PANEVĖŽIO KOLEGIJA ISSN 2029-1280, eISSN 2669-0071. Taikomieji tyrimai studijose ir praktikoje – Applied Research in Studies and Practice, 2023, 19.

THE PUBLIC PROCUREMENT: THE IN-HOUSE PROCUREMENT IN LITHUANIAN LAW

Sigita ŠIMBELYTĖ

Panevėžio kolegija/ State Higher Educational institution, Lithuania

Abstract. Although the in-house procurement, as an exception to public procurement process, have existed in Lithuanian law for more than a decade and the European Union has expressed a clear positive position on the issue by legalize it in international level with Directive 2014/24/EU, but this legal institute still is not analysed enough in scientific level in order to evaluate its situation and problems in Lithuanian public procurement law. Especially, when in order to find the most optimal legislative regulation of the in-house procurement, the Lithuanian legislator has changed this legal institute many times and in many ways without its clear decision as to how the issue should be regulated in statutory regulation. Therefore, the object of the research is the legal institute of the in-house procurement in Lithuanian public procurement law and the aim of the research is to analyse the peculiarities and problems of this legal regulation and its application in legal practice. The article uses basic research methods such as document analysis, systematic analysis, comparative analysis, the deduction analysis and generalization methods. The analysis of this article shows main problems of this legal institute of Lithuanian public procurement law seen clearly in legal regulation and practice require as well as provide the certain solutions for necessary substantial adjustment of existing legal regulation on this question.

Keywords: in-house transactions, public procurement, Lithuanian law, administrative law

INTRODUCTION

There is constant debate in the media about how in-house procurement should be regulated as it is an exception to the application of formal public procurement procedures, therefore, a significant part of the public sees more dangers in it than positive features of this institute, i.e. lack of transparency, risk of possible decision-making in favour of personal interests, etc. (Balčiūnaitė, 2019; Lithuanian Free Market Institute, 2019). While others are in favour of liberalizing the in-house procurement institute, giving institutions as much power as possible in the area of in-house procurement (Soloveičik, 2019; 09.10.2019 Letter of the Association of Lithuanian Municipalities). In search of the optimal and most suitable legal regulation, the Lithuanian legislator changed the regulation of in-house procurements many times, i.e. either by narrowing or expanding the scope of such transactions, by including, or by abolishing provisions related to the control of in-house procurements, and even attempts have been made to ban in-house procurements. And this shows that Lithuania does not have a clear direction as to how in-house procurements should be regulated in the national legal system, especially because the constantly changing political processes and political directions have a strong impact on this. Although the in-house procurements, as an exception to public procurement processes, have existed in Lithuanian national law for a little over a decade, and the European Union in Directive 2014/24/EU clearly stated the position by which it approved this legal practice and legitimized this legal institute at the cross-border level, however, this issue still does not receive more serious scientific research, which would provide a more detailed overview of the situation and problems of this law institute in public procurement. The last research on this topic was carried out more than a decade ago by D. Soloveičikas (2009), and in general, public procurement law is not a common phenomenon in Lithuanian legal doctrine as an object of scientific research, therefore, such research significantly contributes to the development of this narrow but at the same time very important public procurement law in Lithuanian national law. All this shows and justifies the importance and relevance of this study, especially since it can be a weighty basis for discussions on the regulation of in-house procurements in the Lithuanian public procurement law amendment law.

The object of the research – the legal institute of the in-house procurements in Lithuanian public procurement law.

The aim of the research – to analyse the peculiarities and problems of legal regulation of the in-house procurements in Lithuanian public procurement law.

The tasks of the research:

1) to reveal the concept, establishment process and peculiarities of the in-house procurements in Lithuanian public procurement law;

2) to examine the main issues of legal regulation of the in-house procurements in Lithuanian public procurement law and its application in legal practice;

3) to provide solutions in order to solve specific issues of this legal institute in Lithuanian public procurement law.

