



## SUMMARY OF KEY AUDIT FINDINGS AND RECOMMENDATIONS

Does the operation of the Prosecutor's Office of  
the Republic of Latvia require any improvements?



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## Summary of conclusions and recommendations

Does the operation of the Prosecutor's Office of the Republic of Latvia require any improvements?

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Sub-task "Effectiveness of the use of state budget funds in the performance of the functions of the Prosecutor's Office of the Republic of Latvia" of performance audit "Effectiveness of investigations and trials of the criminal offences in the economic and financial area"

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## Main conclusions and recommendations

Considering that the Prosecutor's Office of the Republic of Latvia (hereinafter referred to as the Prosecutor's Office) is a "key" institution in the investigation of financial and economic crimes and prosecution, and it has a central and leading role in applying criminal law and procedure, the State Audit Office audited the Prosecutor's Office.

In terms of the number of prosecutors, Latvia does not lag behind other countries, so there is no ground to state that resources are not sufficient to perform the functions of the prosecution service effectively.

- ❖ *Latvia has 23.5 prosecutors per 100 thousand population, while the average indicator is 12.1 prosecutors in other benchmarked countries. At the same time, in terms of the number of cases received by the Prosecutor's Office, Latvia lags far behind other countries - the Prosecutor's Office receives 0.68 cases per 100 population per year in Latvia (while an average is 3.1 cases in other countries). Latvia has a relatively large number of prosecutors in the top-level structural unit (Prosecutor General's Office), which is 8.1% of all prosecutors on average in other countries but it is 17.7% in Latvia<sup>1</sup>.*

Given the above, the State Audit Office has assessed in the audit how they have organised the work of the Prosecutor's Office, how they implement the management function of the institution, and how they reduce the risks of inefficient work. The State Audit Office paid special attention to the requirements of the legal framework, the suitability of the institutional model of the Prosecutor's Office, and compliance with internationally recognized best practice by evaluating whether the legal framework and the institutional model of the Prosecutor's Office provide preconditions for successful criminal investigation and prosecution and do not impose external obstacles to effective work organisation of the Prosecutor's Office. The institutional model and work organisation of the Prosecutor's Office were assessed in co-operation with experts from the Organisation for Economic Co-operation and Development (OECD), who conducted a comparative benchmarking study of purposefully selected prosecution services. The aim of the study, put forward by the State Audit Office, was to identify better practices of more successful countries in this respect, which might be useful for the situation in Latvia.

Countries have the opportunity to establish a prosecutor's office, both subordinate to the government and independent of the government, by providing sufficient and effective measures to guarantee the independence of the Prosecutor's Office and the status required for the performance of prosecutorial functions<sup>2</sup>. In Latvia, the Prosecutor's Office is an institution of the judiciary that supervises the observance of legality independently within the competence specified by law<sup>3</sup>.

Following the assessment carried out<sup>4</sup>, the State Audit Office concludes that the institutional model of the Prosecutor's Office chosen in the Latvian national legal system does not *de jure* create any obstacles for the Prosecutor's Office to perform the functions of the Prosecutor's Office effectively within the chosen model.

The regulation of the Prosecutor's Office Law identifies all the necessary standards for the independence of both the Prosecutor's Office and a prosecutor arising from the set of transnational documents. In its audit report, the State Audit Office analyses the guidelines of international organisations and examples of internationally recognised best practice in interpreting the concept of the independence of a Prosecutor's Office and prosecutors and draws attention to the Venice

Commission's opinion that, even as part of the judiciary, the independence of prosecution service is not the same as that of judges<sup>5</sup>.

The evidence obtained in the audit shows that the concept of the independence of the Prosecutor's Office and prosecutors is interpreted more broadly in Latvia than it follows from the recommendations and opinions of international institutions<sup>6</sup>, namely, in Latvia, the independence of a prosecutor means both the prohibition of external influence on the course of particular criminal proceedings and decisions made within the latter<sup>7</sup> and the independence is considered as almost 'absolute' by limiting, for example, the possibility of holding the Prosecutor's Office accountable for its work, cooperation with state institutions in developing crime prevention and combating policies or extend the principles of good governance and efficiency applied by other public administration institutions to the Prosecutor's Office.

According to OECD experts, the understanding of the almost 'absolute' independence of the Prosecutor's Office has contributed to the Prosecutor's Office distancing itself from the reforms implemented in the country aiming to modernise and streamline the functioning of state institutions, including the Latvian judicial system. The State Audit Office, in its turn, points out the most significant consequences that affect the efficiency of criminal proceedings negatively, what the long-term application of this understanding in the work organisation of the Prosecutor's Office might have caused.

In the opinion of the State Audit Office, the understanding of the independence of the Prosecutor's Office as a unified system of three levels of institutions and approach to the implementation of management functions require significant changes, which would both increase the capacity of the Prosecutor's Office in performing its primary functions and promote more efficient use of the existing resources of the Prosecutor's Office. If further elaboration of the concepts and its consolidation in laws and regulations are necessary for the implementation of the mentioned understanding, the State Audit Office will facilitate such an approach by addressing the Latvian Parliament (Saeima) and the Cabinet of Ministers after the audit.

The recommendations of the State Audit Office (see below) are aimed at eliminating the deficiencies in all the mentioned areas.

## 1. The place and role of the Prosecutor's Office in the national institutional system

The operating principles and standards of prosecution service are set out in several supranational documents, the most important of which are Recommendation Rec(2000)19 of the Committee of Ministers to Member States on the Role of Public Prosecution in the Criminal Justice System on 6 October 2000, the opinions adopted by the Consultative Council of European Judges (CCJE) and the Consultative Council of European Prosecutors (CCPE)<sup>8</sup>, documents adopted by the United Nations (UN) and the International Association of Prosecutors<sup>9</sup>. The Venice Commission documents<sup>10</sup> are also an important source of opinions and recommendations.

Recommendation Rec(2000)19 of the Committee of Ministers to Member States on the Role of Public Prosecution in the Criminal Justice System adopted by the Committee of Ministers of Justice of the Council of Europe on 6 October 2000 was the first European document to set standards for the operation of the public prosecution. The Recommendation allows countries to establish a

prosecution service both subordinate to the government and independent of the government, by providing sufficient and effective measures to guarantee the independence of the prosecution service and the status required to perform the functions of the prosecution service. Over the last two decades, the Consultative Council of European Prosecutors (CCPE), the United Nations Office on Drugs and Crime (UNODC), the International Association of Prosecutors, and the Venice Commission have developed and adopted opinions and recommendations on how to implement this Recommendation.

Recommendation Rec (2000) 19 adopted by the Committee of Ministers of Justice of the Council of Europe on 6 October 2000 recognises the significance of several basic principles of the operation of the prosecution service, for example:

- ✓ *States should take appropriate measures to ensure that public prosecutors are able to perform their professional duties and responsibilities without unjustified interference or unjustified exposure to civil, penal or other liability. However, the public prosecution should account periodically and publicly for its activities as a whole and, in particular, the way in which its priorities were carried out<sup>11</sup>;*
- ✓ *In countries where the public prosecution is independent of the government, the state should take effective measures to guarantee that the nature and the scope of the independence of the public prosecution is established by law<sup>12</sup>;*
- ✓ *Public prosecutors should, in any case, be in a position to prosecute without obstruction public officials for offences committed by them, particularly corruption, unlawful use of power, grave violations of human rights and other crimes recognised by international law<sup>13</sup>;*
- ✓ *In order to promote the fairness and effectiveness of crime policy, public prosecutors should co-operate with government agencies and institutions in so far as this is in accordance with the law<sup>14</sup>.*

In Latvia, the above principles have been addressed by the legal provisions established in the Prosecutor's Office Law, which contains a regulation on the legal basis for the activities of the Prosecutor's Office, that is, the Latvian Constitution (Satversme), the Prosecutor's Office Law, and other laws and regulations<sup>15</sup>. Section 1 of the Prosecutor's Office Law states that (1) the Prosecutor's Office is an institution of judicial power, which carries out supervision of the observance of law independently within the scope of the competence determined by the Law; (2) the task of the Prosecutor's Office is to react to a violation of the law and to ensure the resolution of a related case in accordance with the procedures prescribed by law. The functions of the Prosecutor's Office also include both making decisions on initiating or continuing prosecutions and supervising pre-trial investigations and operational activities, and conducting pre-trial investigations<sup>16</sup>.

Based on the assessment performed in the audit, the State Audit Office concludes that the institutional model of the Prosecutor's Office chosen in the Latvian national legal system does not *de jure* create any obstacles for the Prosecutor's Office to perform the functions of the Prosecutor's Office effectively within the chosen model.

- ❖ There are no shortcomings identified in the Prosecutor's Office Law with regard to the conditions for the efficient and optimal performance of the functions of the Prosecutor's Office, which are provided for in the internationally agreed guidelines on the functions,



operating principles, and independence of the prosecution service to be ensured according to the model chosen by the country.

- ❖ The principles of independence, appointment, and early dismissal of the Prosecutor General have been addressed in line with the standards set out in the supranational package of documents and do not provide grounds for claiming that the status and appointment of the Prosecutor General may affect the institutional functioning of the Prosecutor's Office adversely. On the contrary, the Prosecutor's Office Law sets forth a wide scope of authority to the Prosecutor General with regard to the organisation of the activities of the Prosecutor's Office which allows the activities of the national prosecution service be organised in accordance with the highest institutional standards of internal and external independence.
- ❖ One identifies all the necessary standards for the activities and independence of prosecutors arising from the set of supranational documents in the regulation of the Prosecutor's Office Law.

The Venice Commission's report<sup>17</sup> assesses the "internal" and "external" independence of the prosecution service separately by distinguishing between the independence of the prosecution service or the Prosecutor General and contrasting to the status of prosecutors who are not the prosecutor general and who are "autonomous" rather than "independent". The Venice Commission has acknowledged that any "independence" of the prosecution differs from the scope of the judiciary fundamentally. The main precondition for such independence of a prosecution service or the Prosecutor General is the inadmissibility for the executive to give instructions to the Prosecutor General (and, of course, directly to any other prosecutor) on specific cases (criminal proceedings). The Venice Commission has also admitted that even as part of the judiciary, the prosecution service is not a court and its independence is not as categorical as judicial independence, nor is the independence of prosecutors the same as that of judges<sup>18</sup>.

The regulation of the activities of the Prosecutor's Office contains the necessary standards for the activities and independence of prosecutors, but there are differences in the independence guaranteed to the Prosecutor's Office, *id est*, the concept of independence in Latvia is generalised and is applied not only to overall prohibition to give instructions on specific criminal proceedings, but also to the possibility of expressing an assessment of the activities of the Prosecutor's Office in general.

It is important to point out the finding confirmed by the Constitutional Court of the Republic of Latvia<sup>19</sup> that the principle of separation of powers arising from the concept of a democratic republic included in the Satversme should not be perceived dogmatically and formally, but its aim of preventing centralisation of power in one institution or one official should be respected. The Constitutional Court has acknowledged that no power can be absolutely independent, otherwise it is not possible to ensure the existence of the principle of separation of powers, which also envisages mutual control and interaction of power. Also in the opinion of the OECD<sup>20</sup>, the Prosecutor's Office interprets its independence more broadly than the Constitutional Court in Latvia. Understanding of the almost absolute independence of the Prosecutor's Office may contribute to the isolation of the Prosecutor's Office from the reforms implemented in the country aiming to modernise and streamline the activities of state institutions, including the Latvian judicial system.

Probably, due to the existing understanding of the independence of the Prosecutor's Office, the Prosecutor's Office Law does not regulate the co-operation of the Prosecutor's Office with the executive authorities sufficiently. A clear settlement of the principles of relations and co-operation in law is necessary not only to ensure that the executive does not interfere in decisions in specific

criminal proceedings<sup>21</sup> but also to coordinate activities in crime prevention policy and to achieve the engagement of all stakeholders including the Prosecutor's Office as the central institution in the criminal justice system in achieving the set targets. Other countries, including those where the prosecution is part of the judiciary, have put in place such mechanisms for action and cooperation.

As emphasised in Recommendation Rec (2000)19 on the Role of Public Prosecution in the Criminal Justice System adopted by the Committee of Ministers of Justice of the Council of Europe on 6 October 2000, due to the independence of prosecution service, there is a risk that its activities may be incompatible with other institutions in the criminal justice system. The public prosecution must therefore work closely with other services that are normally accountable to the government, and the principles and methods of such cooperation must have a legal basis<sup>22</sup>.

There is a Crime Prevention Council<sup>23</sup> established in Latvia whose scope of responsibility was expanded in 2020<sup>24</sup> to include the function of implementing co-operation between the executive and the judiciary in order to set common goals and co-ordinate co-operation in strengthening the rule of law by respecting the principles of the separation of powers. The Crime Prevention Council is a collegial body that aims to strengthen the rule of law, coordinate, and improve the activities of state institutions to prevent and combat crime, especially corruption and organised crime, which threaten national security and economic stability, and promote a unified and effective cooperation of the executive and judiciary in strengthening the rule of law.

This could be one of the forms of cooperation where, as in other countries, it would be possible to agree on common goals and results for the current year, in the medium and long term by identifying the major risks in the fight against crime. The State Audit Office considers that the achievement of these goals and results should be the basis of the operational strategy of the executive and judicial authorities. According to the audit findings, the operational strategy of the Prosecutor's Office does not link with the policy documents approved by the state in the field of combating crime. Both the operational strategy and the work plans are too general and cannot be considered as a roadmap for achieving the desired results.

It is possible that for involving the Prosecutor's Office in achieving policy goals and results more, law and regulations must stipulate solutions, e.g., the fact that Parliament can set targets and results for the Prosecutor's Office be achieved in a specified time based on proposals from the Crime Prevention Council.

*The State Audit Office recommends to evaluate the possibility of improving the regulation of the activities of the Prosecutor's Office in relation to co-operation with executive institutions by envisaging a mechanism of action for the Prosecutor's Office be engaged in achieving the strategic goals and results of crime prevention policy.*

When assessing the regulation included in the Prosecutor's Office Law regarding the principles of responsibility and accountability of the institution and prosecutors, one can establish that those principles might not be regulated sufficiently in the Prosecutor's Office Law.

The Venice Commission's report<sup>25</sup> emphasises the accountability of prosecutors and states, for example, that:

- ❖ *Like any public institution, judges, also the prosecution service must be accountable to the public. The traditional way to ensure accountability is control of the executive, which provides indirect democratic legitimacy through the executive's dependence on the elected parliament. Another means is the control of the Council of the Prosecutor's Office, which*



*cannot be a mere instrument of self-government but must acquire its democratic legitimacy by electing at least some of its members to parliament.*

In addition, the opinion on the independence, accountability, and ethics of prosecutors adopted by the Consultative Council of European Prosecutors on 23 November 2018<sup>26</sup> states that:

- ❖ *Accountability of prosecutors does not mean interfering with the independence of prosecutors. Despite their independence, prosecutors are held liable and accountable for their activities according to the hierarchy, the public, the judiciary, and other public officials and bodies, and the mass media. They should explain their actions proactively or provide information to the public, especially when there is public attention;*

The guidelines on the status and role of prosecutors, approved jointly by the United Nations Office on Drugs and Crime (UNODC) and the International Association of Prosecutors in 2014, stress that<sup>27</sup>:

- ❖ *The fair, independent, and impartial performance of the judiciary's tasks also requires that prosecutors be held accountable if they fail to perform their duties in accordance with established professional standards. In this context, the view expressed in the report of the UN Special Rapporteur on the Independence of Judges and Lawyers<sup>28</sup> that autonomy cannot exist to the detriment of accountability is emphasised;*
- ❖ *The independence of the prosecutor does not mean that the prosecutor is completely autonomous and not accountable to anyone. The prosecution services are accountable to the executive, the legislature, the public and, to some extent, the judiciary. The "responsibility" of the prosecutor means that the prosecution service can be held accountable for its actions by submitting reports.*

Perhaps, the understanding of the independence of the prosecution service, which goes beyond the prohibition of giving external instructions in specific criminal proceedings and applies to the assessment of the performance of prosecution service in general, may have refrained from the Prosecutor's Office Law providing for non-procedural control over the prosecution on behalf of the Parliament or other institution. Only in 2020, the provision of the Prosecutor's Office Law came into force stipulating the procedure by which the Saeima should be informed about the achievements and priorities of the Prosecutor's Office, namely, the Prosecutor General shall submit a report to the Saeima on the progress in the reported period and the priorities for the next year by 1 March each year<sup>29</sup>. However, when judging by the annotation of the draft Law<sup>30</sup>, one can perceive this activity as informing the legislator rather than reporting on the work done. In addition, the Rules of Procedure of the Saeima do not specify a procedure for reviewing the report submitted by the Prosecutor General, as it specifies, for example, regarding the reports of the Ombudsman and the reports of the Auditor General<sup>31</sup>.

