.