

INTRODUCTORY SPEECH OF THE AUDITOR GENERAL ELITA KRŪMIŅA

11 January 2021

Your Excellencies, Mr President Levits, Prime Minister Kariņš, and Secretary-General of the Organization for Economic Cooperation and Development, Mr Gurria, Distinguished Ministers and Heads of Institutions, Dear Colleagues, Partners, and Media Representatives,

I am delighted for the opportunity to conclude my eight-year term as the Auditor General with a comprehensive, systemic, and structural reform-supporting audit. The audit findings highlight the reasons for the failure of the responsible authorities to effectively investigate financial and economic crimes in a timely and professional manner, and to bring fair and indisputable charges against offenders.

Why did we conduct this audit? We did it because both - the risk assessments performed by the State Audit Office itself and the assessments by international organisations pointed to significant and unresolved problems for years. It was clear that the current situation was unacceptable, as it negatively affected not only every our citizen but also economic processes in the country and the economy as a whole, as well as jeopardised the international reputation of the Republic of Latvia and its image as a country.

I would like to emphasise that this audit was not only an initiative of the State Audit Office. The government was also very interested and approximately a year ago invited out office to consider such an audit.

This type of assessment is unprecedented in Latvia, therefore the State Audit Office needed strong and professional cooperation partners. Experts who could be able to assess the compliance of the Latvian situation with internationally recognised best practice and possibly dispel some myths about what is and what is not the rights and obligations of law enforcement institutions. The State Audit Office chose an extraordinary and ambitious approach to attracting experts.

The State Audit Office addressed the Organisation for Economic Co-operation and Development (OECD) for cooperation. The OECD responded positively and engaged both - experts from the OECD Directorate for Public Governance and experts from OECD partner countries, so-called peers. They assessed the work of prosecution service in the context of the systems and experiences existing in developed countries, where the legal framework and institutional model were comparable to the situation in Latvia. Their expertise was particularly relevant in assessing issues such as the understanding of values and the interpretation of supranational terms, such as whether the prosecution service should be 'absolutely independent'. The team of experts consisted of high-

ranking former officials from OECD partner countries like Attorneys General and staff of prosecution services, as well as heads of the International Association of Prosecutors.

This means not only that the State Audit Office has issued audit recommendations based on internationally approved and recognised best practice. This also marks the beginning of a new era in public sector auditing practices. I assume that this is one of the few, if not the only case in the history of cooperation between national supreme audit institutions and the OECD bodies, where these two independent institutions carry out a simultaneous assessment of a certain area, based on the principle of complementarity of resources and methods, resulting in comprehensive recommendations addressing challenges in the sector. We also engaged Latvian academia in law and the practitioners applying laws and regulations as experts in the assessment of certain problem factors.

There are four reports published today. Three audit reports of the State Audit Office, where the first one analyses the factors hindering the investigation and prosecution of financial and economic crimes. The second report analyses the place and role of the Prosecutor's Office in the system of state institutions and the performance effectiveness of that institution. The third report assesses the progress in digitising criminal proceedings and the efficiency of the use of resources spent on digitisation. The fourth report includes a peer review by the OECD of the work of the Latvian Prosecutor's Office.

You will have noticed that the State Audit Office has chosen to summarise the analysis of the activities of the Prosecutor's Office in a separate report and had requested the OECD experts to focus specifically on studying the work of the Prosecutor's Office. Why?

The Prosecutor's Office is a 'key' institution in investigating and prosecution of financial and economic crimes and plays a central and leading role in the application of Criminal Law and Criminal Procedure Law. There is no reason to believe that the resources of prosecutors are insufficient in Latvia. In terms of the number of prosecutors, Latvia does not lag behind other countries. Therefore, there was a risk that the management of the Prosecutor's Office could be one of the reasons limiting effective investigation and trial.

For that purpose, the State Audit Office assessed how the institution of the Prosecutor's Office was managed, how the work of the Prosecutor's Office was organised, and how the risks of ineffective work were reduced. The State Audit Office paid particular attention to suitability of the institutional model of the Latvian Prosecutor's Office, that is, whether it complies with the internationally recognised best practice and does not impose external obstacles to the efficient performance of the functions of the Prosecutor's Office and work organisation.

Given the significance and impact of the facts revealed in the assessment of the work of the Prosecutor's Office, I would like to highlight the related findings myself. My colleagues will share other audit findings later.

The assessment reveals that the concept of the independence of the prosecution service and a prosecutor is interpreted more broadly in Latvia than it follows from the recommendations of international institutions. Here, I mean the opinions expressed by the Council of Europe, the United Nations, the International Association of Prosecutors, the Consultative Council of European Prosecutors, and the Venice Commission since 2000.