According to the Prosecutor's Office<sup>32</sup>, the convention of the annual meeting of Chief Prosecutors, where the Prosecutor General reports on the work of the Prosecutor's Office in the reported year and priorities for the next year, corresponds to the performance evaluation of the Prosecutor's Office and public reporting of the Prosecutor's Office provided for in Article 11 of the Recommendation Rec(2000)19 adopted by the Committee of Ministers of Justice of the Council of Europe. The Prosecutor's Office has published<sup>33</sup> the drafted annual reports on the website [www.prokuratura.gov.lv/lv](http://www.prokuratura.gov.lv/lv). However, when assessing the information provided in the Prosecutor's Office reports, one can conclude that they contain quantitative indicators characterising the crime situation in the country and statistical indicators on the work of the Prosecutor's Office, while

lacking a qualitative analysis of the performance of the Prosecutor's Office, for instance, on the impact of the activities implemented by the Prosecutor's Office on the reduction of crime rates. It is also not possible to determine whether and what contribution the Prosecutor's Office makes and intends to make in improving the efficiency and quality of pre-trial investigations, in improving the quality of state prosecutions in court and other relevant areas of activity in criminal justice. Therefore, the State Audit Office finds that one should assess the possibility to specify the scope of the report submitted by the Prosecutor General to the Saeima in the Prosecutor's Office Law.

With regard to the control of the activities of the Prosecutor's Office, one should also note that the Council of Prosecutor General provided for in the Prosecutor's Office Law is not as a prosecuting institution that might comply with the institutions stated in the reports of the Venice Commission and the CCPE, namely, Prosecution (prosecutor) council that is one of the tools<sup>34</sup> to facilitate accountability and liability of the prosecution service. The Council of the Prosecutor General specified in Section 29 of the Prosecutor's Office Law is a collegial advisory body that examines the main issues of the work organisation and operation of the Prosecutor's Office and consists of chief prosecutors of departments and judicial districts of the Prosecutor's Office, and an administrative director of the Prosecutor's Office. The area of responsibility of the Council of Prosecutor General, a collegial advisory institution, including the power to issue separate internal regulations of the Prosecutor's Office, makes the Council of the Prosecutor General a self-governing institution, whose documents the Prosecutor General approves once again<sup>35</sup>.

*The State Audit Office recommends to evaluate the possibilities for improving the regulation of the activities of the Prosecutor's Office by strengthening the understanding of the accountability and responsibility of the Prosecutor's Office and specifying the scope of the report of the Prosecutor General to the Saeima and providing a procedure for its review so that the Parliament and the public would receive as comprehensive insight of the performance and development of the Prosecutor's Office as possible.*

In the institutional model of the prosecution service established in Latvia, the Prosecutor's Office Law grants a wide scope of authority to the Prosecutor General enabling to organise the operation of public prosecution according to the highest institutional standards of internal and external independence. At the same time, the State Audit Office finds that the understanding of the independence of each prosecutor could have an impact on the implementation of the management functions of the Prosecutor's Office, as the work organisation of the Prosecutor's Office has not implied such approaches like determination of obligations and powers, process descriptions or guidelines to be used in the work of a prosecutor in internal regulations. Such an approach has not promoted a unified and consistent application of the provisions of the Criminal Law and the Criminal Procedure Law or the performance of the Prosecutor's Office in general although the application of the same statutory provisions and formation of unified legal practice in criminal proceedings is required to meet the principle enshrined in Section 91 of the Latvian Constitution. Other countries have standardised procedures or even a quality management system for the prosecution.

The documents of the Venice Commission outline that the independence of the prosecution service is not as categorical as the independence of the judiciary. Even if the prosecution service as an institution is independent, there may be other principles of hierarchical control of prosecutorial decisions and actions<sup>36</sup>. The hierarchical system of subordination (which is also considered to be the Prosecutor's Office of the Republic of Latvia), although more common when the prosecution service is a part of the executive, is still appropriate in cases when the prosecutions service belongs

to the judiciary. The provision of legal certainty by combining processes at the national and/or regional level is mentioned<sup>37</sup> as one of the advantages of the hierarchical structure of the prosecution service.

In the jurisprudence of the Court of Justice of the European Union, when assessing the principles of the independence of the prosecutions service, one also expressed the opinion<sup>38</sup> that prosecutors were obliged to follow the instructions of their immediate superiors. As follows from the case law of the Court of Justice of the European Union, in particular the judgments of 27 May 2019<sup>39</sup>, the requirement of independence does not preclude internal instructions, which their immediate superiors may give to prosecutors based on the subordination link regulating the smooth functioning of the prosecution service.

Following the statement of the Venice Commission<sup>40</sup> that there are no (applicable) standards for the independence of prosecutors equivalent to the independence of judges and that even if the prosecution service as an institution is independent, the institution can be organised hierarchically when prosecutors are bound by directives issued by their superiors, the State Audit Office sees an opportunity to specify the mandate of the Prosecutor General regarding the setting of standards and guidelines applicable to the activities of the Prosecutor's Office. The State Audit Office considers that one needs to change the understanding of the work organisation of the Prosecutor's Office, that is, to consider it acceptable and even necessary that the top official of the Prosecutor's Office, namely, the Prosecutor General may determine the organisational methods, guidelines, principles, and criteria of the Prosecutor's Office. This would allow using the advantages better that the hierarchical structure of the Prosecutor's Office provides to combine uniform processes at the national level in order to ensure legal certainty and increase the efficiency of pre-trial criminal proceedings.

*The State Audit Office recommends to evaluate the opportunities to specify the powers of the Prosecutor General regarding the determination of standards and guidelines applicable in the activities of the Prosecutor's Office in the regulation of the activities of the Prosecutor's Office.*

The recommendations and opinions contained in the transnational documents<sup>41</sup> indicate clearly that essential categories such as performance of the institution, performance results, efficiency indicators, internal control, internal and external audit, good governance, improving and reviewing governance, efficiency in the use of public sector resources and other notions that are applied in the activities of any institution in the public sector cannot be left out of the activities of the Prosecutor's Office.

The development planning documents of Latvian public administration<sup>42</sup> envisage the application of the principle of efficiency in public administration. Legislation regarding direct administration institutions stipulates the responsibility of the head of the institution for both the economic, efficient operation of the institution, compliance with the regulatory framework and the principles of good governance, as well as for the timely detection and elimination of errors and inconsistencies, uneconomical, inefficient, or illegal activity. The Law on the Structure of Public Administration<sup>43</sup> provides that the head of a direct administrative institution organises and is responsible for the performance of the institution, manages the administrative work of the institution by ensuring its continuity, efficiency, and legality, manages the financial, human resources, and other resources of the institution, and establishes the internal control system of the institution, monitors and improves it. This Law<sup>44</sup> also stipulates that public administration is organised as efficiently as possible, the institutional system of public administration is constantly inspected and, if necessary, improved.

Following Section 3 of the Law on the Structure of Public Administration, this Law determines the institutional system of public administration subordinated to the Cabinet of Ministers and the basic rules of public administration (Section 3.1). However, it is also established at the same time that the principles of public administration and other provisions of this Law shall also apply to institutions which are not subordinated to the Cabinet of Ministers, insofar as the special legal provisions of other laws do not provide otherwise (Section 3.3). Thus, the legislator has determined the framework for the application of the principles of the Law on the Structure of Public Administration also to entities outside the executive system, and in the opinion of the State Audit Office, there are no visible obstacles to their application in courts and the Prosecutor's Office.

It is important to point out that in assessing the status of the institution of the national prosecution service<sup>45</sup> in the jurisprudence of the Constitutional Court, one has acknowledged, "the Law on the Structure of Public Administration stipulates the institutional system of public administration subordinate to the Cabinet of Ministers and fundamental principles of public administration. According to Section 3.3 of the said Law, the principles of public administration other provisions of this Law shall also be applicable to those entities, which are not subordinated to the Cabinet of Ministers unless otherwise provided by the special laws. The Law on the Prosecutor's Office, the Law on Criminal Procedure, and other laws and regulations regulate the activities of the Prosecutor's Office. The Law on the Structure of Public Administration and the Administrative Procedure Law regulate the activities of the Prosecutor's Office or a prosecutor in those cases when the Prosecutor's Office or its official – a prosecutor performs public administration functions, id est, activities not listed in Section 2 of the Law on the Prosecutor's Office".

Thus, the application of the principles of public administration and the provisions of the Law on the Structure of Public Administration is not applicable to those cases when the Criminal Procedure Law, the Law on the Prosecutor's Office, the Law on Operative Activities, etc. are applicable that regulate the scope of rights and obligations of prosecutorial officials directly within the framework of special laws and regulations. Yet, the issues related to the functions of public administration such as the establishment of the administrative system of the institution, the handling of state budget funds (effectiveness and efficiency) etc. should also be addressed by the Prosecutor's Office in accordance with national standards, for instance, good governance, internal control, and efficiency.

According to the audit findings, one must improve the implementation of the management functions of the Prosecutor's Office in order to have preconditions for the efficient and effective operation of the Prosecutor's Office. Therefore, the State Audit Office finds that provision of legal certainty requires assessing an opportunity to apply the principle of good governance and efficiency in the regulation of the activities of the Prosecutor's Office, to strengthen the responsibility of the Prosecutor General for compliance of the prosecution service with the principles of good governance, economy, efficiency, and the establishment, monitoring, and improvement of the internal control system. At present, the Law on the Prosecutor's Office does not provide for such duties of the Prosecutor General as the Head of the Prosecutor's Office.

*The State Audit Office recommends to evaluate the opportunities to improve the regulation of the Prosecutor's Office by envisaging the application of the principle of good governance and efficiency in the Prosecutor's Office, as well as the responsibility of the Prosecutor General for compliance of the prosecution service with the principles of good governance, economy, efficiency, and the establishment, monitoring, and improvement of the internal control system.*

The leading role of a prosecutor in the investigation of criminal proceedings has been assessed in supranational documents and is recognised as an effective model of prosecutorial involvement and cooperation with investigative institutions for rapid and successful investigation of criminal proceedings internationally<sup>46</sup>. Although there is a wide range of involvement of the prosecution service in the investigative stage in the world starting from general non-involvement to active role in criminal proceedings and even management thereof, there is a growing tendency for prosecutors to engage in an investigation at an early stage, especially in complicated crimes (such as fraud or corruption)<sup>47</sup>.

Both the findings of the previous audit by the State Audit Office “Effectiveness of Pre-trial Investigation in the State Police” completed in 2017 and similar shortcomings in the organisation of pre-trial criminal investigation detected during this audit allow us to state that the model of cooperation between police and prosecution service established in Latvia should be improved.

The part of the OECD benchmarking study on the activities of the Prosecutor's Office in Latvia on the role and responsibilities of prosecutors in the investigation coincides with the audit findings of the State Audit Office “Effectiveness of Pre-trial Investigation in the State Police” that adoption of the Criminal Procedure Law has resulted in negative change in the understanding of the involvement of a supervising prosecutor in the investigation of criminal offence, namely, it has facilitated the separation of prosecutors from the investigation by seeking to leave it solely to the police.

According to OECD experts, it is currently not possible to assess unequivocally whether the role of prosecutors in pre-trial investigations should be increased in all cases. It is possible that by leaving the investigations of certain types of criminal offences to the police alone, prosecutors could focus on investigating the most complicated criminal offenses, as it is the case in most of the countries benchmarked. The optimal balance can be found in a combination of both solutions.

The State Audit Office considers that the Prosecutor's Office should play a leading role in order to implement the solutions already envisaged in the Criminal Procedure Law for simplification, faster and more economical conduct of the criminal proceedings in practice more effectively. To this end, one should define a common understanding and applicable practice within the Prosecutor's Office regarding the implementation of uniform procedures first, for example, what is the minimum amount of action required to terminate criminal proceedings, etc. The OECD benchmarking exercise also recommends<sup>48</sup> examining the possibility of standardising and simplifying procedures as much as possible in the case of the simplest criminal proceedings. In the OECD's view, this can provide a sound interpretation of the rules of criminal procedure, which is necessary for coherence and predictability of actions, and can significantly facilitate cooperation between prosecutors and investigators.

The State Audit Office also regards that it is necessary to assess whether the equal involvement of a prosecutor would be useful in all criminal proceedings, including the so-called insignificant (petty theft, fraud, small-scale embezzlement). The alternative is to increase the involvement of prosecutors from the initial stage of the investigation only in the investigation of the most complicated criminal offenses, including economic and financial offenses by simplifying and standardising the simplest criminal proceedings gradually.

*The State Audit Office recommends to assess and find the most suitable long-term solutions for the Latvian situation within the criminal justice system for relieving the criminal justice system (by decriminalising and/or simplifying and standardising less significant criminal proceedings, etc.), as well as for involving of a prosecutor and undertaking the leading role*



*in the investigation of complicated criminal offences at an early stage of the criminal proceedings by deciding on the choice of the type of proceedings, the direction of the investigation, the progress of the case, and other essential aspects in cooperation with the investigator.*

The State Audit Office finds that Latvia has the opportunity to apply to the Venice Commission for consultations on planned draft amendments to the Law on the Prosecutor's Office in order to find the most appropriate solutions for improving the regulation of the national prosecution service in accordance with the views and recommendations on the independence of prosecution service guaranteed by the transnational documents.

## 2. The Implementation of the Management Functions of the Prosecutor's Office

In documents in which organizations such as the Venice Commission, the Consultative Council of European Prosecutors, and others have expressed their views in assessing the principles of the prosecution service, the quality and efficiency of the prosecution service is emphasised as a precondition for combating crime, the rule of law and justice, as well as for increasing public trust in the judicial system. Below are some of the findings that point to the growing global demand for improved quality and efficiency of prosecution performance:

- ❖ *Irrespective of the governance model established, prosecutors must ensure the cost-effective and efficient management of the resources entrusted to their management... [..] (Consultative Council of European Prosecutors, 2012<sup>49</sup>);*
- ❖ *The main responsibility of the prosecution service is to ensure its efficiency. There must be a structure and organisation that would ensure fast and efficient performance of the tasks specified by law while maintaining a high level of quality. The necessary steps must be taken to maximise results with the available resources [..] (Consultative Council of European Prosecutors, 2014<sup>50</sup>);*
- ❖ *There is a growing global reflection on the development of a framework for the excellence of the prosecution service (inspired by the International Judicial Excellence Model<sup>51</sup>). For example, elements related to the excellence of the prosecution service include: (1) management (including resource management) and leadership, (2) policies and plans for the prosecution function in criminal proceedings, (3) effective criminal procedures, (4) effective cooperation with the relevant courts and police, (5) high quality prosecutions, (6) a high level of public trust, and (7) a high level of availability (OECD, 2020<sup>52</sup>).*

The State Audit Office considers that any organization, especially public sector institutions that are financed from the state budget, should operate in accordance with the principles of economy, efficiency, and effectiveness<sup>53</sup>. In the context of this audit, one must highlight the last two of those. The principle of effectiveness means that the set goals and the planned results must be achieved whereas the principle of efficiency is related to the relationship between the resources used and the results achieved, that is, the pursuit of maximum benefit from available resources (financial, human resources, etc.). The leaders of organisations are responsible for putting those principles into practice. For an organisation to focus on the effectiveness of achieving results and goals, one requires a close and integrated link between the organization's planning, implementation, control,



and evaluation followed by setting new goals and objectives to prevent problems and improve results. In its turn, the establishment of an internal control system is crucial for this to succeed.

During the last two decades, one has consolidated the concept and basic requirements of the internal control system in Latvian laws and regulations<sup>54</sup> based on the model of internal control system COSO (The Committee of Sponsoring Organizations)<sup>55</sup> developed in the USA in 1992. An internal control system is a set of risk management, control, and governance measures of an organisation (institution) aiming at ensuring the achievement of the institution's goals, efficient operation, compliance with laws and regulations, and reliability of reports. The COSO model considers five elements: the control environment, risk assessment, control activities, information and communication, and monitoring, of which the internal control environment is the main element that forms the basis for the other elements. All those elements are integrated into the basic requirements<sup>56</sup> for the establishment of internal control system for direct administration institutions, as well as the basic requirements<sup>57</sup> for preventing the risk of corruption and conflict of interest in a public institution, which also applies to the judiciary, of course, meeting the specific nature of the functions and activities stipulated in special laws.

Although the laws and regulations do not set mandatory requirements for the establishment of an internal control system in the Prosecutor's Office (except for the prevention of corruption and conflict of interest), it is also necessary to implement management functions and create a control environment appropriate to the specifics of the activity there. This results from supranational documents and internationally recognized practices<sup>58</sup> clearly.

As previously concluded in this report, the Prosecutor General has been given a wide range of powers in the Law on Prosecutor's Office regarding the organisation of the activities of the national prosecution service, which allows its activities be organised in accordance with the top institutional standards. However, the findings of the State Audit Office show that such a control environment has not been established in the Prosecutor's Office and there is no set of governance measures implemented to create preconditions for the effective and efficient performance of the basic functions of the prosecution service.

