

Warsaw, 17 October 2007

POLAND

Answers to the questionnaire - "The role of prosecution authorities outside the field of criminal justice"

Part I

Ad 1 – 2 (answers given previously are actual)

Ad 3. In the year 2006 in the prosecution authorities 75 000 civil law cases were registered (in 2005 – 65 000), it means 14,4% of increase. As it comes to the administrative law cases, in the year 2006 – 50 603 cases were registered. In that same time prosecutors examined 39 000 administrative law cases including 8342 administrative decisions, 2700 administrative resolutions and legal acts of self-governing territorial organs. In the year 2006 prosecutors in Poland lodged 19 000 motions on instituting administrative proceedings and tax law procedures, 1500 protests against administrative decisions, 400 appeals from administrative decisions, 238 complains to the Administrative Courts, 90 complains to the Highest Administrative Court from decisions of Regional Administrative Courts. Furthermore prosecutors took part in 1800 administrative proceedings and tax-law procedures initiated by other subjects.

Ad.4. Poland does not intend to reform above-mentioned competences.

Part II

Ad. 5

In the Public Prosecution Service in Poland there is no separate internal organization, acting outside the criminal justice area. Civil law cases fall under the competence of the Public Prosecutor's Office, according to the competence *ratione loci* of a law court, competent to examine given case.

In the local Prosecutor's offices the above mentioned tasks are carried out by prosecutors appointed by the heads of those units.

Usually, depending on the number of cases, these prosecutors are excluded from conducting criminal law proceedings.

Civil and administrative cases are conducted in the Court Proceedings Divisions of Regional and Appellate Prosecutor's offices by appointed prosecutors. In the National Prosecutor's Office there is the Court Proceedings Bureau.

According to the provisions of administrative law solely the highest prosecutorial body i.e. the Prosecutor General is authorised to undertake some extraordinary actions. These actions take place, if there is a necessity of:

- lodging an extraordinary appeal against final civil court decision to the Supreme Court,
- lodging an action on unlawfulness of a court final decision,
- taking part in all Supreme Court and Supreme Administrative Court proceedings,
- instituting of the objection to the decision taken by a Minister of the Government.

Ad. 6

The prosecutor is authorized to demand every civil proceedings and may take part in any ongoing civil litigation, as well, if according to his own assessment, there is a need of protection of rule of law (law – abidingness), rights of citizens or interest of

society.

According to the Civil Procedure Code all civil claims, even adverse claims may be instituted by the prosecutor. There is also possibility to institute non-litigious, executive proceedings as well as securing evidence and securing claims,

By virtue of the Family and Guardianship Code, the public prosecutor is authorized to institute an action on annulment of a marriage, ascertainment of existence (or not existence) of a marriage. He/she is also authorised to take the legal action leading to ascertainment or denial of a legitimation of a child or dissolution of a adoption. According to the law while taking such action in that area the prosecutor makes use of his/her own right, i.e. his/her position as a plaintiff in the civil law proceedings is independent (substantial).

Another form of participation of a prosecutor in ongoing civil proceedings is so called accession to a case. Exceptionally, if the law so provides for, the participation of a prosecutor in the civil proceedings is obligatory. It concerns adoption cases and cases concerning recognition of foreign courts decisions.

It should be underline that the participation of a prosecutor in civil law proceedings is regulated by the provisions of the introductory chapter of the Code of Civil Procedure. It shows i.a. that this institution (participation of a prosecutor in civil law proceedings) still plays a significant role in the Polish the legal system.

The rights of a prosecutor in the civil procedure are regulated first of all by the provisions of the Law on Public Prosecutor's Office and the Code of Civil Law Procedure but also by provisions of other laws providing for that a prosecutor is in fact an independent party equipped with defined right: e.g. he/she is authorised to approach to the civil law court with an action against the person e.g. abusing alcohol and demand his/her obligatory treatment. According to the Law on Associations from 7th April 1989 the prosecutor may also institute the proceedings leading to pronounce the dissolution of a given association if its activity is contrary to the binding law or at least obstinately breaks regulations of an internal charter.

The rights of the prosecutor within extra penal field concerning administrative law

are of the non-power character. It means that the prosecutor is authorised to act as any other party to the proceedings. While instituting the administrative proceedings the prosecutor is not obliged to prove the legal interest justifying his/her action brought to the court. Prosecutor is also awarded with the longer time limits to institute an action against final decisions of administrative authorities. The participation of the prosecutor in the administrative proceedings is regulated by the provisions of the Regulation of the Minister of Justice on the internal office work of the Public Prosecutor's Office from 11 April 1992.

Ad. 7 – we have no information on such decisions.

Ad. 8.

The most important competence of PP within the framework of civil law proceedings is the right of instituting extraordinary legal means of appeal leading to change of the second instance courts' final decisions, i.e. cassation claim and claim concerning ascertaining of unlawfulness of final court decision, if in the consequence of such decision basic principles of legal order have been severely violated.

Within the administrative law domain the most significant competence – from the point of view of safeguarding the rule of law - is supervision over the tax authorities while conducting tax control proceedings. This right of PP guarantees proper observance of law and protects controlled persons or companies from arbitrariness of tax authority. The next competence is the right to appeal against unlawful legal acts issued by local self-governing authorities and government administration organs of regional level (voivodship).