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Replies from :
Bulgaria, Lithuania

Réponses de :
La Bulgarie, la Lituanie

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BULGARIA/BULGARIE

RESPONSES

TO A COUNCIL OF EUROPE QUESTIONNAIRE ON THE IMPLEMENTATION OF RECOMMENDATION (2000) 19 ON THE ROLE OF THE PUBLIC PROSECUTION OFFICE IN THE CRIMINAL JUSTICE SYSTEM OF THE REPUBLIC OF BULGARIA

1. Progress in the implementation of Recommendation (2000) 19:
   1.1. Reforms and initiatives affecting the Public Prosecution Office that took place in 2003 and early 2004:

   (a) With regard to items 4 through 8 of said Recommendation, in 2003 and early 2004 the management of the Public Prosecution Office of the Republic of Bulgaria undertook a number of organisational measures:

- The second twinning project for the "Institutional strengthening of public prosecution for combating organised crime, economic crime and corruption" implemented jointly with the Bavarian Federal Ministry of Justice under the Phare Programme, with a total budget of Euro 2 100 000, has been approved and the relevant activities launched, focusing on the training of public prosecutors specialised in combating organised crime, serious economic crime and corruption. This project is an extension of a first two-year Phare project with a total budget of Euro 3 000 000, which ended in May 2003 and whereby the development of an IT system for the needs of the Bulgarian Public Prosecution Office was launched.
- The Supreme Prosecution Office of Cassation has been structured in five specialised investigation departments, namely Crime Against the Person and the Rights of Citizens, Organised Crime and Terrorism, Economic Crime, Crimes in Office and Corruption, Crime of Public Threat and Other Types of Crime. There is now a specialisation in Crime of Public Threat and Other Types of Crime. Therefore, a specialisation and upgrading of prosecutors' qualification in combating crime has been achieved, but also methodical guidance, operational practice and overall precision were improved, and an opportunity was allowed to increase the efficiency and target operations by departments.
- All pending cases involving the offence of bribery, corruption within the banking, credit and financial systems, privatisation-related offences and all other types of corruption are now under the special supervision of the Supreme Prosecution Office of Cassation. Joint teams consisting of a public prosecutor, an investigator and an officer of the Ministry of Interior have been set up to investigate and dispose of such cases.
- Some of the inspections and investigations of corruption have been assigned and carried out by prosecutors of the Supreme Prosecution Office of Cassation and by investigators of the National Investigation Service, mainly in respect of former and present high-ranking officials and magistrates, in conformity with the provisions of the Code of Criminal Procedure and the Judiciary System Act.

- A special internal procedure and a unit of public prosecutors of the Supreme Prosecution Office of Cassation have been set up to receive, follow up and investigate information on corruption reported to the Supreme Prosecution Office of Cassation.

Instructions on the operation and interaction between preliminary investigation authorities have been prepared and signed under the direction of the Public Prosecution Office.

Agreements for cooperation and interaction have been made with the Parliamentary Anti-Corruption Commission, the Commission on Coordination of Anti-Corruption Activities under the authority of the Council of Ministers of the Republic of Bulgaria, the National Audit Office, the Tax Directorate-General, the Customs Agency, the Financial Intelligence Agency.

An inter-agency Task Force has been set up, consisting of prosecutors with the Supreme Prosecution Office of Cassation, within the "Bureau of Financial Intelligence" Agency under the authority of the Ministry of Finance, to detect and investigate money-laundering offences.

- Rules of Professional Ethics for Public Prosecutors in Bulgaria (Code of Conduct) have been elaborated and approved by the Supreme Judicial Council with the active participation of the Association of Public Prosecutors in Bulgaria.