This confirms that possibly due to the existing understanding of both the independence of the Prosecutor's Office and the individual autonomy of prosecutors, the Prosecutor's Office has remained outside the reforms undertaken in the country to modernise and streamline the activities of state institutions. One needs significant changes in the understanding of the implementation of the management functions of the Prosecutor's Office as a unified three-tier system of institutions in order to increase the capacity of the Prosecutor's Office in performing its basic functions and using the resources available to the Prosecutor's Office more effectively.

## 2.1. Planning the activities of the Prosecutor's Office

In order to improve the efficiency of the Prosecutor's Office as a unified, centralised three-tier system of structural units, the Prosecutor's Office needs to change its understanding of operational planning, as it does not comply with internationally recognised good practice applicable to prosecutorial institutions currently. Although the Prosecutor's Office drafts operational strategies and work plans, they are too general and cannot be considered as a roadmap for achieving the desired results. At present, the operational strategy of the Prosecutor's Office does not describe the contribution that the Prosecutor's Office intends to make to the implementation of the national

strategic plans for combating crime, although the Prosecutor's Office plays an important role in ensuring the rule of law and applying the Criminal Law and Criminal Procedure Law.

Despite the fact that the Operational Strategy of the Prosecutor's Office for 2017-2021 includes the effective and high-quality performance of prosecutorial functions in combating financial and economic crimes as an operational priority, which one can associate with the priority of Latvian Parliament to prevent threats to the national economy, *id est*, to strengthen the capacity of law enforcement bodies in detecting and investigating economic and financial crime. However, the strategy does not indicate what challenges the Prosecutor's Office intends to address and what objectives it sets in the fight against economic and financial crime in order to strengthen the capacity of law enforcement bodies to detect and investigate economic and financial crimes. It is also not clear how it will be possible to assess whether effectiveness and quality are improving (or are not decreasing), as no comparable indicators have been put forward.

The experience of other countries included in the OECD benchmarking study shows that mechanisms for co-operation between the executive and the prosecution service have also been found in the model where the prosecution service belongs to the judiciary. In Portugal, for example, the government submits a bill to parliament every two years setting out policy objectives, priorities, and guidelines in the field of criminal justice. Discussions with all stakeholders precede, including the highest collegial bodies of the judiciary and the prosecution service, etc. Based on this, the prosecution service defines its strategy.

The OECD comparative study indicates that the development of a strategy for the role of the prosecution service in criminal proceedings, including a strategic plan complemented by annual action plans with clear operational objectives and the necessary resources (human, material, and financial), could be an important first step in promoting excellence of prosecution services. The OECD finds that the operational strategy of the Prosecutor's Office should also include clear and measurable objectives to be achieved and an action plan or roadmap on how to achieve those objectives<sup>59</sup>. For the implementation of a more effective management strategy, the OECD considers<sup>60</sup> it advisable for the Prosecutor's Office to focus on increasing the effectiveness of its processes and procedures, for example, by assessing its work organisation and procedures to identify possible reasons for prolonging criminal proceedings and promoting measures to increase efficiency of the processes.

The Prosecutor's Office is not obliged to apply legislation<sup>61</sup> that determines the content to be included in development planning documents and the operational strategy of an institution, including, for example, the definition of problems to be addressed and the link between the operational directions and implementation of a function in specific policy areas, sectors, or sub-sectors. However, as these laws and regulations are considered as national standards for planning the activities of institutions and linking them with budget planning and use, the application of the principles and basic requirements defined in them would be desirable to the Prosecutor's Office by adopting them to the specific nature of functions and activities of the Prosecutor's Office stipulated in special laws accordingly.

More than 20 years ago, when launching reforms in public administration, Latvia chose the path so that budget planning would be based on the achievement of the goals set in development planning documents in full deliberately. At the various stages of the implementation of the reform, there were all the necessary laws and regulations adopted to ensure the quality implementation of the development planning process. The Development Planning System Law with subordinate laws and

regulations, recommendations, and guidelines determines the framework for the elaboration of development planning documents. In its turn, the Law on Budget and Financial Management with its subordinate laws and regulations determines the connection of the development and approval of the state budget with development planning. When developing the operational strategy of the Prosecutor's Office according to the above-mentioned principles, it would be possible to 1) substantiate achievement of which goals and results required additional funding; 2) provide the public and other institutions with information regarding the goals and results which must be achieved in a certain area with the available state budget financing; and 3) create a basis for an objective assessment of the performance of the Prosecutor's Office.

*The State Audit Office recommends, the Prosecutor's Office to develop an operational strategy by adapting the framework of development planning documents stipulated in the country to the specific nature of its activities<sup>62</sup> and by indicating the problems to be solved, achievable goals and results, as well as objectives for implementation of specific action directions.*

## 2.2. Work organisation of the Prosecutor's Office

The Prosecutor's Office is designed as a three-tier system of structural units that should be aligned with court instances by planning the cooperation of a Prosecutor's Office of relevant level with an appropriate-level instance of the court system. In 2018, the reform of court districts was completed in Latvia, which aimed to facilitate uniform court practice in reviewing one type of cases, to ensure the specialisation of judges in specific categories of cases, as well as to balance the workload of judges. The mentioned reform resulted in 9 district courts established instead of 34 district courts by merging the territories of district (city) courts in the territory of the regional court, establishing one court of first instance legally, and preserving structural territorial units of courts (courthouses) simultaneously.

In the Prosecutor's Office, nobody has carried out a reform with a similar goal, and there are still 37 district-level Prosecutor's Offices in Latvia. The State Audit Office doubts that the situation in Latvia requires such a fragmented structure of lower-level Prosecutor's Offices, which is also resource-intensive because a chief prosecutor manages each Prosecutor's Office with 3-6 prosecutors and each Prosecutor's Office has full-time support staff. The Prosecutor's Office should evaluate the possibilities for optimizing the structure, which could have several benefits such as equalising the workload of prosecutors, introducing specialisation, saving resources (for instance, by means of centralising the support functions), and greater opportunities to introduce a consistent approach to prosecutorial functions, etc. For example, merging the five district (city) level Prosecutor's Offices in the Kurzeme court district (which is the smallest territorial unit in terms of the number of prosecutors) by giving up at least four clerks of court and two clerks would save about 77,000 euros per year in the salary costs that one could spend for the creation of additional position of assistant prosecutor or for other purposes. It would also be possible in this case to reorganise four positions of chief prosecutors by finding additional resources for the performance of the basic tasks of prosecutors.

The information provided by the chief prosecutors during the audit indicates that only 10 out of 33 chief prosecutors of territorial district (city) level prosecutors are supervising criminal proceedings. For example, no district (city) level prosecutor supervised any criminal proceedings in the Kurzeme

court district and Riga court district as of 1 March 2020. Only in the Vidzeme court district, there were the criminal proceedings under the supervision of the chief prosecutors of all district (city) level prosecutor's offices, and several chief prosecutors had even to approximately the same extent as their subordinate prosecutors. The other chief prosecutors of the district (city) prosecutor's offices have mainly performed the duties of a senior prosecutor and the tasks related to the work organisation of the structural unit (approximately 90% of their total working time).

During the audit, the first structural changes have been made in the Prosecutor's Office<sup>63</sup> by merging two district (city) level prosecutor's offices, that is, the Riga City Zemgale District Prosecutor's Office and the Riga City Kurzeme District Prosecutor's Office, into the Riga City Pārdaugava Prosecutor's Office as of 1 October 2020. One justified the changes with the need to streamline the work of prosecutors and ensure a more rational use of state budget funds.

In their turn, several district (city) level prosecutor's offices within the Riga court district as well as specialised district (city) level prosecutor's offices will be merged<sup>64</sup> as of 1 January 2021 by establishing the Riga Eastern Prosecutor's Office, Riga Northern Prosecutor's Office, Pierīga Prosecutor's Office, and Multidisciplinary Specialised Prosecutor's Office. However, when assessing the planned structural changes, one can conclude that the reduction in the number of support staff is expected to be insignificant. For instance, a part of the established (merged) prosecutor's offices will be housed in the new Prosecutor's Office premises at 7 Aspazijas Boulevard in Riga, where a centralised chancellery will be established while maintaining nine positions of clerk of court, ten clerk positions, and one archives manager position. The State Audit Office sees opportunities here for further evaluations by reviewing the organisation of record keeping work and the necessary resources.

In general, one can conclude regarding the support staff of the Prosecutor's Office that the number of support staff of the Prosecutor's Office (Administrative Director Service, excluding assistant prosecutors) is relatively large in Latvia. According to the statistical data included in the 2020 report of the European Commission for the Efficiency of Justice (CEPEJ)<sup>65</sup>, the number of the support staff of the Prosecutor's Office is 20.6 per 100 thousand inhabitants in Latvia, which is significantly higher than the national average of 14.3 support staff per 100 thousand population. It is important that those support staff do not include staff who would provide legal or analytical support to prosecutors in the performance of their core functions. It reaffirms the need to review the work organisation to find, where possible, additional resources for key functions by centralising and optimising support functions, e.g., by increasing the number of assistant prosecutors, introducing analysts, and other staff positions.

The State Audit Office considers that the Prosecutor's Office should develop a plan covering the whole set of planned changes in order to avoid problems encountered by the judicial system when neither guidelines nor a plan for territorial changes and activity planning were developed. During the audit in 2017, the State Audit Office discovered<sup>66</sup> that the lack of a unified vision of the necessary changes in general affected the course of judicial territorial reform negatively what both the Chair of the Judicial Council and the Chairs of regional courts pointed out.

It is crucial for the changes in the structure of the Prosecutor's Office happen in coordination with the changes in the structure of the State Police as the largest investigative institution and depending on the decisions taken to reduce the workload of the common criminal justice system.

*The State Audit Office recommends developing a reorganisation plan of the Prosecutor's Office structure for planned and coordinated action by:*

*(1) Evaluating the possibilities for optimising the structure of the Prosecutor's Office by merging the district (city) level prosecutor's offices in the judicial area into one district (city) level prosecutor's office;*

*(2) Assessing simultaneously which structure is the most optimal so that co-operation between prosecutors and investigators can take place as efficiently as possible; to what extent territorial units of district (city) level prosecutor's offices could be preserved, and where they should be located.*

The Prosecutor's Office does not provide a clear and transparent division of competences among the structural units and prosecutors of the Prosecutor's Office, as provided for in the opinions adopted by the European institutions on the prosecution service<sup>67</sup>, namely, that in a law-governed state with a hierarchic structure of the prosecution service, its efficiency is closely linked with the transparent concepts of the powers, reporting, and liability of prosecutors and that the relationship among the different levels of the hierarchy must be governed by clear, unambiguous, and balanced rules, as well as appropriate checks and balance mechanisms must be provided<sup>68</sup>.

The Office of Prosecutor General is the structural unit of the highest level and also the largest in terms of the number of prosecutor positions consisting of the Criminal Justice Department, the Department of Analysis and Management, the Department for Defence of Individual and Federal Rights, and independent Division of Specially Authorised Prosecutors. None of the structural units of the Office of General Prosecutor has elaborated regulations or statutes that would define the functions and tasks of the structural units. In the understanding of the Office of Prosecutor General, the mentioned organisational documents are not necessary, because the Criminal Justice Department, the Department for Defence of Individual and Federal Rights, and the independent Division of Specially Authorised Prosecutors work in accordance with special laws, that is, the Criminal Procedure Law, the Criminal Law, the Civil Law, the Civil Procedure Law, law on Operative Activities, the Law on State Security Institutions, the Law on a State Secret, etc. In their turn, regarding the tasks of the Department of Analysis and Management, one has explained during the audit that they are not defined anywhere and have developed historically. A part of the prosecutors of the Office of Prosecutor General are not involved in the performance of the functions of criminal justice or ensuring the protection of the rights of individuals and the state or performing other tasks assigned to a prosecutor, and in the assessment of the State Audit Office, they actually perform support functions. For example, the Chief Prosecutor and Prosecutors of the Division of Prosecutor HR and Professional Development of the Department of Analysis and Management (9 positions in total) are responsible for organising the selection of candidate prosecutors, organising professional assessment of prosecutors, providing support to members of the Prosecutors' Attestation Commission, and similar organisational tasks. The highest-level prosecutors perform that job, whose remuneration and social guarantees are equivalent to those of a judge of the Supreme Court. During the audit, the said division in the Prosecutor's Office has already been liquidated by transferring the functions of the division to the Administrative Director Service as of 1 November 2020.

The State Audit Office also considers that one cannot state unequivocally that the Chief Prosecutor and prosecutors of the Division for Supervision of Pre-trial Investigation of the Criminal Justice Department of the Office of Prosecutor General (15 positions in total) perform the functions specified by laws in criminal justice as none of the prosecutors of that Division had been entrusted the supervision of any criminal proceedings, prosecution and/or bringing charges to court according to the information the prosecutors provided to the State Audit Office as of 1 March 2020. The audit found that the prosecutors of the Division for Supervision of Pre-Trial Investigation perform various



inspections in lower-level prosecutor's offices in accordance with the procedure established in practice in the Prosecutor's Office, whose rules neither internal nor external laws and regulations do not regulate.

The research conducted by the State Audit Office shows that the division of responsibilities of all prosecutors in both the structural units of the Office of Prosecutor General and the Prosecutor's Office as a whole is not stipulated in writing and that the heads of those units, chief prosecutors choose to determine obligations at their discretion and differently and do not always ensure transparent distribution of tasks meant for all prosecutors.

The Law on the Prosecutor's Office stipulates that the Chief Prosecutor of a Department of the Office of Prosecutor General manages the work of prosecutors of the Department and controls the specific direction of activity in all structural units of the Prosecutor's Office (i.e., regional prosecutor's offices and district (city) prosecutor's offices). The Chief Prosecutor of the Prosecutor's Office of the judicial region manages the work of regional prosecutors and controls the activities of district (city) prosecutor's offices located in the territory of the region<sup>69</sup>. In addition to the above, the Criminal Procedure Law also stipulates<sup>70</sup> that a senior prosecutor in office controls how a prosecutor exercises his or her powers. The State Audit Office finds that such a multi-level system requires a clear division of liability and powers in order to be clear how this control shall be implemented, for instance, which issues related to the exercise of the powers of a district prosecutor fall within the scope of responsibility of a Chief Prosecutor of the Prosecutor's Office of that judicial region and when a Chief Prosecutor of a Department of the Office of Prosecutor General is involved who is responsible for some specific direction of activities in the Prosecutor's Office in general (for example, criminal justice, defence of individual and federal rights). One cannot deduct from the internal legislation of the Prosecutor's Office. Such a situation poses a risk of separating the supervisory responsibilities arising from the Criminal Procedure Law from the administrative functions performed by a Chief Prosecutor as an administrative head of the Prosecutor's Office at the appropriate level or a Chief Prosecutor of a Department of the Office of Prosecutor General.

Under the Criminal Procedure Law, a prosecutor performs the functions of supervision of investigation, investigation, prosecution, public prosecution, and other specified functions in criminal proceedings. In carrying out its functions, a prosecutor in may have different statuses criminal proceedings such as a prosecutor supervising the investigation, authority in charge of the investigation, authority in charge of the prosecution, senior prosecutor, member of the investigation team, issuer of procedural tasks, executor of procedural tasks, prosecutor, etc. The Prosecutor's Office should have a common understanding of the expected behaviour of prosecutors in each of those positions, rather than in the current absence of a common practice for co-operation between the supervising prosecutor and the investigator - authority in charge when the intensity of the supervising prosecutor's involvement in pre-trial investigation varies widely and depends much on the individual views of each prosecutor.

*The State Audit Office recommends that the Prosecutor's Office finds the most suitable solutions for the specific nature of the Prosecutor's Office and define the scope of competencies, powers, and responsibilities of prosecutors for the performance of functions provided for in criminal proceedings by issuing internal regulations.*

The introduction of specialization is an internationally recognised practice for responding to the development of forms of crime more effectively, especially organised crime, that is implemented both at the level of the prosecution service and in the sense of career development of prosecutors. The Law on the Prosecutor's Office stipulates that the Prosecutor General may establish a



specialised sectoral prosecutor's office. Taking into account that more than a half (53%) of all the criminal proceedings initiated in the country are in the Riga Region, the Prosecutor General has resolved the issue of specialisation of prosecutors in this region by creating specialised prosecutor's offices whose operating territory is the Riga judicial region. At present, five Specialised Prosecutor's Offices have been established in the Prosecutor's Office: the Specialised Prosecutor's Office on organised crime and other sectors (Prosecutor's Office of judicial region), and four district Prosecutor's Offices, the Specialised Multidisciplinary Prosecutor's Office, the Prosecutor's Office for investigating financial and economic crimes, Prosecutor's Office for investigating crimes of illicit drug circulation, and Riga Road Transport Prosecutor's Office. It is not clear from the internal regulation of the prosecution service why one specialised Prosecutor's Office has the status of a judicial region Prosecutor's Office while the others have the status of district-level prosecutor's office.

Under the order of the Prosecutor General issued during the audit<sup>71</sup>, one plans to merge the specialised district (city) level prosecutor's offices within the Riga judicial region, namely, Riga Road Transport Prosecutor's Office, Prosecutor's Office for investigating crimes of illicit drug circulation, and Specialised Multidisciplinary Prosecutor's Office by establishing a Multidisciplinary Specialised Prosecutor's Office from 1 January 2021.