Methodology of the research: depending on the topic, goals and objectives of the scientific article, the following research methods are used: the systematic analysis and comparative analysis methods are used when comparing legal provisions and case law as well as Lithuanian law and EU law; the deduction analysis method made it possible to define specific problems arising in legal practice from the general requirements, while the generalization method helps to systematize the entire analysis and to provide structured conclusions.

Abbreviations in the research:
1. the LPP – the Law on Public Procurement of the Republic of Lithuania.
2. the LC – the Law on Competition of the Republic of Lithuania.
3. the CJEU – the Court of Justice of the European Union.
4. the EU – the European Union.
5. the CCRL- the Competition Council of the Republic of Lithuania.

1. THE CONCEPT AND EMERGENCE OF IN-HOUSE PROCUREMENTS IN LITHUANIAN LAW AND EU

The conclusion of an in-house procurements is understood as a procedure where the procuring organization can purchase resources from an entity whose activities it can have a decisive influence on and can effectively control, and the main feature of an in-house procurement is that no public procurement is announced, i.e. mandatory public procurement rules do not apply, and such a contract is not considered a public procurement contract (Soloveičikas, 2009). An in-house procurement in the narrow sense is to be considered when a transaction is concluded with one of its divisions (departments), which does not have legal subjectivity, and an in-house procurement in the broadest sense is to be considered when the transaction is concluded with persons controlled by the procuring organization, who have independent legal subjectivity (Janssen, 2014). Public procurement legal norms do not affect internal procurement in the narrow sense, because then the contracting organization and its employees have labour legal relations, however, when it comes to internal procurements in a broad sense, these are indeed problematic, which will be the main focus.

In the absence of consolidated regulation of in-house procurements, CJEU in the 12.11.1999 decision No. C-107/98 (hereinafter - the *Teckal* case) laid the foundation for the institution of in-house procurements and formed two main criteria in which cases an in-house procurement can be concluded: 1) the procuring entity must exercise control over the other counterparty in a manner similar to its own departments, structural parts, units or divisions; 2) the other party to the transaction carries out most of its activities together with or for the benefit of this procuring organization. Although the in-house procurement criteria established in the *Teckal* case became the basis for the in-house procurement institute, however, this was just the beginning and due to the abstractness of the criteria, the CJEU repeatedly provided clarifications on various aspects of in-house procurements until the publication of EU Directive 2014/24/EU in 2014, Article 12 of which established the exception of in-house procurements and the conditions for their conclusion. It is noteworthy that this directive sets out a third condition, which complements the criteria of the *Teckal* case, i.e. condition for direct participation of private capital. However, this condition was not new, but only derived from the doctrine of the CJEU, e.g. CJEU 11.01.2005 decision No. C-26/03, 22.05.2003 decision No. C-18/01 and others. Although the conditions for the conclusion of in-house procurements established in this directive are not sufficiently detailed and clear by themselves, it is necessary to refer to the practice of the CJEU, however, it cannot be said that such consolidation of in-house procurements and their conclusion criteria in EU positive law was insignificant, on the contrary, it gave this institution of law more clarity and definition than it had before (Janssen, 2014).