One of the internationally recognised conclusions that one has omitted during development of investigative and judicial practices in Latvia is the following. Even being a part of the judiciary, the prosecution service is not a court, and its independence is not as categorical as the independence of the judiciary. The independence of prosecutors is not the same as that of judges. However, in Latvia, we have interpreted the independence of the prosecutor not only as a prohibition of external influence on specific criminal proceedings, which is a necessity and serves as an instrument for preventing undue influence. In Latvia we have gone further in interpreting the independence of the Prosecutor's Office by presuming that the independence of the Prosecutor's Office is almost 'absolute'. This makes impossible to hold the Prosecutor's Office accountable for its work results and/or apply the principles of good governance and effectiveness that are required from other public institutions including constitutional and independent institutions.

A significant and negative result of the presumption of 'absolute' independence is the lack of accountability of the institution for the results achieved and/or not achieved, and subsequent lack of motivation to achieve the results. While in other countries the accountability of the Prosecutor's Office to other institutions (for example, the Parliament) serves as an essential control mechanism over the activities of the Prosecutor's Office, reporting to the Parliament is perceived as an informative event in Latvia.

There must be a mechanism for holding the head of the Prosecutor's Office accountable for what has been achieved. So far, it has not been the case. The Prosecutor's Office as an institution must also be accountable to the public for the effective and efficient use of the resources allocated to it, id est, for the proper performance of the institutional functions, achieving its goals and results.

We also question the existing assumption that the cooperation between the Prosecutor's Office and the parliament and government in development of relevant policies and legislation must be limited not to jeopardize the independence of the Prosecutor's Office. In our view, the independence of the Prosecutor's Office can be maintained without creating obstacles to the involvement of the

institution in cooperation, especially because the Prosecutor's Office has access to the broadest information on problem situations, their causes, and is the best positioned to see the most effective mechanisms for solving those problems. If the involvement of the Prosecutor's Office requires additional regulation by law, then one must adopt such a regulation.

The currently prevailing and exaggerated perception of the independence concept has heavily contributed to isolation of the Prosecutor's Office from the reforms implemented in the country aiming to modernise and streamline the activities of state institutions, including in the Latvian judicial system. It forms the basis for ineffective management of the prosecution service, which complicates the performance of the functions and duties of the Prosecutor's Office significantly. We cannot continue like this. There are significant changes needed in understanding of what the independence of the Prosecutor's Office means and what must be the approaches to implementation of management functions. This is the only possible way to increase the capacity of the Prosecutor's Office in performing its core functions and to facilitate the efficient use of the resources allocated to the Prosecutor's Office.

If approbation of internationally acknowledged concepts in Latvia requires further detailing of said concepts in laws and regulations, then this is the last moment to modify / supplement the laws. The State Audit Office has provided relevant recommendations to the Saeima and the Cabinet of Ministers. For positive changes in investigation and prosecution of economic crimes, the "key" institutions of the system cannot be left out. Therefore, active engagement and participation of the Prosecutor's Office in improving the efficiency of pre-trial criminal proceedings is required. This must be done by undertaking the leading role in forging the law enforcement practices and properly supervising the work of investigators, particularly when investigating complicated criminal proceedings which heavily affect public interests.

As for the system for investigating and prosecuting financial and economic crimes in general, our auditors obtained assurance that each institution was 'fighting' individually on its own - both in trying to develop law enforcement practices and in training staff. At the same time, the system critically lacks the unifying element. The expansion of the powers of the Crime Prevention Council could become a positive change if the Council became a form of cooperation between the executive power and institutions of the judiciary.

I believe that the audit results and 44 recommendations issued by the State Audit Office to eliminate deficiencies will serve as a roadmap, first to address the causes of inefficiency and then to take actions striving for excellence.

The management of law enforcement institutions must be aware that they have not only rights but also duties. If we refer to Mahatma Gandhi, he said, “rights that do not flow from duty well performed are not worth having.”

I suppose the government and the responsible institutions will have the courage and commitment to follow this ‘road map’. In that case, we, as the people of Latvia, will feel it very soon. The time will come when we will be proud of our law enforcement institutions and, quite simple, feel safe and secure. During the audit, we learned that the staff of law enforcement institutions such as prosecutors, investigators, and judges expected the changes themselves because they wished to be proud of their institutions and their work as well.

The State Audit Office and experts have done their job and now hand on the baton to the responsible officials.

I invite you to work hard and accomplish, and I wish you good luck!

Finally, I would like to thank our auditors for their ability to do this work: Ms Ilze Grīnhofa, leader and coordinator of all tasks, Council Member of the State Audit Office, Ms Tatyana Teplova, Head of the OECD assessment team, all Latvian and international experts who were highly motivated and worked not counting their working hours. They worked with the belief that their work would bring the change.

In particular, I would like to address the Secretary-General of the OECD, distinguished Mr Angel Gurría. First of all, I thank you for trusting the Supreme Audit Institution of the Republic of Latvia and agreeing to do this vital work together. You have been leading the OECD for 14 years already, and the organisation has become an undeniable leader of good governance and an agent of change under your leadership.

Latvia joined the OECD six years ago, during your term of office. We joined the family of developed countries to develop further under the principles of democracy and open market economy.

I truly hope that by initiating and performing this joint and vital work, Latvia demonstrates that it is a strong country. A country capable of identifying shortcomings itself, admitting mistakes, agreeing on joint action, developing constantly, and striving for excellence!