Since 2017, the Prosecutor's Office has made supervision of the investigation of economic and financial crimes a priority. Two of the specialised prosecutor's offices specialise in organised crime and other sectors (regional prosecutor's office) and Prosecutor's Office for investigating financial and economic crimes (district-level prosecutor's office) specialise in investigating economic offences. The prosecutors of the Division of Investigation of Especially Serious Cases of the structural unit of the Office of General Prosecutor also supervise the investigation of the most complicated economic crimes. Although the area of responsibility of specialised prosecutor's offices in supervising investigations, prosecuting, and bringing public charges is relatively clearly separated, regional and district prosecutors (other than specialised prosecutors) also supervise in fact a large part of criminal proceedings initiated regarding financial and economic crimes. Without the specialization of prosecutors in a non-specialised prosecution service, a large proportion of prosecutors will most probably face the challenge in dealing with complicated cases, including financial and economic crime as good as with not complicated ones. The question of the specialisation of prosecutors, i.e., whether to introduce and practice specialisation in a structural unit at all, to what extent (e.g., to specialise only one prosecutor by leaving others with the same responsibilities, or to specialise several prosecutors), and in what way (i.d., according to prosecutor's functions, complexity of cases, or otherwise), is left to the discretion of each Chief Prosecutor by generating the possibility of different practices in each structural unit.

*The State Audit Office recommends evaluating and determining the most suitable short-term and long-term measures for the specialisation of prosecutors be implemented in the Latvian criminal justice system (the issue could be solved in connection with the reform of the structure of the Prosecutor's Office and the solutions planned in the country in general for relieving the burden of the criminal justice system).*

The Prosecutor's Office does not analyse information on the workload of prosecutors. The data that the State Audit Office collected during the audit show that the workload varies a lot. In district-level prosecutor's offices, prosecutors perform the functions of criminal justice mainly, as they perform more than 80% of the total workload on average, and one can conclude that the workload

and work intensity are significantly higher compared to the district prosecutor's offices. In district prosecutor's offices, the number of criminal proceedings where a prosecutor performs the duties of a supervising prosecutor can reach more than 2,000 cases per prosecutor, while the maximum number identified in a regional prosecutor's office is 200 criminal proceedings per prosecutor on average.

The highest workload is observed in the prosecutor's offices of Riga City and of Riga Region, where the average number of supervised cases per prosecutor was 1,000 and more cases as of 1 March 2020. The workload is significantly lower in district level prosecutor's offices outside Riga Region, for example, one prosecutor supervised from 176 (Alūksne District Prosecutor's Office) to 653 (Valka District Prosecutor's Office) criminal proceedings on average in district level prosecutor's offices belonging to Vidzeme judicial region.

The workload of prosecutors in specialised prosecutor's offices was also very different as of 1 March 2020. The Specialised Prosecutor's Office for organised crime and other sectors (Judicial region level Prosecutor's Office) had an average of 32 cases per prosecutor, while the Prosecutor's Office for investigating the financial and economic crimes (District-level Prosecutor's Office) had 314 cases (288 financial and economic offences).

The information compiled by the State Audit Office on the situation as of 1 March 2020, obtained during a survey of prosecutors, confirms that a relatively small number of cases are under prosecution or brought to court. For example, if there are 65.27 criminal proceedings for financial and economic crimes under supervision per prosecutor on average, then only 0.98 cases and prosecuted, and 2.54 proceedings result in charges maintained in court.

One should put in place an action mechanism to monitor the workload of prosecutors and procedural mechanisms in the Prosecutor's Office to allow for an equalisation of the workload, and one should address those issues in the context of the structural reform of the Prosecutor's Office. However, these measures may not be enough to solve the problem completely, and one should find solutions to relieve the criminal justice system in the country as a whole at the same time.

*The State Audit Office recommends assessing and introducing an action mechanism for monitoring the workload of prosecutors (the issue could be addressed within the framework of the performance indicator system of the Prosecutor's Office), finding short-term solutions and determine the procedural and work organisation mechanisms for balancing the workload among the structural units of the Prosecutor's Office with the internal regulation (the issue could be solved in the context of the structural reform of the Prosecutor's Office).*

According to the data submitted by prosecutors as of 1 March 2020, prosecutors supervised more than 162,000 criminal proceedings in the structural units of the Prosecutor's Office, of which only slightly more than 24,000 (15%) were criminal proceedings for economic and financial offences<sup>72</sup>. It is possible that most criminal proceedings are so-called minor and dark criminal proceedings, most of which were initiated more than 5 years ago and where no active investigation was going on. For a comprehensive and impartial insight of the stock of criminal proceedings under supervision, one should assess criminal proceedings according to uniform criteria.

In performance audit report "Effectiveness of Pre-trial Investigation in the State Police", published in September 2017, the State Audit Office has stated<sup>73</sup> that there is a large backlog of cases per officer of the criminal police unit of the State Police, especially in the units of Riga Region, such as Riga City Latgale District and Riga City Kengarags District with an average of more than 400

criminal proceedings and in Riga City Kurzeme District with an average of about 570 criminal proceedings. At the same time, almost half (47%) of the backlog of criminal proceedings in the general records of the State Police as of the end of 2016 were criminal proceedings initiated more than five years ago, where an active investigation most probably did not happen. As of 30 June 2016, there were 73,467 criminal proceedings in total in the State Police, which one had initiated between 2013 and 2015, where one had not identified a guilty person, and which one had not suspended or completed. One could probably consider that majority of those criminal proceedings qualified for application of the principle of suspending criminal proceedings at the stage of investigation. In view of the above, the State Audit Office found that they should assess whether one required addressing the issue of possibilities to reduce the backlog of such cases at the national level. In foreign practice, there have been cases where one decided to terminate the cases initiated, for instance, more than two years ago (with the exception of criminal proceedings for specific offenses) in order to eliminate a backlog of cases. Therefore, the State Audit Office recommended the Ministry of the Interior and the State Police take measures to address the issue of reducing the backlog of long-standing criminal proceedings. The measures taken by the State Police resulted in the number of criminal proceedings in the State Police decreasing by 18% over the last three years, while the situation regarding the *age* of criminal proceedings has not changed because about half of criminal proceedings had been initiated more than five years ago in 2020.

Hence, one can conclude that both the workload and the backlog of criminal cases are a problem that the Prosecutor's Office and the State Police must tackle jointly. The State Audit Office finds that one must assess the backlog of criminal cases according to uniform criteria for a complete and impartial insight of the backlog of pre-trial criminal cases by determining, for example, the age of criminal proceedings, what part of them are "minor" offences, what part of them are "dark" cases, particularly complicated criminal proceedings, criminal proceedings especially infringing national interests, or cases whose investigation and completion require solving any specific problems characteristic of a particular type of crime (for instance, numerous criminal proceedings initiated for offences of one type that are not finished for a long time), etc. Such an assessment would make prioritisation of criminal proceedings and deciding on the necessary long-term action possible.

The 2017 audit report on the effectiveness of pre-trial investigations in the State Police also found<sup>74</sup> that the investigators of the State Police did not use the tools provided for in the Criminal Procedure Law sufficiently to simplify, speed up, and prosecute criminal proceedings more efficiently (e.g., refusal to initiate criminal proceedings and terminate it in so-called minor-damage cases<sup>75</sup>, suspension of criminal proceedings at the stage of investigation<sup>76</sup> in so-called dark cases) In the State Police, officials in charge of proceedings acknowledged that criminal proceedings could be terminated much more, but there was a lack of common understanding of what constituted "minor damage" among both investigators and prosecutors. Only a part of the supervising prosecutors is interested in the actions taken and the progress of the investigation in the "dark cases" to ensure compliance with those suspension terms. In addition, most prosecutors have different requirements regarding the minimum amount of measures required to terminate criminal proceedings.

The State Audit Office considers that the Prosecutor's Office should play a leading role to implement the solutions already provided for in the Criminal Procedure more effectively for simplification, faster and more economical conduct of the criminal proceedings. To this end, a common understanding and applicable practice within the Prosecutor's Office regarding the implementation of uniform procedures should be defined first, for example, what the minimum amount of action required to suspend criminal proceedings is, etc.

The OECD comparative study recommends<sup>77</sup> examining the opportunity of standardising and simplifying procedures as much as possible, i.e., in the case of the simplest criminal proceedings. Standardisation refers to the harmonization of criteria and actions to be applied when a specific case reaches the prosecution. The OECD considers that it can provide a sound interpretation of the rules of criminal procedure necessary for coherence and predictability of actions and can facilitate cooperation between prosecutors and investigators significantly.

One may require other solutions apart from the need to implement the tools already provided for in the Criminal Procedure Law for the simplification, faster and more economical execution of criminal proceedings in practice. Other countries still choose to decriminalise less serious offenses by dealing with administrative rather than criminal proceedings in order to solve an overburdened criminal justice system and to expand the powers of prosecution service to terminate criminal proceedings without judicial involvement. At the same time, one needs to review the Criminal Procedure Law and the understanding of its application as to whether it allows sufficient opportunities not to continue criminal proceedings based on considerations of expediency or proportionality and economy, taking into account the principle of mandatory criminal proceedings and provided grounds for terminating and suspending criminal proceedings. It is understandable that those are solutions one must plan in the long-term, however, the assessment of whether there are opportunities for the implementation of such solutions in the Latvian situation should be started as soon as possible according to the State Audit Office.

*In order to obtain comprehensive and impartial information on the backlog of supervised criminal proceedings and on the actual workload of prosecutors accordingly for further decision-making, the State Audit Office recommends the Prosecutor's Office to (1) evaluate and determine criteria for the assessment of the backlog of supervised criminal proceedings, and (2) carry out evaluations in cooperation with investigative agencies.*

*The Prosecutor's Office should act for introducing the solutions already provided for in the Criminal Procedure Law for simplifying, speeding up, and more economical criminal proceedings, including the development of instructions for the implementation of uniform procedures and a common understanding of the minimum actions to be taken regarding so-called minor-damage and dark cases, as well as other cases.*

*The State Audit Office has addressed the Crime Prevention Council regarding the need to evaluate and find the long-term solutions within the criminal justice system most suitable in the Latvian situation to relieve the criminal justice system by decriminalising or simplifying minor criminal proceedings, extending the powers of prosecutors to complete criminal proceedings out of court, and reviewing provided grounds for termination or suspension of criminal proceedings.*

The Law on the Prosecutor's Office does not separate the area of responsibility of the structural units of the Prosecutor's Office of different levels on the conduct of criminal proceedings clearly, and this situation is not in line with the views of the competent authorities<sup>78</sup> on the prosecution service, namely, that clear, unambiguous, and balanced rules must regulate relations among various hierarchical levels and that one must envisage corresponding control and balancing mechanisms.

While the area of responsibility of the specialised prosecutor's offices in supervision, prosecution, and maintenance of public charges is separated relatively clearly<sup>79</sup>, the division of responsibilities between district (city) level prosecutor's offices and territorial judicial region prosecutor's offices for those criminal proceedings which do not fall under the area of responsibility of specialised

prosecutor's offices in supervision, prosecution, and maintenance of public charges, is ambiguous and open to various interpretations.

For the structural units of the Prosecutor's Office, external laws and regulations do not determine the jurisdiction of supervision of investigation, prosecution, and maintenance of public charges clearly. In its turn, it is not clear from the division of responsibilities provided for in the Law on the Prosecutor's Office whether district (city) level prosecutor's offices are responsible for supervising investigations (and therefore prosecuting) in all criminal proceedings and whether judicial region level prosecutor's offices may take over it depending on different circumstances, whether there are also criminal proceedings, in which the supervision of the investigation is directly the responsibility of the territorial judicial region level prosecutor's offices and the Divisions of the Criminal Justice Department of the Office of General Prosecutor immediately after the commencement of the criminal proceedings. It is also unclear in which cases judicial region level prosecutor's office is responsible for maintaining public charges given that the state prosecution in the appellate court is maintained as far as possible by the same prosecutor who maintained it in the court of first instance, but a higher-ranking prosecutor may refer it to another prosecutor according to the Criminal Procedure Law.

There are different procedures established in the prosecutor's offices of judicial region. For example, in the Kurzeme Judicial Region Prosecutor's Office, when deciding on the distribution of criminal proceedings or prosecution to prosecutors of the judicial region or district (city) level, the Chief Prosecutor takes into account the workload of prosecutors, the volume and complexity of criminal proceedings, and probability of public resonance. In its turn, in the Latgale Judicial Region, all criminal proceedings go to the district (city) level prosecutor's offices for the supervision of the investigation first but if the district (city) level prosecutor's office finds that the supervision of the investigation in the specific criminal proceedings should be transferred to the judicial region prosecutor's office due to its complexity or volume, the Chief Prosecutor of district (city) level prosecutor's office shall inform the Chief Prosecutor of the Latgale Judicial Region Prosecutor's Office of the specific criminal proceedings by proposing to take over the supervision of the investigation. After their mutual consultation, the Chief Prosecutor of the Latgale Judicial Region Prosecutor's Office will decide whether the Latgale Judicial Region Prosecutor's Office should take the supervision of the investigation of the specific criminal proceedings over.

There is situation created where by referring to the lack of resources or other reasons, a high-level prosecutor's office with more qualified and better-paid prosecutors might or might not take over those categories of cases (complexity, public resonance, ineffectiveness of pre-defined supervision, etc.) by leaving the case to a lower level prosecutor's office, or, vice versa, it might take over any case from a lower-level prosecutor's office without special justification. The large differences among the judicial region prosecutor's offices detected during in the audit (One prosecutor supervises 135 criminal proceedings on average in the Zemgale judicial region, 113 criminal proceedings in the Vidzeme judicial region prosecutor's office, and 40 criminal proceedings in the Kurzeme judicial region prosecutor's office) indicate the lack of a unified approach to the distribution of cases in various territorial judicial region prosecutor's offices and confirm that the distribution of cases depends on the assessment of the Chief Prosecutor of the judicial region or the activity of the Prosecutor's Office or on the activity and ability of the Chief Prosecutor of a district (city) level prosecutor's office to reach the transfer of a case to a higher level prosecutor's office to a large extent.



*The State Audit Office recommends assessing and defining the distribution of area of responsibility (jurisdiction of supervision of investigation, prosecution, and maintenance of public charges) among the structural units of the Prosecutor's Office of different levels clearly in laws and regulations, including, by providing procedural solutions for redistribution of cases among structural units if necessary.*

Under the procedure established in the Prosecutor's Office, the Methodology Division of the Department of Analysis and Management of the Office of Prosecutor General is engaged in developing methodological materials and common practice on the application of the law in the Prosecutor's Office and identifying errors made and deficiencies in practical work of prosecutors, their analysis, and elaborating recommendations as well as providing opinion to other institutions regarding the practice of applying laws and regulations. Prosecutors of the Methodology Division also engage in the development of methodological materials in inter-institutional working groups. The internal regulation of the Prosecutor's Office does not define the area of responsibility of the Department of Analysis and Management and the Methodology Division thereof. In general, the Prosecutor's Office has not introduced the practice of approving descriptions of internal processes or other documents at the level of the institution, which would determine how the basic functions are carried out and co-operation with support structural units takes place. Consequently, the development of methodological materials takes place according to the understanding that has developed over time, where the process of defining common practices is not clear enough, as well as nobody has specified how methodological materials are approved and implemented in practice, i.e., whether their application is mandatory. The Prosecutor's Office uses three formats such as guidelines, information letters, and analytical summaries.

The information obtained during the audit shows that although various materials are prepared in the Prosecutor's Office, they are only informative, as methodological materials to promote the implementation of common practice and understanding are not approved at the institutional level. There is no practice in the Prosecutor's Office to elaborate practical guidelines or manuals for prosecutors. This may be due to the understanding of the Prosecutor's Office about the prosecutors' independence but the requirement of prosecutors' independence does not prohibit internal instructions (confirmed by senior prosecutors), in particular to make the work of the Prosecutor's Office more efficient as recognised in supranational documents and the case law of the Court of Justice of the European Union. The top official of the Prosecutor's Office, that is, the Prosecutor General may define organisational methods, guidelines, principles, and/or criteria that must be applied in the performance of the functions of the Prosecutor's Office.

In the opinion of the State Audit Office, making more use of the information obtained within the framework of inspections performed in prosecutor's offices and individual assessment of prosecutors is possible for specifying expected actions for elimination of identified problems and development of uniform and consistent practice in the form of methodological materials. One should form a uniform and consistent approach both with regard to the application of the Criminal Law and the Criminal Procedure Law and the functions of the Prosecutor's Office in general, such as the duties of a supervising prosecutor in pre-trial criminal proceedings, etc.