Meanwhile, analysing the situation in Lithuanian law, it should be noted that the LPP, in 02.03.2010 established the exception of in-house procurements for the first time. The text of the exception was then drafted slightly differently than the current version, i.e. it provided that the requirements of the law do not apply to procurements if the contracting organization enters into a contract with an entity that has a separate legal entity status that it controls, as its own service or structural division and in which it is the only participant (or exercises the rights and duties of the state or municipality as the only participant), and if the controlled entity derives at least 90 percent of its sales revenue from activities designed to meet the needs of the procuring organization or to perform the functions of the procuring organization (LPP wording valid from 02.03.2010 to 26.11.2010). It is noticeable that the norm already distinguished a specific part of 90 percent of the income from the activity, i.e. a specific essential part of the activity, when there was no EU regulation providing for the essential part of the activity. It should also be mentioned that the requirement of the state or municipality as the only participant was established in the LPP, which was later established in Directive 2014/24/EU with a similar wording (with an exception) as the third criterion for in-house procurements. It should be noted that from the protocol of the 22.12.2010 meeting of the Economic Committee of the Seimas of the Republic of Lithuania No. 108-P-49 can be seen, that in the same year, it was proposed to abolish the exception for in-house procurements, based on the fact that the assessment carried out by the Special Investigations Service stated that in-house procurements in municipalities take place in a non-transparent manner, and the regulation at that time does not ensure the control of in-house procurements, especially the exception of in-house procurements threatens competition between services. However, the in-house procurement exception has not been removed from the LPP, but its wording has changed slightly, i.e. the previously valid version of the law was supplemented with categories of income during the last financial year and established the provision that in order to ensure internal procurement control, when the procuring organization approves the public procurement plans planned for the current budget year, information about the planned in-house procurements must also be provided, and within 30 days from the end of the reporting calendar year, submit to the Public Procurement Office reports of all in-house procurements carried out during the calendar year (12-23.12.2010 Law No. XI-1255).

In response to the criteria for in-house procurements established in Directive 2014/24/EU, new amendments to the regulation of in-house procurements in Lithuanian law came into force in 2014, i.e. in the new version of the LPP, the

criterion of at least 80 percent of sales income from operations was established (22.10.2013 Law No. XII-569). The legislator motivated this change by the fact that the second condition for the conclusion of an in-house procurement provided for in the previous version of the LPP before the changes, compared to the one specified in the *Teckal* case, unreasonably narrows the application, although in fact the *Teckal* case referred to "an essential part of the activity of a legal person", however, this part is not expressed as a percentage. And the legislator also took into account the latest changes made in Directive 2006/97/EC59 at that time, where the essential part of the activity of 80 percent of income is also established. However, from the 12.06.2013 conclusion of the Education, Science and Culture Committee of the Seimas of the Republic of Lithuania No. 106-P-25 can be seen, that the CCRL did not agree to the change and stated that the extension of the limits of the application of in-house procurement criteria increases the possibilities of procuring organizations - state or municipal institutions - to avoid the application of public procurement rules when purchasing goods that they could buy from entities operating in the market, in this way, institutions find themselves in a privileged position, which could create different conditions of competition between private and state- or municipal-run entities.

Judicial practice undoubtedly had further influence on legal regulation, since from the middle of 2015 in the practice of the court of cassation, such as in civil case No. e3K-3-120-469/2018, the legality of in-house procurements begins to be associated not only with the conditions established by the *Teckal* case, but also with additional value bases arising from the provisions of the LC, i.e. continuity of service provision, good quality and availability, opportunities to compete and impact on the equality of other economic entities.

In the penultimate change in the regulation of in-house procurements in 2017, the legislator changed the wording of the in-house procurement exception, prohibiting such transactions in state-controlled companies, as it is precisely such transactions that raise the most questions about abuse and non-transparent tenders. Also, in the new wording of the LPP, there was no longer a requirement to obtain the consent of the Public Procurement Office for the conclusion of an in-house procurement. The President of the Republic of Lithuania did not approve of this amendment to the law, and in the 18.04.2017 decree No. 1K-940 stated, that such an amendment privileges municipalities and does not comply with the constitutional principle of equality, since according to this amendment in-house procurements can only be concluded by municipalities and companies managed by them, especially the number of such transactions is growing and this shows that in the practice of some procurement organizations this exception has become the rule. Such a position was followed by the CCRL in the 30.04.2015 resolution No. 1S-45/2015, where it is noted, that without violating the constitutional imperative of fair competition, the municipality could enter into a transaction with the company it manages in only one case, when, after creating public, transparent and non-discriminatory conditions for all entities operating in the market to compete for the supply of a service or product, the municipality would not receive any bids or would receive bids that do not meet the purchase conditions established by it, however, in such a case, the in-house procurement exception is not required, as unannounced negotiations can then be conducted. Despite this clear disapproval, the relevant amendments to the LPP were adopted.