(b) Items 3 and 11 of the Recommendation prescribe for the public prosecutor to direct and supervise pre-trial investigation, whereas the state should take appropriate measures to protect public prosecutors from unjustified interference. Item 11 of the Explanatory Memorandum provides for public prosecutors to enjoy the required independence or autonomy from whichever power, legislative or executive, in the exercise of their powers. The rules established following the amendments made to the Code of Criminal Procedure in 2003 cannot lead to successful implementation of the requirements laid down in the Recommendation of the Committee of Ministers of the Council of Europe in the context of current Bulgarian legislation in force. In particular the following should be noted:

- Following the amendment of Article 191 of the Code of Criminal Procedure, provision has been made to have pre-trial proceedings considered open, once an investigative action has been taken by any investigation body (including by a police investigator with the Ministry of Interior), such as a visit to the scene of crime and related interrogation of eyewitnesses, searches and seizures, identification of persons and objects. In such cases a public prosecutor neither can reverse the initiation of preliminary proceedings, nor can interfere in any other way. Through its actions an investigative body would place public prosecutors under the obligation to dispose preliminary proceedings to be conducted, and only after the termination thereof they could deliver their opinion on the justification and lawfulness of initiation of such proceedings.
- Following the amendments made to Articles 409 and 410 of the Code of Criminal Procedure, the power of police investigators to submit a case to the prosecutor has been introduced, where, at the discretion of such police investigators, the prerequisites for drafting and submission of indictments to the court are met. The provisions concerned do not give grounds to consider that a prosecutor may in any way prejudice such powers of police investigators, or revoke any decisions made by them or remand the case for

further activities to be taken within the context of summary police proceedings.

- Following amendments to the procedural law, the possibility for the prosecutor to require the case or individual materials pertaining thereto from investigation bodies, for example in view of verifying the lawfulness and justification of procedural decisions made and relevant procedural actions taken (Article 176 in combination with Article 414 of the Code of Criminal Procedure), has been eliminated.

The Amendment of the Judiciary System Act entered in force in 2004. It provides for the elimination of the power conferred on the Prosecutor-General to make proposals to the Supreme Judicial Council for the initiation of disciplinary proceedings against investigators in relation to offences committed by them. In 2003, following such proposals of the Prosecutor-General, 30 disciplinary proceedings were filed against investigators. It is apparent that such amendment of law will reduce the functional possibilities of the Public Prosecution Office to perform complete and adequate direction and supervision over pre-trial investigations.

(c) In accordance with item 16 of the Recommendation, the Public Prosecution Office should be able to conduct criminal prosecution in respect of civil servants for corruption, abusive exercise of power, serious human rights related offences and other offences recognised by international law. In 2003, the amendments made to the Code of Criminal Procedure made a provision, which restricted the powers of the Public Prosecution Office to bring in court, by means of a well-founded indictment, a substantial public prosecution against charged offenders, once complete and effective pre-trail proceedings have been conducted. Article 239a of the Code of Criminal Procedure provides for a possibility for the relevant court of first instance to dispose, at the request of defendant, of criminal proceedings for indictable offences during the pre-trial stage of such proceedings, where two years from the date of indictment have elapsed in case of serious crimes, and three years in case of offences committed by negligence, and where the prosecutor has not disposed of or brought the case to court within a period of two months granted by the latter. Formal grounds have been thereby provided for impeding public prosecution – it is prevented from being brought and sustained in court. Account should be taken of the fact that normally more complicated cases, both from in fact and law, are those in the economic field, as well as those involving corrupt practices and privatisation. They require a longer period of pre-trial investigation. Currently, as far as such cases are concerned, the possibilities of the Public Prosecution Office for criminal prosecution in respect of civil servants (persons vested with power) are considerably restricted.

(d) Article 33 of the Recommendation requires from prosecutors to take into account the interests of victims of crime. Bu virtue of item 25 of the Explanatory Memorandum, the Public Prosecution Office has been assigned prosecutorial functions, however it should be recalled that its primary function is to be a custodian of the law. The possibilities of the Public Prosecution Office to protect the interests of victims of indictable offences were restricted by the amendments of the Code of Criminal Procedure made in 2003.The following should be noted in this respect:

- The possibility for victims to bring a civil action already claiming damages at pre-trial has been eliminated. Action may be brought only in the court of first instance. The Public Prosecution Office has thereby been deprived of the possibility to bring civil action, under Article 47 of the Code of Criminal Procedure, in view of protecting the interests of victimised children and young persons or of persons with disabilities and learning difficulties, preventing them from the possibility to protect themselves, as well as the interests of municipalities. Now prosecutors may bring such actions only in trial proceedings at the first instance.