The audit findings demonstrate that there is no common practice for co-operation between a supervising prosecutor and an investigator in charge of criminal proceedings. From the information obtained during interviews with investigators, their immediate superiors, and prosecutors, it appears that each prosecutor has his or her own form of cooperation with an investigator and his or her own requirements. Only some prosecutors consider that contacting an investigator immediately after the



commencement of criminal proceedings or shortly thereafter and agreeing on initial actions are necessary, especially in cases where the investigation (or initial actions) in the particular criminal proceedings are not a standard case. There are also criminal proceedings where a prosecutor is well informed about the progress of the criminal proceedings, there is regular communication with an investigator and consultations to exchange views and agree on the next steps, and there are both oral and written instructions given. There are also differences of opinion on the right of the supervising prosecutor *to participate in the performance of procedural activities aimed at cooperating with an individual who has the right to defence*, as only a part considers that it is necessary and uses it in cases that are more complicated.

There is currently an understanding in the Prosecutor's Office that not only the materials elaborated by the Methodology Division of the Department of Analysis and Management of the Office of Prosecutor General but also the documents developed within the framework of inter-institutional co-operation are informative and recommendatory. For example, during the 2017 audit on the effectiveness of pre-trial investigations in the State Police, the State Audit Office found<sup>80</sup> that the State Police and the Prosecutor's Office agreed on *Guidelines for Simplifying Criminal Investigations* in order to find a common view on pre-trial investigations and prevent disagreements in November 2015. However, according to a survey, almost a quarter of supervising prosecutors considered them to be of a recommendatory nature only and therefore did not apply them in practice.

The audit revealed that both the Methodology Division of the Department of Analysis and Management of the Office of Prosecutor General works on the development of a common practice and, for example, the Specialised Prosecutor's Office for combating organised crime and other sectors holds consultations with investigators, their immediate superiors, and heads of investigative departments regularly.

Prosecutors acknowledged in interviews that there was a lack of and much-needed compendium of practice and guidelines, such as on the set of circumstances to be proved and evidence required for various types of financial and economic crime, on criminal investigations in the digital environment, on the use of circumstantial evidence, how to prosecute voluminous and complicated criminal proceedings, what one should include in tax evasion charges, and other issues. Prosecutors also pointed out in interviews the need for joint exchange of experience and practice, as the available training did not replace it and did not solve issues in their practice.

The opinions of the experts engaged in the audit<sup>81</sup> on the sampled criminal proceedings terminated by the Prosecutor's Office have also identified cases where there is a lack of common understanding of the application of the Criminal Law not only between an investigator and a supervising prosecutor, but also among prosecutors resulting in a prolonged criminal proceedings or termination thereof at all. Thus, for example, the experts have stated in the opinion, *"In the specific criminal proceedings, there are significant differences of opinion both on the existence of elements of certain constituent elements of criminal offenses and on the issues of evidence."*<sup>82</sup>

The publications of legal scholars<sup>83</sup> also stress the duty of a prosecutor as a person in charge of proceedings to ensure the application of equal laws and regulations and the formation of uniform practice in criminal proceedings to implement the principle enshrined in Section 91 of the Constitution of the Republic of Latvia:

*The declaration in Section 91 of the Satversme of the Republic of Latvia that all human beings in Latvia shall be equal before the law and the courts imposes an obligation not only on courts but also on every person in charge of proceedings at the specific stage of criminal proceedings to interpret legal provisions equally and establish uniform practice in applying*

*the same legal provisions. At the same time, one shall emphasise the role of the court, but in cases specified by law, also the role of the prosecutor in the performance of this duty when recognizing a person guilty of committing a criminal offense and imposing (determining) a penalty. Equal understanding of the provisions of the Criminal Law and their uniform application are a guarantee of correct qualification of a criminal offense, which, in its turn, means both fair settlement of criminal justice, imposition (determination) of fair punishment, and implementation of the basic principle of criminal law - justice.*

As mentioned in previous chapters of this report, the OECD comparative study recommends<sup>84</sup> assessing the possibility of standardising and simplifying procedures as much as possible, i.e., in the case of the simplest criminal proceedings by mentioning some benefits such as the coherence and predictability of actions, as well as the possibility of facilitating cooperation between prosecutors and investigators significantly.

According to the State Audit Office, the Prosecutor's Office should play a leading role in deciding on the standardisation of procedures, for example in criminal proceedings for "minor" criminal offenses, and in cooperating with investigative agencies. This could be one of the long-term measures of the Prosecutor's Office in the elaboration of methodology by strengthening the capacity of the structural unit responsible for the development of the methodology accordingly.

*The State Audit Office recommends the Prosecutor's Office to act for strengthening the capacity of elaborating methodology including by defining the area of responsibility of the structural unit responsible for the development of the methodology and regulating the procedure for the development, coordination, approval, and application of the methodology materials.*

### 2.3. The internal control system of the Prosecutor's Office

It is necessary to take measures in the Prosecutor's Office to improve the control environment of the Prosecutor's Office in accordance with the internationally recognised practice applicable to the prosecution service<sup>85</sup>. The Prosecutor's Office has shortcomings both in the planning of the operation of the Prosecutor's Office as a unified and centralised system of three-tier structural units and in the organization of work, which have been analysed in the previous sections of this report. Here again are some facts that confirm this.

- ❖ Although the Prosecutor's Office develops operational strategy and work plans, they are too general and do not form the basis for assessing the effectiveness of the Prosecutor's Office.
- ❖ There is no clear and transparent division of competences among the structural units and prosecutors of the Prosecutor's Office ensured as provided for in the opinions adopted by the European institutions on the prosecution service<sup>86</sup>. For example, external laws and regulations do not determine the jurisdiction of supervision of investigations, prosecution, and maintenance of public charges for the structural units of the Prosecutor's Office explicitly, and the division of responsibilities provided for in the Law on the Prosecutor's Office either or how the institute of a higher prosecutor works in practice in the Prosecutor's Office is not clear as well.
- ❖ The Prosecutor's Office does not use such techniques as defining the duties and powers, descriptions of the process or guidelines to be used in the work of a prosecutor in internal

regulations in its work organisation. Internal instructions in the prosecution services are recommended<sup>87</sup> to make the work of the prosecution more efficient, predictable, and consistent.

The State Audit Office considers that the term “senior prosecutor” is used in the Prosecutor’s Office without separating the powers of a senior prosecutor in a specific criminal proceeding already defined in the Criminal Procedure Law precisely from the powers of an administratively senior prosecutor outside certain criminal proceedings when inspecting the quality of work of prosecutors of hierarchically lower level. Thus, a situation occurs that during a criminal proceedings, individuals who do not conduct the criminal proceedings examine and check the criminal case file, which is the secret of the investigation, contrary to the Criminal Procedure Law.

A prosecutor may have different statuses in criminal proceedings such as a prosecutor supervising the investigation, official in charge of the investigation, prosecutor in charge of the prosecution, senior prosecutor, member of an investigation team, issuer of procedural tasks, executor of procedural tasks, prosecutor, as well as official (prosecutor, head of prosecutor structural unit) having the power to resolve rejections, complaints, and organisational issues of the process. To determine the role and scope of authority of a senior prosecutor clearly and unambiguously, it is essential to define its functions both within and outside the specific criminal proceedings. For example, according to the order of the Prosecutor General determining the mutual subordination of prosecutors, when exercising the powers of a senior prosecutor, a district (city) prosecutor has several senior prosecutors including a chief prosecutor of the district level prosecutor’s office, a prosecutor of the judicial region prosecutor’s office (within the framework of permanent or separate functions), a chief prosecutor of a judicial region prosecutor’s offices, prosecutors of Departments and Divisions of the Office of General Prosecutor (within the framework of permanent or separate functions), chief prosecutors of the Divisions of the Office of General Prosecutor (in the direction of their activities), chief prosecutors of the Departments of the Office of General Prosecutor (in the direction of their activities), and the Prosecutor General. However, it does not follow from the existing legal framework in which cases each of the prosecutors is considered to be a senior prosecutor in relation to a lower-level prosecutor, or whether all the above senior prosecutors are entitled to inspect any case of a district-level prosecutor, to instruct him, revoke his decisions, etc. The internal regulations of the Prosecutor’s Office do not define the scope of the powers of a senior prosecutor either within the framework of the permanent or separate functions specified by the respective chief prosecutors or within the directions of activities of specific chief prosecutors when exercising the powers of a senior prosecutor.

The Chief Prosecutor of the Pre-Trial Investigation Supervision Division of the Criminal Justice Department of the Office of Prosecutor General is senior to any district-level prosecutor in all matters related to the performance of prosecutor functions in criminal justice but prosecutors of this Division are senior to any district-level prosecutor within the framework of their permanent or separate functions. The mentioned Division inspects district (city) prosecutor’s offices and territorial judicial region prosecutor’s offices and exercises the following power during those inspections to assess the file of criminal case, give instructions on pre-trial investigation activities, annul decisions of an investigator and lower prosecutor in active criminal proceedings. The prosecutors of the Division are instructed to perform inspections and specific assignments while a prosecutor of the Division inspects criminal cases and discusses related issues, ascertains opinions, compiles and prepares draft decisions, which are submitted to the chief prosecutor for evaluation and signing.

The State Audit Office finds that if the inspections carried out by the Criminal Justice Department of the Office of Prosecutor General are an internal control mechanism, one doubts that such inspections would allow familiarising with the files of active criminal proceedings, revocation of decisions of the prosecutor in charge, and giving instructions to the supervising prosecutor or an official in charge, etc. in the criminal proceedings subject to review. In addition, the implementation of such a control mechanism (purpose of control, choice of issues to be inspected, procedure of inspections, etc.) should be determined in an internal regulation of the Prosecutor's Office by providing where and how one uses the information obtained during control at the same time, for instance, whether prosecutors of the Criminal Justice Department of the Office of Prosecutor General must gather information indicating different practices in the application of the law, ambiguous legal provisions, etc. and what the next step would be when conducting inspections on the application of the Criminal Law in judicial region prosecutor's offices and/or district level prosecutor's offices. One should also establish explicitly which prosecutors and in which cases perform the functions of a senior prosecutor in a specific (what content) position, both within and outside particular criminal proceedings, including with regard to the handling of complaints.

*The State Audit Office recommends assessing the need to amend laws and regulations to establish clearly which prosecutors and in which cases perform the functions of a senior prosecutor within and outside particular criminal proceedings.*

The Prosecutor's Office has not established an internal supervision system that would cover all functions and operational processes of the Prosecutor's Office and ensure an independent assessment of the operation of the internal control system at the institution level.

Supervision is defined as the actions taken by managers at all levels to ensure that the processes under their responsibility comply with the requirements for the implementation of controls and that appropriate corrective and preventive action is taken in the event of errors. In its turn, the monitoring process established at the institution level provides sufficient assurance that the basic principles and procedures of control are appropriate, sufficient, and effective.

The Law on the Prosecutor's Office stipulates that the Chief Prosecutor of the Department of the Office of General Prosecutor controls the specific direction of activity in all structural units of the Prosecutor's Office (that is, in the regional prosecutor's offices and district (city) prosecutor's offices, respectively). The Chief Prosecutor of a judicial region prosecutor's office controls the activities of district (city) prosecutor's offices located in the region. In addition to the above, the Criminal Procedure Law also stipulates that a senior prosecutor controls how the prosecutor exercises his or her powers. Earlier in this report, the State Audit Office concluded that the division of responsibilities and powers among the chief prosecutors of different levels of structural units regarding the control measure, i.e., how this control should be implemented, could not be concluded from the internal legislation of the Prosecutor's Office.

By the order of the Prosecutor General, only the powers of Chief Prosecutors have been determined in general terms in 2004<sup>88</sup>. With regard to the powers of the chief prosecutors of the Divisions within the Departments of the Office of Prosecutor General when implementing a direction of activities in the country, one has defined as follows:

- *Instruct inspections in regional or district level prosecutor's offices;*
- *Requests information necessary for analysis;*
- *Exercises the powers of a senior prosecutor personally in cases that are in the records of regional chief prosecutors and may exercise the powers of a senior prosecutor in cases that*

*are in the records of regional prosecutors and district (city) level chief prosecutors and prosecutors;*

- *Provides methodological instructions for ensuring the fulfilment of the planned tasks.*

The above-mentioned order of 2004 stipulates that chief prosecutors in charge of a prosecutor's office or its structural unit:

- *Organises the work of the institution (structural unit) and ensures the observance of work discipline, determines the permanent division of responsibilities for subordinate prosecutors for this purpose; instructs to perform inspections specified by law or to perform specific tasks, gives instructions regarding the progress of performance and performance of specific activities, controls the course and deadlines of inspections, etc.*

Regarding the chief prosecutors of the judicial region prosecutor's offices, one has established that when controlling the activities of the district (city) level prosecutor's offices in the region, they:

- *Control the work organisation of the prosecutor's offices in the region, including the assignment of inspections of certain areas of activity, etc.*

There is also no internal legislation on the control to be exercised by a prosecutor holding a senior position administratively, which would provide more detailed guidance on the day-to-day operations and the scope of inspections.

The State Audit Office concludes that the Prosecutor's Office has not established an internal supervision system that would cover all functions and operational processes of the Prosecutor's Office and ensure an independent assessment of the operation of the internal control system at the institution level.

The Law on the Prosecutor's Office stipulates the position of auditor in the staff of the Prosecutor's Office providing that the auditor ensures the operation of internal audit<sup>89</sup>. Although one has established the Internal Audit Division in the Prosecutor's Office, its scope covers only the functions of the Office of Administrative Director, that is, only a part of the support functions. Consequently, only a part of the support functions in the Prosecutor's Office such as financial management and accounting, economic support functions will subject to risk assessment and planned supervision measures, which the Internal Audit Division implements. Accordingly, a part of the support functions is subject to internal audit procedures based on risk assessment<sup>90</sup>. At the same time, there are no supervision measures over the implementation of support functions detected that the Department of Analysis and Management of the Office of General Prosecutor's Office performs, which consists of the Methodology Division, the International Cooperation Division, and the HR and Professional Development of Prosecutors Division.

In addition, one must note that the traditional internal audit approach may not apply to the performance of the core functions of the Prosecutor's Office (e.g., performance of criminal justice functions) in all cases, where this supervision process should be entrusted to staff with sufficient and appropriate experience and the rights to undertake such responsibility. However, even in this case, one should separate the day-to-day control process from the institution-level control exercised by independent supervisors who have not participated in the work process or in ensuring the quality control of the work themselves.

At present, one has not introduced an independent supervision mechanism at the institution level in relation with the performance of the basic functions of the Prosecutor's Office (functions in criminal justice and beyond).



In the implementation of functions in criminal justice, one could perhaps refer the supervision performed by prosecutors of the Pre-trial Investigation and Supervision Division of the Criminal Justice Department of the Office of General Prosecutor in lower-level prosecutor's offices to the supervision at the institutional level. However, nobody has specified the purpose and procedure of those inspections in laws and regulations. At the same time, the State Audit Office has not established that one would take supervision measures over the performance of the tasks of the Criminal Justice Department of the Office of General Prosecutor and the independent Division of Specially Authorised Prosecutors.

As regards the implementation of the above inspections, the State Audit Office received an ambiguous explanation during the audit. On one hand, they explained that inspections were performed within the powers of a senior prosecutor provided for in the Criminal Procedure Law but on the other hand, inspections were a part of the internal control mechanism established in the institution aiming at effective performance of the functions. The State Audit Office assesses that if inspections are an internal control mechanism, it is doubtful whether such inspections would allow acquaintance with the files of active criminal proceedings, revocation of decisions of the official in charge of the proceedings, and instructing a supervising prosecutor or case manager, etc. in the criminal proceedings subject to review. Therefore, one should assess the nature of this control mechanism and determine the procedure in an internal regulation (Purpose of control, choice of issues to be inspected, inspection procedures, etc.) while also stipulating how one may use the information gathered in the result of an inspection on detected shortcomings to improve the institutional performance. One should also define the scope and procedure of daily control (inspections) to be performed by a senior prosecutor.

*The State Audit Office recommends the Prosecutor's Office to take the necessary measures for improving the internal performance supervision system in relation to the performance of the core functions of the Prosecutor's Office:*

- (1) Evaluating and determining what is included in the concept and basic elements of "control" applicable to the performance of the core functions of the Prosecutor's Office in internal regulation;*
- (2) Evaluating and determining the scope and procedure of control (inspections) to be performed by a senior prosecutor on a daily basis in internal regulation;*
- (3) Assessing and determining the independent supervision (control) process at the institution level who and how implements it, how one plans and implements inspections and other measures, etc. in internal regulation.*

As indicated above, one carries out risk assessment only for a part of support functions in the Prosecutor's Office such as financial management and accounting, economic support functions by planning supervisory measures accordingly.

One does not carry out risk assessment on the performance of the core functions of the Prosecutor's Office in criminal justice and outside criminal justice and has not carried it out in relation with crucial areas such as integrity, corruption, and conflicts of interest in the activities of prosecutors. Given the broad responsibilities, powers, and discretion of a prosecutor (i.e., whether to prosecute or not), prosecutors may be exposed to integrity risks in particular. The Prosecutor's Office must create a control environment to prevent risks of integrity, corruption, and conflicts of interest. This need is clear from the supranational documents relating to the prosecution service, including the OECD recommendations<sup>91</sup>, the documents adopted by the United Nations and the European



institutions<sup>92</sup>. The Cabinet Regulation<sup>93</sup> on the basic requirements of the internal control system for the prevention of the risk of corruption and conflict of interests in a public institution also stipulate that judicial authorities apply these regulations in compliance with the specific nature of their functions and activities specified in special laws. The OECD found the measures taken to be insufficient when performing in-depth assessment<sup>94</sup> of the control environment in the Prosecutor's Office.