In 31.12.2019, the last changes to the LPP were made, i.e. Section 2 of Article 10 of this law has been amended, stipulating Point 2, that in-house procurements may be concluded when public services are purchased, administered in accordance with Section 2 of Article 9of the Law on Local Self-Government of the Republic of Lithuania. Thus, the amendments to the law created wider opportunities for municipalities to carry out in-house procurements. According to the changed procedure, public procurements may not be announced in a fairly wide range of public services and in cases where immovable property owned by municipalities would be required to provide the services. According to the amendment, the aforementioned services for municipalities can be purchased either from existing companies or new ones can be established. Such an amendment to the law should be considered as expanding the discretion of municipalities to choose how public services should be provided. However, it should not be forgotten that the discretion of municipalities is limited to certain services enshrined in the law, which are considered extremely significant for local self-government, without which our society cannot function normally. Undoubtedly, the legislator, when making such a change, relied on the tendencies of other countries to return certain services to the public sector, i.e. based on materials of the 18.10.2019 VII session of the Seimas of the Republic of Lithuania No. 333, the trend of returning the water supply sector to the public sector is clearly visible in France - as many as 106 cases, 61 cases in the United Kingdom, 27 cases in Spain, 17 cases in Germany and in the waste management sector: in Germany – 13 cases, in the United Kingdom – 7 cases, etc.

Thus, during the entire period of the LPP on the regulation of in-house procurements, in order to find the most optimal regulatory option and to reduce threats due to distortion of competition or corruption, the legal provisions of the LPP were repeatedly changed, however, at the same time, it is difficult to see the position of the legislator in which direction the regulation of in-house procurements should go.

2. PROBLEMS OF REGULATION OF IN-HOUSE PROCUREMENTS IN LITHUANIAN LAW

2.1. THE LPP PROBLEM OF REGULATING SOME IN-HOUSE PROCUREMENT CONDITIONS

The condition enshrined Section 1 of Article 10 of the LPP that in-house procurements can only be concluded with the purchasing organization leads to the fact that, in most cases, the conclusion of an in-house procurement alone is not enough to achieve the ultimate goal of the purchasing organization, but at the same time, public procurement has to

be carried out, since it is not always possible to purchase the various instruments required for the execution of an in-house procurement from a controlled procurement organization. In addition, the condition that in-house procurements can only be concluded with the purchasing organization rather restricts the possibilities of non-transparent use of funds. As a result, smaller in-house procurements should generally be made, which would be seen as a positive step.

The most critical of the requirements established in Article 10 of the LPP for concluding an in-house procurement is the provision of Section 2 of this article, that when purchasing by public procurement, it would be impossible to ensure the continuity, good quality and availability of the service, which means that, above all, the procuring organization must announce a public procurement tender and only in the event that no single supplier's offer meets the requirements of the procuring organization or if none supplier would not submit a bid, the procuring organization could enter into an in-house procurement. In this way, entities owned or controlled by the state are directly or indirectly eliminated from the possibility of entering into an in-house procurement altogether (Soloveičik, 2019). It can also be assumed that in such a case, when the procuring organization is still obliged to check when announcing a public procurement, the institution of in-house procurements essentially loses its meaning, since in such a case the institution of unannounced negotiations can be used, according to Article 71 of the LPP, in-house procurements should be characterized by the speed of their conclusion, this can be considered one of the main advantages of this institute, but it is problematic that the conclusion of an in-house procurement in this case may take longer than the acquisition by organizing a competitive procedure.