Within the framework of the procedure for termination of cases involving indictable offences through plea bargaining, the rule according to which the victims or the heirs thereof also were to take part in the preparation and approval of agreement has been repealed. Before these amendments, the prosecutor was under the obligation to trace the victims or the heirs thereof and inform them of their right to participate in the conduct of said procedural transaction and to allow them participation, including the possibility to sign the agreement prior to the latter being submitted in court. Now the prosecutor is deprived of the possibility to render such assistance to victims.

(e) With regard to the requirements set out in items 37 through 39 of the Recommendation, a Department of International Legal Assistance has been set up with the Supreme Prosecution Office of Cassation.

The promotion of direct contacts between the prosecutors of said Department of International Legal Assistance with the Supreme Prosecution Office of Cassation of the Republic of Bulgaria and their counterparts in various countries is performed:

- within the framework of the international conventions in force (the Council of Europe European Convention on Mutual Assistance in Criminal Matters of 20 April 1959 and the Additional Protocol thereto, the European Convention on Extradition of 13 December 1957 and the two Additional Protocols thereto) with all Member States of the Council of Europe;
- within the framework of the UN conventions: the Single UN Convention on Narcotic Drugs of 1961, as amended by the Protocol thereto of 1972; the UN Convention on Psychotropic Substances of 1971; the 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances ; the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of Proceeds from Crime, etc., using the forms and methods of cooperation established under these international instruments;
- based on practical agreements, prosecutors of the Department of International Legal Assistance with the Supreme Prosecution Office of Cassation are included also in training programmes and in the exchange of practices under the international cooperation programmes of TAIEX, a unit set up by the Council of the European Union.

With that end in view, prosecutors of the Department of International Legal Assistance with the Supreme Prosecution Office of Cassation participate in training seminars and international meetings for the exchange of practices organised by the Council of Europe (the RASO Programme for Combating Corruption and Organised Crime in Southeastern Europe), the European Union (international cooperation programmes organised by TAIEX) and SECI (Southeast European Cooperative Initiative).

Favourable conditions have been made for direct contacts between the prosecutors of the Department of International Legal Assistance with the Supreme Prosecution Office of

Cassation and their counterparts in various countries, within the framework of international judicial cooperation via prosecutors from the department representing the Office the contact networks of:

- Eurojust;
- the countries participating in the Council of Europe RASO Programme;
- the SECI-SEEPAG Advisory Group of Prosecutors.

All means of contact, information and documentary exchange listed in item 38 are used in the everyday activities of the Department of International Legal Assistance via the above networks.

Prosecutors are included in foreign language training courses organised by the Supreme Prosecution Office of Cassation, as well as in all seminars for prosecutors organised within the above mentioned networks of contact persons by the Council of the European Union, the Council of Europe and the Southeast European Cooperative Initiative.

Such seminars contribute to the improvement of professional qualification and awareness of prosecutors with the Department of International Legal Assistance with the Supreme Prosecution Office of Cassation of developments in the field of international legal assistance and cooperation.

- All prosecutors of the Department of International Legal Assistance with the Supreme Prosecution Office of Cassation are specialised in the field of international legal assistance. In accordance with the legislation in force in the Republic of Bulgaria (Article 464 read in combination with Article 461 of the Code of Criminal Procedure), no obstacles have ever existed for the heads of the Department of International Legal Assistance with the Supreme Prosecution Office of Cassation (former International Section) to address, as representatives of a requesting state, the requests for legal assistance drafted in the department directly to the competent authorities of the requested state, where the submission of such requests has been a matter of urgency. Requests for the execution of foreign rogatory commissions are also directly received in the Supreme Prosecution Office of Cassation, both in urgent cases and when so provided for in bilateral agreements for legal assistance. However, when the countries participating in the European Convention on Mutual Assistance in Criminal Matters are concerned, the materials resulting from execution are returned, even when received directly in urgent cases, through the Ministry of Justice, in accordance with the requirements of Article 15, item 2 of the European Convention on Mutual Assistance in Criminal Matters.

By ratifying the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters this procedure is expected to change, the Supreme Prosecution Office of Cassation becoming the central cooperation body with regard to requests for legal assistance in pre-trial proceedings, on the one hand, and the sending and receipt of requests for legal assistance and rogatory commissions using electronic data transfer media and fax being deemed sufficient in cases where no doubts exist as to the sender’s authenticity and competence, on the other hand.