The Prosecutor's Office must take steps to implement basic requirements in terms of control environment for the implementation of integrity policy by (1) establishing responsibility for the implementation and coordination of integrity-related measures, (2) developing a strategy that assesses existing risks, sets goals and responsibility for the measures to mitigate risks in key risk areas and processes; (3) updating the 1998 "Latvian Code of Ethics for Prosecutors" and implementing it with the guidelines for action applicable to the activities of prosecutors; (4) organising regular training activities; (5) taking steps to raise awareness of the purpose and operation of the whistle-blower mechanism and establishing procedures for a prosecutor to be consulted in the event of integrity dilemmas.

Until July 2020, prosecutors had immunity from administrative liability, which means that other administrative violations related to integrity (good faith), such as violations of conflicts of interest and declarations of income of public officials (violations of the Law on Prevention of Conflicts of Interest in Activities of Public Officials) fell within the remit of the Prosecutors' Attestation Commission.

According to the information provided by the Prosecutor's Office, there were no disciplinary proceedings initiated in the last three years for breaches of the rules of integrity (good faith). Such practices, according to OECD experts, raise concerns about the ability of the prosecution's disciplinary system to respond to breaches of prosecutor integrity, in particular those related to the application of the Code of Ethics for Prosecutors<sup>95</sup>. In the opinion of OECD experts, this is due to the lack of guidelines or instructions for the structural units responsible for the application of the Code of Ethics for Prosecutors.

In its opinion of 23 November 2018<sup>96</sup>, the Consultative Council of European Prosecutors has clarified the consideration set out in Recommendation Rec(2000)19<sup>97</sup> on the application of the principles of independence, accountability, and ethics of prosecutors. One must outline that the opinion of 23 November 2018 on the independence, accountability, and ethics of prosecutors does not provide for sanctions of a moral nature, which are specified in the Code of Ethics for Prosecutors. At the same time, in accordance with the Code of Ethics for Prosecutors<sup>98</sup>, the decision of the Attestation Commission on the application of moral sanctions to a prosecutor is final and cannot be appealed.

The State Audit Office considers that the above creates risks of biased attitude and lack of legal certainty in connection with the examination of breaches of the provisions of the Code of Ethics for Prosecutors<sup>99</sup> as it is not clear in which cases moral sanctions are applied without disciplinary sanctions. Similarly, the application of moral sanctions is probably only an interpretation of the responsible structural units (Heads of prosecutor's offices, heads of structural units or the Attestation Commission) regarding the cases when moral sanctions are applied and when the disciplinary liability specified in the Law on the Prosecutor's Office is applied. Thus, the State Audit Office finds that it does not facilitate the application of integrity standards in the Prosecutor's Office and the activities of prosecutors.

*The State Audit Office recommends the Prosecutor's Office to act for introducing the basic requirements of control environment for implementing the integrity policy by:*

- (1) Determining responsibility for conducting and coordinating integrity-related activities;*
- (2) Drafting a strategy that assesses existing risks, sets goals and responsibilities for taking measures to reduce the impact of risks in key risk areas and processes, including measures to "implement" the Latvian Code of Ethics for Prosecutors, solutions for training activities, and other measures applicable to the prosecutor's office according to the OECD recommendations, documents adopted by the United Nations and other competent institutions;*
- (3) Assessing whether the moral sanctions set out in the Code of Ethics for Prosecutors should be maintained in order to ensure legal certainty. While maintaining and applying such sanctions further on, it would be necessary to establish a framework (nature of breaches, etc.) in the Prosecutor's Office regulations for the application of moral sanctions set out in the Code of Ethics for Prosecutors and disciplinary sanctions provided for in the Law on the Prosecutor's Office.*

The Prosecutor's Office has not developed an understanding of the accumulation and analysis of information aimed at identification of problems that affect the performance of the Prosecutor's Office in criminal justice, although they accumulate extensive and detailed information on prosecutor achievements in terms of statistical indicators. For example, although statistics on the supervision of investigations are collected by indicating the number of criminal proceedings received under the supervision of a prosecutor during the reporting period, the number of cases examined, the number of written instructions, the number of revoked investigator decisions, etc., it could be used to assess (1) the structure of backlog cases, such as how many of them are complicated cases and on which criminal offenses, their duration since the commencement of criminal proceedings, (2) the workload of prosecutors, such as how many cases under supervision are currently active, etc., (3) whether the investigation relevant to the principle of reasonable term is provided, etc.

The Prosecutor's Office has approved<sup>100</sup> an approach to summarising and comparing the work results of district-level prosecutor's offices by assigning positive and negative points to specific indicators, summing them up, and calculating workload and operational efficiency mathematically.

The State Audit Office considers that one cannot calculate the efficiency of the structural units of the Prosecutor's Office or the workload of prosecutors mathematically. Given that criminal proceedings differ significantly in their complexity, one requires determining qualitative indicators in order to evaluate their effectiveness, according to which the assessment could be provided within the framework of quality control measures. The OECD also considers<sup>101</sup> that the assessment should not rely on the idea of winning or losing a case in court if a fair settlement of the criminal relationship has been reached. This may affect a prosecutor's decision to refer a criminal case to court, as a prosecutor may refrain from taking this decision in case of the slightest doubt. In the OECD's view, this could explain the small number of cases in Latvia where a prosecutor brings charges to court compared to the large number of criminal proceedings initiated under the supervision of a pre-trial investigation. The State Audit Office finds that, for example, the large number of negative points awarded for criminal cases with a prosecution period of more than 2 months may also influence the prosecutor's decision to prosecute or terminate criminal proceedings if there is no assurance that sufficient evidence has been obtained in the case for winning that case

in court for sure (i.e., the trial would end with a conviction). The Prosecutor's Office has established the following procedure:

- 2 negative points are calculated for each remaining criminal case with a term of prosecution for more than 2 months;
- A number of negative points is awarded for each criminal case with a term of prosecution over 6 months and a criminal case that is in the proceedings of the Prosecutor's Office for more than 6 months which equals to the duration divided by 2 (for example, 3 points for 6 months, 5 points for 9 months, 8 points for 16 months, etc.).

Internationally accepted practice<sup>102</sup> indicates that qualitative analysis of statistical indicators is recommended. The prosecution service should be able to track and find out what is done in every case that is on the records of the Prosecutor's Office throughout the time the prosecution handles it. One admits that statistics can also be useful in strengthening public confidence in the prosecution and the judiciary by reflecting the realities of the effectiveness of some or all of the functions of the prosecution service.

The State Audit Office considers that the approach used by the Prosecutor's Office should be changed by creating a system that not only collects statistics but is used in management decision-making in full and giving up the approach of calculating the efficiency of prosecutor's offices mathematically. Therefore, one needs assessing whether the collection of statistics in such detail as now is useful, namely, whether all those indicators are analysed and used in management decision-making. One should make use of the information stored in the information system of the Prosecutor's Office as far as possible by improving the system if necessary. In addition, the system of indicators should be adequate to assess the achievement of the goals and performance set in the operational planning documents of the Prosecutor's Office, which are not currently the case. In order to improve the planning of the activities of the Prosecutor's Office with regard to the goal-setting and results to be achieved, one should review the data to be collected on the performance of the functions of the Prosecutor's Office and harmonize accordingly.

*The State Audit Office recommends the Prosecutor's Office to establish a system for the evaluation of its performance:*

- (1) *By evaluating the system of statistical indicators of the Prosecutor's Office and determining what indicators are relevant and meaningful in order for assessing the progress and identifying the existing problems in the supervision, prosecution, and imputing stage of criminal proceedings;*
- (2) *By assessing and determining the qualitative indicators to be taken into account when carrying out quality checks on the work of prosecutors.*

## 2.4. Professional performance evaluation and training of prosecutors

The evaluation of the professional performance of prosecutors aims at facilitating the continuous professional development of prosecutors during the performance of their duties<sup>103</sup>, however, the audit concludes that the established evaluation system is not fully used as a tool for improving qualification of prosecutors, identifying their training needs, and career development planning process.

The Prosecutor's Office has determined the information to be evaluated for each position level, developed detailed documents, opinions, statistical reports, and other documents to be submitted to the Prosecutors' Attestation Commission, for example, when evaluating the professional activity of a prosecutor of a district level prosecutor's office, one assesses the inspection results of criminal proceedings under the supervision of the prosecutor, of the quality of the written instructions given by the prosecutor, of the quality of the decisions made by the prosecutor, of the quality of the responses by the prosecutor to applications and complaints, and of the quality of the decision to prosecute an individual, etc.

At the same time, there are no criteria, in which cases the Commission provides a positive and/or negative assessment, it is not clear how one determines the significance of the errors and how the findings during the assessment affect the assessment. In all cases examined in the audit, there were errors and shortcomings in the work of the assessed prosecutor identified (for example, unjustified delays in the investigation were allowed in several supervised criminal proceedings, the decision to suspend the criminal proceedings was not made in time, decisions also indicated information on an individual whose mentioning was not provided for in the Criminal Procedure Law, there were deficiencies detected in the decisions regarding language use, in two of the allegations examined, the qualification of the offence did not correspond to the description of the facts, etc.). Nevertheless, prosecutors received positive assessment and the Prosecutors' Attestation Commission has not recommended specific tasks by the assessed prosecutor within a certain period to eliminate the identified deficiencies or to promote professional development.

In general, one invests resources a lot and prepares very detailed and extensive information about a prosecutor's progress in the professional performance evaluation, however, the audit did not find that the evaluation would identify and summarise examples of best practice or shortcomings, conditions that promoted or hindered the work of prosecutors.

One might consider whether assessing the professional performance of prosecutors more frequently than every five years would be required, as a five-year period is too long to analyse the individual performance of a prosecutor and does not identify problems if any as well as deficiencies are not eliminated in a timely manner. The case detected during the audit indicates to the mentioned problem when during the first assessment of the professional performance of a prosecutor in 2018 who took office in 2014, various problems were identified in the performance of his work, especially in the supervision of pre-trial investigation. There were additional inspections carried out and the findings indicated that the problems were likely to have existed for several years. At the time of the opening of the investigation, the prosecutor had accumulated a huge number of criminal proceedings under the supervision of the pre-trial investigation, namely, 5,703 criminal proceedings (of which 3,000 criminal proceedings had been taken over from a prosecutor absent for a long time two years ago). In addition, one carried out a quality check of the supervision of 176 criminal proceedings and concluded that the prosecutor had performed the duties of the supervising prosecutor unsatisfactorily in general. The State Audit Office deems that the large number of supervised criminal proceedings most probably led to such result and the solution to the problem had to be found in time, without waiting for this fact to become apparent during the evaluation of the prosecutor. The Prosecutors' Attestation Commission decided to evaluate the prosecutor's work positively, without explaining the justification or offering proposals to improve the situation.

The State Audit Office considers that if one decided to evaluate the professional performance of prosecutors more frequently, the process of evaluating the professional performance of prosecutors should be simplified, which is very time-consuming and labour-intensive process currently due to

the extensive regularity inspection of prosecutor's decisions made. The daily control by a senior prosecutor (chief prosecutor) is an alternative to more frequent assessment of professional performance, whose scope and content regulations of the Prosecutor's Office should define. Within the current established practice, prosecutors of the judicial region prosecutor's office and Divisions of the Office of General Prosecutor inspect the work of the prosecutors in the district (city) level prosecutor's offices regularly, which could possibly be considered as institution level control. The Prosecutor's Office should assess the nature of this control mechanism and determine how internal regulation should define the procedure (goal of control, choice of issues to be examined (or based on risk assessment), inspection procedures, etc.), while also providing how one should use the information collected during the control on the detected deficiencies in the professional activity of a prosecutor. By introducing clear instructions and applicable procedures for daily control and institution-level inspections, which would be implemented consistently in all structural units of the Prosecutor's Office, one would not repeat such a large-scale inspection of criminal proceedings during professional performance evaluation of prosecutors as in the example discussed above.

The State Audit Office deems that evaluation every five years cannot fully serve as a tool for planning the professional career development of prosecutors. One has not regulated the procedures for promoting a prosecutor in detail unlike taking office as a prosecutor. The inspections carried out during the audit revealed that the chief prosecutor of the structural unit of the particular prosecutor's office decides which prosecutor to invite to the internship in the vacant position alone and recommends him or her to the Prosecutor General for approval. The chief prosecutor is not obliged to justify his or her choice (at least no such documents were obtained during the audit). Prior to the promotion of a prosecutor, the Prosecutors' Attestation Commission shall provide an opinion on the compliance of the knowledge and professional skills of the selected candidate with the new position, which is of a recommendatory nature. Thus, one can conclude that there is a high degree of subjectivity in the system of professional performance evaluation of prosecutors, although they have established the Prosecutors' Attestation Commission.

According to the Law on the Prosecutor's Office<sup>104</sup>, one shall publish information on the website of the Prosecutor's Office no later than one month before filling the vacancy; however, the audit could not verify whether they had met this requirement in the studied cases because the Prosecutor's Office does not record and accumulate such information and does not compile and accrue the information on a number of candidates and other information indicating the justification for the selection of one or the other candidate.

The State Audit Office considers that not all decisions on the professional performance evaluation of prosecutors, development of a prosecutor's career, and promotion are transparent and substantiated sufficiently. Such a practice is not in line with Recommendation Rec(2000)19 of the Committee of Ministers of the Council of Europe "The Role of the Public Prosecution in the Criminal Justice System" and other supranational documents that prosecutors' careers and promotions are based on known and objective criteria such as experience and competence where a decision is made by implementing fair and impartial procedures.

The audit findings indicate that one can decide subjectively and possibly even in situations of conflict of interest. The inspections revealed a case when the commission for professional performance evaluation of a prosecutor included his father and cases when the new prosecutors, who are next of kin to high-ranking prosecutors, are experiencing rapid career development.

The tables and forms used to evaluate the professional performance of prosecutors provide extensive information on the work of particular prosecutor being assessed during a given period, so



more attention should be paid to how information on errors and omissions is assessed and used to plan training of prosecutors and to develop a common training system. One should ensure reasoned decision-making on the evaluation result without calling into question the validity of those decisions. One also requires making the procedures for promotion of prosecutors significantly clearer such as identification, evaluation, and justification of the decision to promote a particular candidate to a higher position. The decision to promote a prosecutor should rely on fair and impartial procedures, in accordance with the practices and standards recommended in the transnational instruments<sup>105</sup>.

*The State Audit Office recommends the Prosecutor's Office to improve the professional performance evaluation system of prosecutors to avoid subjectivity in decision-making by:*

- (1) Determining the criteria for assigning a positive and/or negative assessment, that is, how one determines the materiality of the errors made and how the findings during the evaluation affect the assessment;*
- (2) Envisaging both the identification of the training needs necessary for the improvement of the qualification of each prosecutor and, in general, the identification of issues for the development of the training content necessary for prosecutors within the framework of the evaluation process;*
- (3) Providing for a link between the evaluation process and the promotion procedure;*
- (4) Assessing the possibilities for simplifying the evaluation system to save the resources of the Prosecutor's Office and reduce the administrative burden.*

*The Prosecutor's Office to take the necessary measures for safeguarding transparent, justified, and fair decision-making within the framework of the evaluation of the professional performance of prosecutors and when deciding on the promotion of prosecutors.*

Under the Law on the Prosecutor's Office<sup>106</sup>, regular improvement of knowledge necessary for the performance of official duties and of professional skills and abilities are among the basic principles of a prosecutor's activity. At the same time, there is no mandatory requirement for prosecutors to receive periodic training on issues related to the maintenance and improvement of the professional qualification of a prosecutor in Latvia, as is the case in most other countries.

The Prosecutor's Office does not draft and approve annual training plans for prosecutors, nor does it plan special training for newly appointed prosecutors. In its turn, one has set up a training program for candidates for the position of prosecutor, which they must complete during their internship before passing the qualification examination, which one could consider as introductory training for new prosecutors according to internationally recognized practice.

During the audit, the Prosecutor's Office pointed to a significant lack of funding for the training of prosecutors, therefore the training offered by other institutions (Court Administration, Latvian Judicial Training Center, School of Public Administration, Latvian Local and Regional Government Training Centre, etc.) is mainly used. There were 404 prosecutors attending 98 training events in total in 2019.

The training needs of a particular prosecutor are also not determined during the professional performance evaluation; neither the evaluation commission and direct manager nor the prosecutor himself or herself indicate them. Yet, the Prosecutor's Office outlined a positive example during the audit that they had identified problems with insufficient quality of indictments exactly during the professional performance evaluations of prosecutors resulting in the special curriculum

developed by the Latvian Judicial Training Centre for improving the quality of indictments prosecutors drafted. Hence, one should use the information obtained during the professional performance evaluation as much as possible to determine the training required for the professional development of prosecutors.