In addition, a linguistic analysis of the conditions for concluding in-house procurements provided for in Article 12 of Directive 2014/24/EU and the conditions for concluding in-house procurements provided for in Article 10 of the LPP shows, that there are more requirements established in Lithuanian law than at the level of the European Union. As a result, the Supreme Court of Lithuania in civil case No. e3K-3-120-469/2018 applied to the CJEU to find out whether states have the discretion to enshrine additional restrictions on in-house procurements in their national law. Meanwhile, the CJEU in the 03.10.2019 decision No. C-285/18 explained that the Section 1 of Article 12 of Directive 2014/24/EU must be interpreted in such a way that according to it, a provision of national law is not prohibited in which a member state associates the conclusion of an in-house procurement with the condition that the conclusion of a public procurement contract would not allow ensuring the quality of the services provided, their availability or continuity, if at the stage before the conclusion of the public procurement contract, the principles of equal treatment, non-discrimination, mutual recognition, proportionality and transparency are observed when choosing a specific method of service provision. Thus, as it can be seen that the additional condition enshrined in Section 2 of Article 10 of the LPP, that in-house procurements can only be concluded if the continuity, good quality and availability of the relevant service cannot be ensured when organizing public procurement, does not contradict the regulation of Directive 2014/24/EU, however, the aforementioned essential principles must be observed, which makes the process of concluding an in-house procurement even more difficult in Lithuanian law, additionally requiring the following criteria to be assessed.

However, after the adoption of this CJEU decision, the Supreme Court of Lithuania in case e3K-3-494-469/2019 stated that all material and procedural requirements for the conclusion of in-house procurements, which the legislator seeks to apply, regardless of whether they are established in the performance of obligations arising from EU law or using the right of internal legal regulation, must be clearly, accurately, unambiguously and comprehensibly established in one legal act - LPP. This causes a considerable problem, since the CJEU clearly stated that competition cannot be distorted in relation to private economic entities, which means that there must be a certain control mechanism to ensure that competition is not distorted, and such a mechanism is not provided for in Article 10 of the LPP. In addition, the conclusion of in-house procurements is not controlled by the Public Procurement Service, based on point 9.12 of the regulations of the Public Procurement Service of the Republic of Lithuania, from which it can be seen that it only supervises the execution of in-house procurements, but not the conclusion process. Meanwhile, no one controls even such cases when it is not even clear for which object purchase the in-house procurement is concluded, e.g. according to the data of the Lithuanian Free Market Institute (2019), in 2018 the object of the in-house procurement concluded with “UAB Grinda” specified by Vilnius City Municipality is “Purchase of mandatory services and works”, the objects specified in the in-house procurements of Švenčionių district municipality and “UAB Pabradės komunalinio ūkio” and “UAB Švenčionių švara” are “Service provision agreement” and others. The lack of control also results in the fact that all the risk regarding the legality of the conclusion of an in-house procurement rest with the procuring organization, and ultimately there is a risk that such an in-house procurement will be contested, and the time and funds allocated to the in-house procurement will be wasted.

2.2. THE PROBLEM OF THE EXCLUSIVITY OF IN-HOUSE PROCUREMENTS FOR MUNICIPAL ENTITIES

In addition, another visible threat due to the conditions for concluding an in-house procurement provided for in the norm of Article 10 of the LPP, according to which the purchased public services are administered in accordance with Section 2 of Article 9 of the Law on Local Self-Government of the Republic of Lithuania, is that this condition makes the exception of in-house procurements no longer of such an exclusive nature. It is doubtful whether it was really necessary to include such a large number of cases where the conclusion of in-house procurements is allowed, since one could hardly agree with the statement that in absolutely all of these areas, i.e. waste management, passenger transport,

maintenance and management of territories and streets, catering , education, social care services, etc., there are not enough economic entities that can compete for the provision of services, especially if some of such public services can also be provided by private entities. Even more doubts arise as to whether this condition is not just an attempt to save inefficient municipal companies. As a result, it is positive that in at least one case of in-house procurements, a certain control is introduced - obtaining the consent to enter into an in-house procurement from the CCRL.

In addition, the situation that state-owned companies are prohibited from entering into in-house procurements, while municipal companies have expanded opportunities to enter into these transactions, raises questions as to why public entities are treated so differently. The ban on in-house procurements for state-owned enterprises means that not only state-owned joint-stock companies cannot enter into transactions with subsidiaries, but also, for example, ministries or other institutions cannot enter into internal procurement contracts. Thus, it is difficult to find objective criteria that lead to such a different determination of the rules for the conclusion of in-house procurements between state-owned and municipality-owned companies, after all, such a different treatment of subjects in itself leads to a violation of the principle of equality.

