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CONFERENCE ON

**“PAST AND PRESENT-DAY LUSTRATION:
SIMILARITIES, DIFFERENCES, APPLICABLE STANDARDS”**

Hosted by the Ministry of Foreign Affairs of the Czech Republic

ČERNÍN PALACE

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REPORT

**“WHY DO TRADITIONAL ANTI-CORRUPTION STANDARDS FAIL
WHEN COUNTRIES UNDERGO TRANSFORMATIONS?
THE LITHUANIAN EXPERIENCE.”**

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Ladies and Gentlemen,

Once I heard somebody say that the legislation that our countries have is in fact a panoramic photo of what and who we are. For an alien, it serves as a framed picture of transformations that we go through, the values that we defend, the numerous interests that we have and lobby for. The loopholes that we create and close by adopting copious amendments and then create again. Because our interests are diverse and countless.

In that respect, the presence of legislation is as good an indicator as the absence of it. Having been delegated by my Government to GRECO (the Council of Europe's Group of States against Corruption) since 2006 I have seen many countries who survived without any anti-corruption legislation or structures for many years. Simply put, they do not develop laws to build trust. On the contrary, they often fear that overregulation can destroy it.

Such countries get the highest scores on corruption perception indexes. Yet, paradoxically, they are not the best performers when it comes to putting in place international anti-corruption standards. In that respect, it is very wise to refrain from comparing countries, 'naming and shaming' them. It is much more constructive to judge them on their own merit. That is what I have learned from GRECO, the "anonymous alcoholics club", where countries openly speak about their corruption problems and together look for solutions. Sometimes very good standards are built. Yet bearing the diversity of countries (49!) in mind, these standards are only the minimum.

When my country, Lithuania, regained its independence in 1990, it was confronted with a huge challenge of rebuilding its statehood, rule of law, judicial system, public administration, and civil society. At that time it was clear that the widespread, almost omni-present corruption, could undermine any constructive, yet very fragile elements that shaped the country (its courts, its economy, its political structure, its democratic institutions and most importantly, people's belief in their country).

Like in Ukraine today, we had to learn to fight corruption the hard way. By learning from our own mistakes. By sometimes walking on a very thin line. When the Special Investigation Service – the Lithuanian anti-corruption agency – was set up in early 1997, there were very few examples in Europe to learn from. There was no GRECO then. No international conventions against corruption to start from. There were no specialized anti-corruption bodies in the continent that we could copy. For us, it was vital to create one, make it independent, fierce and produce fast results. Our approach was that surgery should come first, and prevention later.

It was only several years later that we realized that, as a matter of fact, corruption is a *state of mind* and to fight it we needed a holistic approach. This means that we were – and still are – fully dependent on the involvement and ownership of others (including political parties, line ministries, local authorities, NGOs, the media and public at large). We had to not only gain self-confidence but also build **trust** among all stakeholders involved.

An EU expert who came to advise us told us that a "country which wants to build its statehood and democracy needs *stable* and professional human resources".

How does one get loyal professionals if they had been traumatized by the regime from which they learned to cheat the country before the country cheated them? How do you change mentality if the word "integrity" as a cornerstone in the fight against corruption does not have an equivalent in the national language? How do you learn to trust them and ask them to trust you?

We needed some non-traditional measures. In 2002 the Law on **Prevention** of Corruption came into effect, which offered several *new* anti-corruption tools. First, corruption risk analysis in ministries and local authorities. It has been performed on the basis of several important criteria. For instance, corruption risk analysis must be performed in a ministry of local authority where a corruption offence has been committed, where the main functions of such an authority are control and oversight, where its activities relate to granting authorisations or handling information that is considered state or official secret. The analysis then translates into sectoral anti-corruption programmes and concrete actions are taken to eliminate the risks. Does it help to build trust? Yes, if bad practices and procedures are eliminated. Because for the general public, poor administration means corrupt administration. Poor services = corrupt services.

Second, review of draft and effective legislation from the anti-corruption point of view. Corruption is, as a matter of fact, a moving target and therefore anti-corruption priorities change all the time. The most crucial today are the health sector (including pharmaceuticals), energy sector, public procurement, land management and others. The goal of these anticorruption legislative assessments is to identify shortcomings in the existing legislative framework that open up ways for corruption or dishonest, wrong, non-transparent and unfair behaviour. On average, the Special Investigation Service (STT) carries out 100 anti-corruption-assessments on its own initiative and another 100 on the initiative of others (the President, Speaker of the Parliament, the Prime Minister, a parliamentary committee, a commission or a parliamentary group). Does it help to build trust? Yes, because there were many instances when non-transparent legislative amendments, draft laws were vetoed or legislation amended. For that, of course, we needed strong political will.

Third, (and it is the most interesting with regard to our discussion of today) is screening of persons who seek to occupy or already hold a high-level position in a state or municipal institution. According to the famous article 9 of the Law of Prevention of Corruption it is **mandatory** to screen persons seeking a position at a state or municipal institution subject to the appointment by the top political bodies or leaders of the country (Parliament, President, Speaker of the Parliament, the Government) or to the positions of heads of state and municipal bodies or their deputies, vice ministers, secretaries of state at the ministries, under secretaries of the ministries, appointed deputies of mayors of municipalities, heads of institutions subordinate to the ministries and their deputies, prosecutors, heads (deputy heads) of state enterprises of strategic importance, state and municipal companies in which the state has 50 per cent of shares. In other words, all high level positions except for elected officials. In addition, it is mandatory to screen all persons whom the Republic of Lithuania proposes to a position in the European Union or an international body (Article 9¹, effective since May 2011). The information about a person is furnished at the request of the head of a state or municipal body. If a request for information is submitted about a person already *holding* a position in a state or municipal institution, it must be motivated and substantiated by the information raising serious doubts about the credibility of the person in question.

What kind of information is verified? General requirements for an “irreproachable” reputation. Such information includes the following: criminal record (including expired convictions), suspicions of corruption offences and procedural decisions with respect to them, dismissal from positions for the breach of oath, for gross violations of conduct (both valid and those that have expired), acknowledged as guilty for violations of conflicts of interest, the Law on Lobbying, code of conduct of politicians or any other legal act regulating conduct, tax violations (for the last ten years), and valid administrative violations. *Please note, that this “filter” does not include any information with regard to political affiliation or political interests.* In addition, STT submits *classified* information about criminal acts that are planned to be committed, are being or have been committed. Classified information is provided only to those persons who have the permission to get access to classified information.

STT has 14 days to collect the necessary information from various state registers, law enforcement and criminal intelligence bodies and submit it to the person appointing the candidate. If the person appointing the candidate decides not to make the appointment on the basis of the information received, he or she must make the person familiar with such information within three days. This requirement applies only to non-classified information. The decision taken not to appoint a candidate can be appealed.

Statistics. The average for the last three years is 7,000 people screened. As compared to, for instance, the year 2008, the number of persons screened increased ten times.

Does it serve as an effective corruption prevention tool? Yes, because criminals have lost their easy access to public service.

Yet do those non-traditional anti-corruption measures help us build trust? Well, as our constitutional court has ruled, they are as good as clear, non-discriminating and objective criteria are applied to everybody.

To conclude, I do believe that many extreme measures that were put in place in my country are necessary, yet they have their own side effects. To paraphrase a well-known German saying (that trust is good but control is better), I do believe that for a healthy society trust is vital, simply because you can breathe normally. If you live in a country that can afford it, of course.