The audit report of the performance audit “Effectiveness of investigations and trials of the criminal offences in the economic and financial area” further analyses the issue of the quality of indictments, which judges highlighted during interviews as a significant factor influencing the duration and outcome of trials. The judges have pointed out that a well-formulated indictment, which contains a detailed analysis of the sufficiency of evidence in all the aspects to be proved is significant for the court’s assessment and which is the basis for a trial and a fair, correct settlement of criminal relations. Some of the prosecutors and chief prosecutors interviewed in the audit also drew attention to the need to develop the ability to draft a substantiated justification among prosecutors so that the circumstances to be proved would be sufficiently specific, where the most important evidence is how the specified circumstances are or have not been proved. The State Audit Office cannot assess whether the already developed curriculum would be sufficient for this purpose. Other solutions may be needed, e.g., summary of recommended practices, guidelines, etc.

The Prosecutor’s Office is now planning to improve the situation by implementing a system of continuing professional education, identifying and including the training required for prosecutors in the curricula. Such a task has been set to fulfil the priority set in the Strategy of the Prosecutor’s Office for 2017-2021, that is, effective and high-quality performance of the prosecution service functions in combating financial and economic crimes but no specific deadline has been set for this task.

The Guidelines on the Status and Role of Prosecutors, approved jointly by the United Nations Office on Drugs and Crime (UNODC) and the International Association of Prosecutors<sup>107</sup> in 2014, state that not only the training of prosecutors on criminal law issues, prosecutor responsibilities and ethics but also the principles of the work organisation and management practically applicable and materials and mechanisms facilitating consistency of the prosecutorial actions, are essential.

*The State Audit Office recommends the Prosecutor’s Office to establish a training system for prosecutors, which includes regular training of prosecutors throughout a prosecutor’s career and relies on the identification of training needs, including the results of professional performance evaluations of prosecutors and other inspections carried out within the Prosecutor’s Office.*

*The Prosecutor’s Office should improve the professional skills of prosecutors in drafting indictments by developing the curriculum further and assessing the need for other measures at the same time (for instance, by providing the elaboration of guidelines, summaries of best practices, or document templates).*

## 2.5. Selection of prosecutor candidates

Despite the relatively high interest in competitions for prosecutor candidates, the selection procedures have not yielded the required results in recent years and the large number of vacancies has not reduced in the Prosecutor’s Office in the long term. For example, during the selection in 2018, there were 6 individuals appointed to the position of prosecutor out of 66 candidates applied, whereas there were 11 individuals appointed to the position of prosecutor out of 75 candidates in

2019. Most of the new prosecutors appointed had previously worked in investigative agencies (the State Police, the Corruption Prevention and Combating Bureau, and the State Revenue Service) or were assistants to prosecutors or judges. This indicates that the requirements for candidates for the position of prosecutor are high.

In order to be appointed as a prosecutor, a candidate must first pass a theoretical and general knowledge test, complete tasks, answer examination paper questions, complete an internship program during the internship, and pass a qualifying examination finally. However, the audit findings suggest that there may be a situation where, despite the successful completion of all of the above, as evidenced by the assessment by the Prosecutors' Qualification Commission, the Prosecutors' Attestation Commission may decide that a candidate does not meet the requirements for the position of prosecutor based on an opinion provided by a Chief Prosecutor. This suggests that the decision on the candidate's suitability for the position may incur subjectivity, which does not comply with the practices and standards recommended in the supranational documents<sup>108</sup>. The State Audit Office considers that one should find an opportunity to separate the area of responsibility of the Prosecutors' Qualification Commission and the Prosecutors' Attestation Commission, as a situation arises when the Prosecutors' Attestation Commission re-evaluates the decision adopted by the Prosecutors' Qualification Commission. It is necessary to remove any doubts about the impartiality of the decision-making process in the procedure for appointing a prosecutor.

The prosecutors' selection system established in the Prosecutor's Office supports previous professional experience in a specific field and ensures that individuals who are already largely prepared for the prosecutor's work are selected. Perhaps in the future, the Prosecutor's Office should also assess ways to strengthen and develop the institution of Assistant Prosecutors, which, like judge assistants in the judiciary, could be a significant internal resource for filling prosecutor vacancies by providing training and finding a pool of prosecutor candidates among the most-qualified Assistant Prosecutors.

*The State Audit Office recommends the Prosecutor's Office to evaluate the possibility of separating the area of responsibility of the Prosecutors' Qualification Commission and the Prosecutors' Attestation Commission to safeguard a transparent and impartial process of appointing a prosecutor.*

*The Prosecutor's Office should evaluate the possibilities for the development of the institution of Assistant Prosecutors to promote the growth of Assistant Prosecutors to a qualified prosecutor candidate.*

## References

- <sup>1</sup> European judicial systems CEPEJ Evaluation Report. 2020 Evaluation cycle (2018 data), available at <https://rm.coe.int/evaluation-report-part-1-english/16809fc058>.
- <sup>2</sup> Recommendation Rec(2000)19 of the Committee of Ministers to Member States on the Role of Public Prosecution in the Criminal Justice System.
- <sup>3</sup> Section 1 of the Law on the Prosecutor's Office.
- <sup>4</sup> The State Audit Office has assessed the place and role of the Prosecutor's Office of the Republic of Latvia in the system of state institutions, as well as the national legal framework for the prosecution in accordance with the opinions, guidelines, and standards adopted by the United Nations, the International Association of Prosecutors, the CCJE, the CCPE, and the Venice Commission.
- <sup>5</sup> Report on European Standards as regards the Independence of the Judicial System: Part II - the Prosecution Service - Adopted by the Venice Commission at its 85<sup>th</sup> plenary session (Venice, 17-18 December 2010), p. 6-7, [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2010\)040-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2010)040-e).
- <sup>6</sup> Recommendation Rec(2000)19 of the Committee of Ministers to Member States on the Role of Public Prosecution in the Criminal Justice System, guidelines and standards adopted by the (UNODC) and the International Association of Prosecutors "Status and Role of Prosecutors" in 2014, opinions, guidelines, and standards adopted by the International Association of Prosecutors, the CCJE, the CCPE, and the Venice Commission.
- <sup>7</sup> OECD Performance of the Prosecution Services in Latvia: A Comparative Study
- <sup>8</sup> See, for instance, the joint opinion "Judges and Prosecutors in a Democratic Society" of the CCJE and CCPE adopted in Strasbourg on 8 December 2009 (Bordeaux Declaration); Opinion No 9 (2014) on European standards and principles regarding prosecutors, adopted within the framework of the CCPE working group in Strasbourg on 17 December 2014; Opinion No 10 (2015) on the role of the prosecutor in criminal investigations, adopted within the framework of the CCPE working group in Strasbourg on 20 November 2015.
- <sup>9</sup> See, for instance, the 1990 UN Guidelines on the Role of Prosecutors; Standards of Professional Liability adopted by the International Association of Prosecutors in 1999, and a statement on the essential duties and rights of prosecutors; Guidelines "Status and Role of Prosecutors" jointly approved by the UNODC and the International Association of Prosecutors in 2014.
- <sup>10</sup> *Venice Commission* –The European Commission for Democracy through Law, better known as the Venice Commission, is a Council of Europe independent consultative body on issues of constitutional law, including the functioning of democratic institutions and fundamental rights, electoral law and constitutional justice. Set up 25 years ago by 18 Member states of the Council of Europe in 1990 it has since subsequently played a decisive role in the adoption and implementation of constitutions in keeping with Europe's constitutional heritage. In 2017, it has 61 full members and 11 other entities formally associated with its work. More than 3 billion people are "covered" by the expertise of the Commission.  
The Council of Europe assists Member States in the fight against corruption and terrorism and in carrying out the necessary reforms of the judiciary. The Council of Europe's Expert Group on Constitutional Affairs, known as the Venice Commission, offers legal advice to countries around the world. More information is available at <https://www.venice.coe.int/WebForms/pages/default.aspx?p=01&Presentation&lang=en>.
- <sup>11</sup> Section 11 of Recommendation Rec(2000)19 of the Committee of Ministers to Member States on the Role of Public Prosecution in the Criminal Justice System.
- <sup>12</sup> Section 14 of Recommendation Rec(2000)19 of the Committee of Ministers to Member States on the Role of Public Prosecution in the Criminal Justice System
- <sup>13</sup> Section 14 of Recommendation Rec(2000)19 of the Committee of Ministers to Member States on the Role of Public Prosecution in the Criminal Justice System
- <sup>14</sup> Section 15 of Recommendation Rec(2000)19 of the Committee of Ministers to Member States on the Role of Public Prosecution in the Criminal Justice System
- <sup>15</sup> Section 3 of the Law on the Prosecutor's Office.
- <sup>16</sup> Section 2 of the Law on the Prosecutor's Office.
- <sup>17</sup> Report on European Standards as regards the Independence of the Judicial System: Part II - the Prosecution Service - Adopted by the Venice Commission - at its 85<sup>th</sup> plenary session (Venice, 17-18 Dec 2010), page 7 (Par. 29-30), [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2010\)040-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2010)040-e).
- <sup>18</sup> Report on European Standards as regards the Independence of the Judicial System: Part II - the Prosecution Service - Adopted by the Venice Commission - at its 85<sup>th</sup> plenary session (Venice, 17-18 Dec 2010), page 6-7, available at [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2010\)040-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2010)040-e).
- <sup>19</sup> Section 1 of Judgment of the Constitutional Court in case No 03-05 (99) "On the Compliance of Paragraphs 1 and 4 of the Saeima Decision of 29 April 1999 on the Telecommunications Tariff Council with Articles 1 and 57 of the Constitution of the Republic of Latvia and other laws".
- <sup>20</sup> OECD Performance of the Prosecution Services in Latvia: A Comparative Study, page 19-20.
- <sup>21</sup> While assessing the compliance of the national regulation on the issuance of the European Arrest Warrant with European Union law, the Court of Justice of the European Union also made important assessments of the independence of the prosecution and prosecutors, stating that there should be regulatory and organizational provisions to ensure that there was no risk for the prosecution to be subordinated, including specific executive instructions. See Rulings of the Court of Justice of the European Union (Joined Cases C-508/18 and C-82/19 PPU, available at <http://curia.europa.eu/juris/document/document.jsf?sessionid=38EDBBA4DDDC58EDA6148521827D9CD0?text=&docid=214466&pageIndex=0&doclang=LV&mode=lst&dir=&occ=first&part=1&cid=12048933>, consideration 74), (Case C-509/18,

<http://curia.europa.eu/juris/document/document.jsf?text=&docid=214465&pageIndex=0&doclang=LV&mode=lst&dir=&occ=first&part=1&cid=12049937>, consideration 52).

<sup>22</sup> Section 15 of Recommendation Rec(2000)19 of the Committee of Ministers to Member States on the Role of Public Prosecution in the Criminal Justice System, comments on recommendations.

<sup>23</sup> Cabinet Regulation No 42 “Statutes of the Crime Prevention Council” of 20 January 2004.

<sup>24</sup> Cabinet Regulation No 587 “Amendments to Cabinet Regulation No 42 “Statutes of the Crime Prevention Council” of 20 January 2004” of 15 September 2020.

<sup>25</sup> Report on European Standards as regards the Independence of the Judicial System: Part II - the Prosecution Service - Adopted by the Venice Commission - at its 85th plenary session (Venice, 17-18 December 2010), page 9 (Par. 41-46), [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2010\)040-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2010)040-e).

<sup>26</sup> CCPE Opinion No 3(2018) of the CCPE: “Independence, Accountability, and Ethics of Prosecutors”, 23.11.2018, [http://www.ejtn.eu/Documents/About%20EJTN/RoL%20Project/RoL\\_2019\\_02\\_Brussels/OPINION%2013%20CCPE\(2018\)\\_2E.pdf](http://www.ejtn.eu/Documents/About%20EJTN/RoL%20Project/RoL_2019_02_Brussels/OPINION%2013%20CCPE(2018)_2E.pdf)

<sup>27</sup> Guidelines for the Status and Role of Prosecutors, approved jointly by the UNODC and the International Association of Prosecutors in 2014, page 13, available at [https://www.unodc.org/documents/justice-and-prison-reform/HB\\_role\\_and\\_status\\_prosecutors\\_14-05222\\_Ebook.pdf](https://www.unodc.org/documents/justice-and-prison-reform/HB_role_and_status_prosecutors_14-05222_Ebook.pdf)

<sup>28</sup> Report of the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaut, [https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A.HRC.20.19\\_En.pdf](https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A.HRC.20.19_En.pdf)

<sup>29</sup> Amendments to the Law on the Prosecutor's Office of 27 Feb 2020, which took effect on 11 March 2020.

<sup>30</sup> Annotation of the draft law “Amendments to the Law on the Prosecutor's Office”, <http://titania.saeima.lv/LIVS13/saeimalivs13.nsf/0/01AD7B6DB91FDA0CC22584D4004C80E8?OpenDocument#B>.

<sup>31</sup> Chapter 5<sup>1</sup> of the Saeima Rules of Procedure on reports of the Ombudsman and Chapter 5<sup>4</sup> on reports of the Auditor General.

<sup>32</sup> As provided for in the Work Plan of the Prosecutor's Office for the first half of 2018 (approved at the meeting of the Council of the Prosecutor General on 10 Jan 2018, the Work Plan of the Prosecutor's Office for the first half of 2019 (approved at the meeting of the Council of the Prosecutor General on 9 Jan 2019).

<sup>33</sup> See <http://www.prokuratura.gov.lv/lv/noderigi/gada-parskati>

<sup>34</sup> Report on European Standards as regards the Independence of the Judicial System: Part II - the Prosecution Service - Adopted by the Venice Commission - at its 85th plenary session (Venice, 17-18 December 2010), page 9 (Par. 41-46), [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2010\)040-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2010)040-e).

<sup>35</sup> Section 23.1 of the Law on the Prosecutor's Office.

<sup>36</sup> Compilation of Venice Commission opinions and reports concerning prosecutors, 11.11.2017, page 33, [https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI\(2018\)001-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI(2018)001-e)

<sup>37</sup> Compilation of Venice Commission opinions and reports concerning prosecutors, 11.11.2017, page 33, [https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI\(2018\)001-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI(2018)001-e), page 33-34.

<sup>38</sup> <https://eur-lex.europa.eu/legal-content/LV/TEXT/HTML/?uri=CELEX:62019CJ0566&from=LV>, Par. 56.

<sup>39</sup> Judgments of the Court of Justice of the European Union C 508/18, C 82/19 PPU, EU:C:2019:456, C 509/18, EU:C:2019:457 of 27 May 2019.

<sup>40</sup> Report on European Standards as regards the Independence of the Judicial System: Part II - the Prosecution Service - Adopted by the Venice Commission - at its 85th plenary session (Venice, 17-18 December 2010), page 7 (Par. 29-30), [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2010\)040-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2010)040-e).

<sup>41</sup> The Recommendation Rec(2000)19 of the Committee of Ministers to Member States on the Role of Public Prosecution in the Criminal Justice System; Opinion (2012) No 7 of the Consultative Council of European Prosecutors on the management of the means of prosecution services adopted by the CCPE at its 7<sup>th</sup> plenary meeting (Strasbourg, 26-27 November 2012), available at <https://rm.coe.int/16807475b5>, Guidelines for the Status and Role of Prosecutors, approved jointly by the UNODC and the International Association of Prosecutors in 2014, Report on European Standards as regards the Independence of the Judicial System: Part II - the Prosecution Service - Adopted by the Venice Commission - at its 85th plenary session (Venice, 17-18 December 2010), page 9-10, Par. 41-46, available at [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2010\)040-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2010)040-e).

<sup>42</sup> See, for instance, Guidelines for the Development of Public Administration Policy for 2014–2020 (approved by Cabinet Order No 827 of 30 Dec 2014, valid until 24 Nov 2017), which define efficiency as the degree to which the system (public administration) or its components achieve the desired result (perform their functions) in comparison with the consumption of resources; Public Administration Reform Plan 2020 (approved by Cabinet Order No 701 of 24 Nov 2017).

<sup>43</sup> Section 17.1, 17.2.6 of the State Administration Structure Law.

<sup>44</sup> Section 10 of the State Administration Structure Law.

<sup>45</sup> Ruling of the Constitutional Court of the Republic of Latvia of 20 Dec 2006 on compliance of Section 1.1, 4.1, 6.3, 22, and 50 of the Law on the prosecutor's Law with Section 1, 58, 82, 86, and 90 of the Constitution of Latvia (consideration 14 under in conclusion part), available at <https://likumi.lv/ta/id/150599-par-prokuraturas-likuma-1-panta-pirmas-dalas-4-panta-pirmas-dalas-6-panta-tresas-dalas-22-panta-un-50-panta-atbilstibu-latvijas-republikas-satversmes-1-58-82-86-un-90-pantam>.