Another problematic aspect of the regulation of in-house procurements is that they can be concluded for a very long time, i.e. according to the data provided by the Lithuanian Free Market Institute (2019), some in-house procurements are concluded for a period of 10, 15 or even 20 years. For municipal companies, this ensures constant income and makes it easier to plan the company's future flows - which can facilitate not only the company's daily operation, but also provide various guarantees, such as facilitating the obtaining of loans, while other market participants cannot apply for such facilitations. The conclusion of such long-lasting transactions indicates to market participants that there will be no need for a certain service or product in the market for a long time, and as a result, private entities wishing to engage in such activities may not appear. This closes the market to potential suppliers of goods or services. As a result, even after the end of the in-house procurement period, there are no other alternatives than to buy services from the municipal company again, and an in-house procurement has to be concluded again.

However, it is doubtful whether the abolition of the in-house procurement institute would solve these problems, as the public sector would find other ways to subsidize subordinated companies. Especially after the elimination of in-house procurements, efficient and non-competitive public entities in the market would have to participate in public procurement tenders, in which they would be the only participants, which would waste a lot of time and funds.

2.3. THE RELATIONSHIP BETWEEN THE REGULATION OF IN-HOUSE PROCUREMENTS AND COMPETITION LAW

Meanwhile, when assessing the relationship between the regulation of in-house procurements and competition law, it should be noted that, as already mentioned, in the 03.10.2019 decision No. C-285/18 CJEU stated, that the conclusion of an in-house procurement that meets the conditions provided for in Point a-c of Section 1 of Article 12 of Directive 2014/24 does not in itself comply with EU law, since in-house procurements can only be concluded when it is ensured that competition will not be distorted in relation to private economic entities. In the absence of in-house procurement control established by the LPP, which can ensure that competition against private entities will not be distorted, Article 4 of the LC has been used for a long time, which prohibits public administration entities from privileging individual economic entities. Despite the fact that the LPP provided for the possibility of concluding in-house procurements, the CCRL recognized such decisions (to enter into an in-house procurement) as contrary to Article 4 of the LC and even when the provision that in-house procurements could only be concluded in exceptional cases was not established in the LPP. The CCRL and the administrative courts have shaped the narrowing application of internal procurement and the practice providing for the exclusivity of this institute (e.g. Decision of the Supreme Administrative Court of Lithuania on 29.03.2016 in case No. A-347-552/2016 and others). Thus, a situation arose that the institution, which should enforce the laws, actually changed them, deciding to apply the norms established by the LC to in-house procurements, although in the case of a conflict between the *lex generalis* (Article 4 of the LC) and the *lex specialis* (Article 10 of the LPP), the conflict must be decided in favour of the *lex specialis*.

Only after the aforementioned CJEU decision No. C-285/18, it was understood that administrative authorities cannot create rules themselves, and thus distort the regulation established by law. And the Supreme Administrative Court of Lithuania formed a new direction in the practice of administrative courts and in case No. eA-893-556/2020 stated that there is no reason to conclude that the Lithuanian legislator did not fully implement his constitutional competence in the legal regulation and did not determine all the necessary aspects of in-house procurement regulation, nor is there any basis for such an interpretation of the law, according to which, ignoring the will of the legislator, the application of the in-house procurements institute remains permanently exclusive, regardless of the regulatory change in Article 10 of the LPP. This position was confirmed by the Supreme Court of Lithuania in civil case No. e3K-3-494-469/2019, in which it was noted that that all material and procedural requirements for the conclusion of in-house procurements sought to be applied by the legislator, regardless of whether they are established in the performance of duties arising from EU law or using the right of internal legal regulation, must be clearly, accurately, unambiguously and comprehensibly established in one legal act – LPP. Thus, the practice according to which Article 4 of the LC was additionally invoked should be considered flawed and should not be applied, therefore, the conclusion of in-house procurements according to the LPP cannot be considered as a conflicting LC. However, this does not change the fact that it is necessary to ensure that competition

against private entities is not distorted, therefore the control mechanism ensuring competition should be clearly, accurately and unambiguously established in the LPP.

CONCLUSIONS

1. During the entire period of the LPP for the regulation of in-house procurements, the threat of removing this institute from the legal regulation of Lithuania has repeatedly arisen, precisely because of its insufficiently optimal regulation and the threat posed by distortion of competition or corruption. It is also difficult to see the position of the legislator in which direction the regulation of in-house procurements should go, because at one time the scope of using the institute of in-house procurements is narrowed, and at another time such an opportunity is being expanded, although the institutions responsible for this area had categorically negative positions regarding the existence of this institute.

2. The performed analysis substantiated that there are a number of problem areas in the regulation of in-house procurements established by the LPP:

2.1. the procuring organization must in all cases announce a public tender in order to make sure that it is impossible to ensure the continuity, good quality and availability of the service, as a result of which the in-house procurement institute, which should be characterized by operational efficiency, basically loses its meaning;

2.2. there is no general real control mechanism that ensures undistorted competition and the compliance of the conclusion of an in-house procurement with all the conditions imposed on it, which leads to the fact that all the risk regarding the legality of the conclusion of such transaction rests with the procuring organization;

2.3. extended opportunities for municipal companies to enter into in-house procurements leads to an obvious violation of the principle of equality, and the possibility to enter into an in-house procurement for an extremely long time leads to the absence of new alternatives for the services or goods provided, after the end of such a transaction period;

2.4. the legal practice of additionally formally applying the provisions of competition law to in-house procurements by strengthening their exclusivity is flawed, but the stricter regulation of in-house procurements provided for in Lithuania does not contradict EU law as long as it does not violate other fundamental principles of EU law.

3. The performed analysis substantiated that after establishing a proper mechanism of real institutional control of in-house procurements in the LPP, assigning these functions to the Public Procurement Service, narrowing the range of cases according to which municipalities can enter into in-house procurements, abolishing the ban on state companies entering into such transactions and determining the maximum possible duration of such transactions in the legislative regulation, the institute of in-house procurements would not only be preserved, but would also function much more efficiently.

REFERENCES

Legal acts:

1. Council Directive 2006/97/EC of 20 November 2006 adapting certain Directives in the field of free movement of goods, by reason of the accession of Bulgaria and Romania, *OL L 363*;
2. Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC Text with EEA relevance, *OL, 2014 L 94/65*;
3. Law on Competition of the Republic of Lithuania. *Valstybės žinios*, No. 30-856 (1999);
4. Law on Public Procurement of the Republic of Lithuania. *Valstybės žinios*, No. 84-2000 (1996);
5. Law on Articles 2, 4, 6, 8, 9, 10, 18, 19, 20, 21, 22, 5. 23, 24, 25, 27, 33, 37, 38, 40, 41, 56, 57 of the Law on Public Procurement of the Republic of Lithuania, Articles 71, 73, 81, 82, 83, 85, 86, 91, 92, 94, 951, 97, the title of Chapter V, Appendices 1, 2, 4 and the Addendum Law No. XI-1255. *Valstybės žinios*, No. 2-36.
6. Law on Local Self-Government of the Republic of Lithuania. *Valstybės žinios*, Nr. 55-1049 (1994);
7. Resolution of the Government of the Republic of Lithuania on the approval of the provisions of the Public Procurement Service, *Valstybės žinios*, No. 161-7630 (2011);

Special literature:

8. Janssen W. A. (2014). The Institutionalised and Non-Institutionalised Exemptions from EU Public Procurement Law: Towards a More Coherent Approach? *Untrecht Law Rewiew*.
9. Soloveičikas D. (2009). Vidaus pirkimai kaip viešojo pirkimo sutarties išimtis. *Teisė*, t. 71.