<sup>46</sup> See, for example, Opinion No 10 (2015) on the role of the prosecutor in criminal investigations, adopted within the framework of the CCPE working group of in Strasbourg on 20 November 2015, Questionnaire for the preparation of the Opinion No 10 of the CCPE on the relationship between prosecutors and police and/or other investigation bodies filled out by the Member States [http://www.coe.int/t/dghl/cooperation/ccpe/opinions/travaux/Compilation\\_CCPE\\_avis10.pdf](http://www.coe.int/t/dghl/cooperation/ccpe/opinions/travaux/Compilation_CCPE_avis10.pdf), page 108; conclusion in the UNODC guidelines of 2014 that the prosecutors hold the leading role in the criminal proceedings, etc.



<sup>47</sup> Guidelines for the Status and Role of Prosecutors, approved jointly by the UNODC and the International Association of Prosecutors in 2014, page 55 [https://www.unodc.org/documents/justice-and-prison-reform/HB\\_role\\_and\\_status\\_prosecutors\\_14-05222\\_Ebook.pdf](https://www.unodc.org/documents/justice-and-prison-reform/HB_role_and_status_prosecutors_14-05222_Ebook.pdf)

<sup>48</sup> OECD Performance of the Prosecution Services in Latvia: A Comparative Study, page 18., 64., 74, 85.

<sup>49</sup> CCPE Opinion (2012) No 7 on the management of the means of prosecution services adopted by the CCPE at its 7<sup>th</sup> plenary meeting (Strasbourg, 26-27 November 2012), <https://rm.coe.int/16807475b5>

<sup>50</sup> CCPE Opinion No 9 (2014) on European standards and principles for prosecutors.

<sup>51</sup> See [www.courtexcellence.com](http://www.courtexcellence.com)

<sup>52</sup> OECD Performance of the Prosecution Services in Latvia: A Comparative Study, page 74. - 87.

<sup>53</sup> ISSAI 300 Performance Auditing Principles issued by the INTOSAI, International Organisation of Supreme Audit Institutions.

<sup>54</sup> See, for example, the concept of establishing the internal audit system (accepted by the Cabinet of Ministers on 23 March 1999, minutes No 18, § 29); Cabinet Regulation No 466 "Regulations on the Basic Requirements for the Establishment of the Internal Control System" of 19 Aug 2003 (in force until 1 Oct 2010); Law on the Structure of Public Administration (adopted on 6 June 2002, effective from 1 Jan 2003); Internal Audit Law (adopted on 11 Feb 2010, effective from 16 March 2010 to 11 Jan 2013); Internal Audit Law (adopted on 13 Dec 2012, effective from 11 Jan 2013); Cabinet Regulation No 326 "Regulations on the Internal Control System in Direct Administration Institutions" of 8 May 2012; Cabinet Regulation No 630 "Regulations on the Basic Requirements of the Internal Control System for the Prevention of the Risk of Corruption and Conflict of Interest in an Institution of a Public Entity" of 17 Oct 2017, etc.

<sup>55</sup> See [www.coso.org](http://www.coso.org)

<sup>56</sup> Cabinet Regulation No 326 "Regulations on the Internal Control System in Direct Administration Institutions" of 8 May 2012.

<sup>57</sup> Cabinet Regulation No 630 "Regulations on the Basic Requirements of the Internal Control System for the Prevention of the Risk of Corruption and Conflict of Interest in an Institution of a Public Entity" of 17 Oct 2017.

<sup>58</sup> See, for instance, the joint opinion "Judges and Prosecutors in a Democratic Society" of the CCJE and CCPE adopted in Strasbourg on 8 December 2009 (Bordeaux Declaration); Opinion No 9 (2014) on European standards and principles regarding prosecutors, adopted within the framework of the CCPE working group in Strasbourg on 17 Dec 2014; Opinion No 10 (2015) on the role of the prosecutor in criminal investigations, adopted within the framework of the CCPE working group in Strasbourg on 20 Nov 2015; the 1990 UN Guidelines on the Role of Prosecutors; Standards of Professional Liability adopted by the International Association of Prosecutors in 1999 and a statement on the essential duties and rights of prosecutors.

<sup>59</sup> OECD Performance of the Prosecution Services in Latvia: A Comparative Study, page 73. – 88., 123. – 220.

<sup>60</sup> OECD Performance of the Prosecution Services in Latvia: A Comparative Study, page 73. – 88., 123. – 220.

<sup>61</sup> Cabinet Regulation No 737 "Regulations for Drafting the Development Planning Documents and Impact Assessment" of 2 Dec 2014; Cabinet Instruction No 3 "Procedures for Developing and Updating the Institution's Strategy and Evaluating Its Implementation" of 28 Apr 2015.

<sup>62</sup> Development Planning System Law and subordinate regulations and guidelines of the Cabinet of Ministers.

<sup>63</sup> Order No 113 of the Prosecutor's Office of the Republic of Latvia on merger of the structural units of the Prosecutor's Office of 10 Sep 2020.

<sup>64</sup> Order No 116 of the Prosecutor's Office on reorganisation of the structural units of the Prosecutor's Office of 9 Nov 2020.

<sup>65</sup> European judicial systems CEPEJ Evaluation Report. 2020 Evaluation cycle (2018 data), available at <https://rm.coe.int/evaluation-report-part-1-english/16809fc058>.

<sup>66</sup> Audit report of the State Audit Office "Effectiveness of measures implemented within the framework of the development of the judicial system during 2009–2015" of 5 June 2017, available at <https://www.lrvk.gov.lv/lv/revizijas/revizijas/noslegtas-revizijas/tiesu-iekartas-attistibas-ietvaros-laika-no-2009-lidz-2015-gadam-istenoto-pasaku-mu-efektivitate>

<sup>67</sup> See, for example, Opinion No 9 (2014) on European standards and principles regarding prosecutors, adopted within the framework of the CCPE working group in Strasbourg on 17 Dec 2014.

<sup>68</sup> Opinion No 9 (2014) on European standards and principles regarding prosecutors, adopted within the framework of the CCPE working group in Strasbourg on 17 Dec 2014.

<sup>69</sup> Section 26 of the Law on the Prosecutor's Office.

<sup>70</sup> Section 45 of the Criminal Procedure Law.

<sup>71</sup> Order No 116 of the Prosecutor's Office on reorganisation of the structural units of the Prosecutor's Office of 9 Nov 2020.

<sup>72</sup> Criminal proceedings for criminal offenses qualified under Section 177, 177<sup>1</sup>, 178, 179, 183, 184, 190, 190<sup>1</sup>, 191, 192, 192<sup>1</sup>, 193, 193<sup>1</sup>, 194, 195, 195<sup>1</sup>, 195<sup>2</sup>, 196, 198, 199, 205, 206, 207, 208, 211, 212, 213, 214, 215, 215<sup>1</sup>, 217, 217<sup>1</sup>, 218, 219, 220<sup>1</sup>, 221, 237<sup>1</sup>, 288<sup>2</sup>, 288<sup>3</sup>, 288<sup>4</sup>, 317, 318, 319, 320, 321, 322, 323, 325, 326, 326<sup>1</sup>, 326<sup>2</sup>, 326<sup>3</sup>, and 327 of the Criminal Law.

<sup>73</sup> Audit Report of the State Audit Office Performance Audit "Effectiveness of Pre-trial Investigation in the State Police" of 20 Sep 2017, available at <https://lrvk.gov.lv/lv/revizijas/revizijas/noslegtas-revizijas/pirmstiesas-izmeklesanas-efektivitate-vals-ts-policija>

<sup>74</sup> Audit Report of the State Audit Office Performance Audit "Effectiveness of Pre-trial Investigation in the State Police" of 20 Sep 2017, available at <https://lrvk.gov.lv/lv/revizijas/revizijas/noslegtas-revizijas/pirmstiesas-izmeklesanas-efektivitate-vals-ts-policija>

<sup>75</sup> The possibility provided for in Section 379.1.1 of the Criminal Procedure Law (in the wording valid until 5 July 2020) to terminate the initiated criminal proceedings because a criminal offense has been committed which has the characteristics of a criminal offense but does not cause such damage to adjudge criminal punishment ("small damage" cases), Section 373.2.1 (in the wording of the law valid until 5 July 2020) enabling to refuse initiation of criminal proceedings in "small damage" cases.

<sup>76</sup> Section 400 of the Criminal Procedure Law.

<sup>77</sup> OECD Performance of the Prosecution Services in Latvia: A Comparative Study, page 18.,64.,74,85.

<sup>78</sup> See, for instance, Opinion No 9 (2014) on European standards and principles regarding prosecutors, adopted within the framework of the CCPE working group in Strasbourg on 17 Dec 2014.

<sup>79</sup> Order No 8 of the Prosecutor General on the area of responsibility of specialised prosecutor's offices of 13 Nov 2019.

<sup>80</sup> Audit Report of the State Audit Office Performance Audit "Effectiveness of Pre-trial Investigation in the State Police" of 20 Sep 2017, available at <https://lrvk.gov.lv/lv/revizijas/revizijas/noslegtas-revizijas/pirmstiesas-izmeklesanas-efektivitate-valsts-policija>

<sup>81</sup> For example, the opinion of the experts involved in the audit - Professor Ā.Meikališa, Professor K.Strada-Rozenberga, Associate Professor D.Hamkova of the Faculty of Law of the University of Latvia on criminal proceedings No. 16870000414, and the opinion of the representative of the experts - Association "Sworn Advocate Office VORONCOVS", Sworn Advocate Edgars Štāls, and Sworn Advocate Inta Putene, Mr E. Štāls on criminal proceedings No 15830028912.

<sup>82</sup> The opinion of the experts involved in the audit - Professor Ā.Meikališa, Professor K.Strada-Rozenberga, Associate Professor D.Hamkova of the Faculty of Law of the University of Latvia on criminal proceedings No. 16870000414.

<sup>83</sup> See, for example, Liholaja V. *Vienveidīgas krimināltiesību normu izpratmes nodrošināšanas iespējas un tiesu loma tajā. Augstākās Tiesas judikatūra un tās loma tiesiskās domas attīstībā Latvijā* (Possibilities to ensure uniform understanding of criminal law provisions and the role of courts in it. The case law of the Supreme Court and its role in the development of legal thought in Latvia). Conference on 15 Oct 2010. Bulletin of the Supreme Court of Latvia No 1/2010 November.

<sup>84</sup> OECD Performance of the Prosecution Services in Latvia: A Comparative Study, page 18.,64.,74,85.

<sup>85</sup> See, for instance, the joint opinion "Judges and Prosecutors in a Democratic Society" of the CCJE and CCPE adopted in Strasbourg on 8 December 2009 (Bordeaux Declaration); Opinion No 9 (2014) on European standards and principles regarding prosecutors, adopted within the framework of the CCPE working group in Strasbourg on 17 Dec 2014; Opinion No 10 (2015) on the role of the prosecutor in criminal investigations, adopted within the framework of the CCPE working group of in Strasbourg on 20 Nov 2015; the 1990 UN Guidelines on the Role of Prosecutors; Standards of Professional Liability adopted by the International Association of Prosecutors in 1999 and a statement on the essential duties and rights of prosecutors; Guidelines for the Status and Role of Prosecutors, approved jointly by the UNODC and the International Association of Prosecutors in 2014.

<sup>86</sup> See, for example, Opinion No 9 (2014) on European standards and principles regarding prosecutors, adopted within the framework of the CCPE working group in Strasbourg on 17 Dec 2014, available at <https://rm.coe.int/168074738b>.

<sup>87</sup> OECD Performance of the Prosecution Services in Latvia: A Comparative Study, page 87.

<sup>88</sup> Order No 17 of the Prosecutor's Office on the powers of Chief Prosecutors of 29 Nov 2004.

<sup>89</sup> Section 45<sup>2</sup> of the Law on the Prosecutor's Office.

<sup>90</sup> See, for instance, Schedule for the Implementation of the Strategic Plan of the Internal Audit Division of the Prosecutor's Office of the Republic of Latvia for 2019 - 2023, approved by the Prosecutor General on 13 Nov 2019.

<sup>91</sup> See, e.g., OECD Recommendation on Public Integrity (2017), available at <https://www.oecd.org/gov/ethics/recommendation-public-integrity/>; OECD Recommendation on Guidelines for Managing Conflict of Interest in the Public Service (2004), available at <https://www.oecd.org/gov/ethics/48994419.pdf>;

<sup>92</sup> See, for instance, UN Convention against Corruption, adopted in Latvia by the Law "On the UN Convention against Corruption" on 17 Nov 2005; Resolution 17/2 of the UN Commission on Crime Prevention and Criminal Justice on strengthening the rule of law by improving the functioning and integrity of the prosecution service, available at [https://www.unodc.org/documents/commissions/CCPCJ/Crime\\_Resolutions/2000-2009/2008/CCPCJ/Resolution\\_17-2.pdf](https://www.unodc.org/documents/commissions/CCPCJ/Crime_Resolutions/2000-2009/2008/CCPCJ/Resolution_17-2.pdf); European Guidelines on the Ethical Conduct of Prosecutors, approved by the Conference of European Public Prosecutors in Budapest on 31 May 2005, available at <https://rm.coe.int/conference-of-prosecutors-general-of-europe-6th-session-organised-by-t/16807204b5>; Recommendation Rec(2000)19 of the Committee of Ministers to Member States on the Role of Public Prosecution in the Criminal Justice System, etc.

<sup>93</sup> Section 2 of Cabinet Regulation No 630 "Regulations on the Basic Requirements of the Internal Control System for the Prevention of the Risk of Corruption and Conflict of Interest in an Institution of a Public Entity" of 17 Oct 2017.

<sup>94</sup> OECD Performance of the Prosecution Services in Latvia: A Comparative Study, page 102.-113.

<sup>95</sup> Code of Ethics for Prosecutors, [http://www.prokuratura.gov.lv/media/newsfiles/etikas\\_kodekss.pdf](http://www.prokuratura.gov.lv/media/newsfiles/etikas_kodekss.pdf).

<sup>96</sup> CCPE Opinion No 3 (2018) "Independence, accountability and ethics of prosecutors", p. 20-21, 47, 51, 23 Nov 2018, [http://www.ejtn.eu/Documents/About%20EJTN/RoL%20Project/RoL\\_2019\\_02\\_Brussels/OPINION%2013%20CCPE\(2018\)\\_2E.pdf](http://www.ejtn.eu/Documents/About%20EJTN/RoL%20Project/RoL_2019_02_Brussels/OPINION%2013%20CCPE(2018)_2E.pdf)

<sup>97</sup> Section 11 of Recommendation Rec(2000)19 of the Committee of Ministers to Member States on the Role of Public Prosecution in the Criminal Justice System and Guidelines "Status and Role of Prosecutors" jointly approved by the UNODC and the International Association of Prosecutors in 2014, chapter 6.3 "Disciplinary proceedings".

<sup>98</sup> Code of Ethics for Prosecutors, [http://www.prokuratura.gov.lv/media/newsfiles/etikas\\_kodekss.pdf](http://www.prokuratura.gov.lv/media/newsfiles/etikas_kodekss.pdf).

<sup>99</sup> Code of Ethics for Prosecutors, [http://www.prokuratura.gov.lv/media/newsfiles/etikas\\_kodekss.pdf](http://www.prokuratura.gov.lv/media/newsfiles/etikas_kodekss.pdf).

<sup>100</sup> Order No 47 of the Prosecutor's Office "On the comparative table of the work results of the structural units of the district level prosecutor's offices" of 9 Nov 2018.

<sup>101</sup> OECD Performance of the Prosecution Services in Latvia: A Comparative Study, page 81.

<sup>102</sup> Guidelines "Status and Role of Prosecutors" jointly approved by the UNODC and the International Association of Prosecutors in 2014.

<sup>103</sup> Par. 1, 2, and 3 of Section 38<sup>2</sup> of the Law on the Prosecutor's Office.

<sup>104</sup> Section 34 of the Law on the Prosecutor's Office.

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<sup>105</sup> Recommendation Rec(2000)19 of the Committee of Ministers to Member States on the Role of Public Prosecution in the Criminal Justice System, Guidelines for the Status and Role of Prosecutors, approved jointly by the UNODC and the International Association of Prosecutors in 2014; standards “Professional Liability Standards and Outline of Main Responsibilities and Rights of Prosecutors” adopted by the International Association of Prosecutors on 23 Apr 1999.

<sup>106</sup> Section 5.3 of the Law on the Prosecutor’s Office.

<sup>107</sup> Guidelines for the Status and Role of Prosecutors, approved jointly by the UNODC and the International Association of Prosecutors in 2014, sub-chapter 4.2.

<sup>108</sup> Section 11 of Recommendation Rec(2000)19 of the Committee of Ministers to Member States on the Role of Public Prosecution in the Criminal Justice System, Guidelines for the Status and Role of Prosecutors, approved jointly by the UNODC and the International Association of Prosecutors in 2014; standards “Professional Liability Standards and Outline of Main Responsibilities and Rights of Prosecutors” adopted by the International Association of Prosecutors on 23 Apr 1999.