Case law and institutional decisions:

10. the Court of Justice of the European Union 12th November 1999 decision in case *Teckal Srl v Commune di Viano* Case No. C-107/98, ECR I-8121, ECLI:EU:C:1999:562.
11. the Court of Justice of the European Union 22th May 2003 decision in case *Arkkitehtuuritoimisto Riitta Korhonen Oy and others No.* C-18/01, ECLI:EU:C:2003:300.
12. the Court of Justice of the European Union 11th January 2005 decision in case *Stadt Halle, RPL Recyclingpark Lochau GmbH v Arbeitsgemeinschaft Thermische Restabfall- and Energieverwertungsanlage TREA Leuna No.* C-26/03.
13. the Court of Justice of the European Union 3rd October 2019 decision in case *Kauno miesto savivaldybė v Kauno miesto savivaldybės administracija and UAB „Irgita“, UAB „Kauno švara No.* C-285/18. ECLI:EU:C:2019:829.
14. the Supreme Court of Lithuania Civil cases division 13th April 2018 ruling in civil case No. e3K-3-120-469/2018.

15. the Supreme Court of Lithuania Civil cases division 17th December 2019 ruling in civil case No. e3K-3-494-469/2019.
16. the Supreme Administrative Court of Lithuania 29th March 2016 ruling in administrative case No. A-347-552/2016.
17. the Supreme Administrative Court of Lithuania 5th February 2020 ruling in administrative case No. eA-893-556/2020.
18. The decree No. 1K-940 of the President of the Republic of Lithuania of 18 April 2017. *TAR*, No. 6598
19. The Competition Council 30th April 2015 resolution No. 1S-45/2015 "Regarding the market research of municipal waste management services".

Other sources:

20. Lithuanian Free Market Institute (2019). *Vidaus sandoriai – grėsmė konkurencijai*. [online]. Available at: https://www.llri.lt/wp-content/uploads/2019/03/PB_Vidaus-sandoriai-savivaldyb--se_20190327.pdf (accessed: 10.10.2022).
21. the Seimas of the Republic of Lithuania the 8th October 2019 VII session transcript No. 333 [online]. Available at: https://eseimas.lrs.lt/portal/legalAct/lt/TAK/68cf28a0ea7911e99f05bdf72918ad4e?positionInSearchResults=4&searchModelUUID=90b64bc2-d10a-4b9d-81c4-2d8d069a49b4 (accessed: 10.10.2022).
22. the Economic Committee of the Seimas of the Republic of Lithuania 22th December 2010 meeting protocol No. 108-P-49 [online]. Available at: https://eseimas.lrs.lt/portal/legalAct/lt/TAK/TAIS.389632?positionInSearchResults=0&searchModelUUID=2a645f94-257d-45a1-810c-b0cbde0d419e (accessed: 10.10.2022).
23. the Education, Science and Culture Committee of the Seimas of the Republic of Lithuania 12th June 2013 conclusion No. 106-P-25 [online]. Available at: https://eseimas.lrs.lt/portal/legalAct/lt/TAK/TAIS.450972?positionInSearchResults=22&searchModelUUID=2a645f94-257d-45a1-810c-b0cbde0d419e (accessed: 10.10.2022).
24. Soloveičik D. (2019). *So, the fate of the EU in-house awards is getting clearer.* [online]. Available at: https://www.linkedin.com/pulse/so-fate-eu-in-house-awards-getting-clearerdeividas-soloveicik?articleId=6532232977253048320#comments-6532232977253048320&trk=public_profile_article_view. (accessed: 10.10.2022).
25. Balčiūnaitė S. (2019). *Iš VPT žinia dėl dviejų valstybės įmonių: rado landų ir toliau sudaro vidaus sandorius*. [online]. Available at: https://www.lrt.lt/naujienos/verslas/4/1051080/is-vpt-zinia-del-dviejuvalstybes-imoniu-rado-landu-ir-toliau-sudaro-vidaus-sandorius (accessed: 10.10.2022).