The prosecutors of the Department of International Legal Assistance with the Supreme Prosecution Office of Cassation are vested with the powers specified in item 39 of the Explanatory Memorandum by virtue of the specialisation established by the Prosecutor-General both in the former International Section of the Supreme Prosecution Office of Cassation and in the Department of International Legal Assistance currently set up in the Supreme Prosecution Office of Cassation. Such powers are exercised as part of the everyday

activities performed by the department, in the field of international legal assistance (e.g. drafting and sending requests for legal assistance with regard to the execution of rogatory commissions abroad, as well as drafting ordinances to the National Investigation Service for the execution of foreign rogatory letters; follow-up and coordination of execution, both locally and abroad, of rogatory commissions on the occasion of requests for legal assistance sent and received; spontaneous information exchange with prosecutors in charge of international legal assistance in other countries).

2. Discretionary powers of public prosecution

(a) The Public Prosecution Office of the Republic of Bulgaria is vested with unlimited discretionary powers to decide whether to initiate criminal proceedings and undertake criminal prosecution in case of indictable offences. Proceedings are initiated with respect to the offence committed, and not against a distinct individual. In principle, the persons who are responsible for the commission of crimes are prosecuted after the initiation of pre-trial proceedings. As an exception from the legality principle in criminal liability matters, the following restrictions to prosecution exist:

- In respect of offences prosecuted both publicly and privately, which have been specified in the criminal law, proceedings are initiated by a prosecutor, following however explicit complaint by the victim. A limited number of *corpi delicti* included in the special part of the criminal law is concerned (e.g. exercise of voting rights, exercise of labour rights, etc.), for which the legislator has considered victim's consent a mandatory prerequisite for prosecution.

- As already mentioned, the new Article 239a introduced in the Code of Criminal Procedure in 2003, offers a possibility for the court of first instance to terminate criminal proceedings, thus avoiding the public indictment in court, where certain time limits as of the initial indictment against a defendant or suspect within the pre-trial proceedings have elapsed.

(b) Prosecutors may decide to transform a criminal prosecution into an administrative penal procedure. The application of Article 78a is at stake, concerning the discharge of defendant from criminal liability and the application of an administrative penalty (fine and disqualification) in its stead. Prosecutors are vested with such powers, which they exercise once pre-trial investigation is completed, by drafting and submitting a proposal to that end, to the court of first instance. Besides, following completion of pre-trial investigation, prosecutors may also submit a proposal to the court for termination of proceedings by plea bargaining. This is an alternative to the general procedure for hearing criminal cases in court. The major specific feature of this alternative consists in the fact that the relevant court decision validating the agreement is not made subject to appeal and verification by a court of a higher instance.

(c) In the case of indictment submitted to court by a prosecutor, the court is bound to open and conduct the relevant court proceedings. The court may not refrain from passing a judgment on the indictment brought, or avoid in any way whatsoever doing so. However, an option exists for the court, immediately following the institution of proceedings, to schedule a hearing and examine the case in pursuance of special rules for the discharge of defendant from criminal liability, notwithstanding the fact that the case has been brought by indictment of a public prosecutor.

(d) As far as the safeguards of defendants against decisions of the Public Prosecution Office are concerned, it should be noted that all actions and decisions of the Public Prosecution Office involving a coercive element come under the supervision of the court. This applies to custody measures (remand in custody, home arrest), other measures of procedural enforcement (removal from office, security for costs, fine or confiscation, placement in a psychiatric institution for the purposes of assessment), as well as to investigation actions of a coercive nature (searches, seizures, certification of persons). In addition, termination of pre-trial proceedings and the suspension thereof come also under the supervision of the court, to which the matter may be referred through complaint by a defendant, a victim or any other party concerned. The explicit provisions of the Constitution and the Code of Criminal Procedure introducing the fundamental principles of: the right of citizens to defence (Article 14 of the Code of Criminal Procedure), revelation of the objective truth (Article 12 of the Code of Criminal Procedure), the principle of formality in criminal proceedings, etc. are all aimed to that effect.

(e) In any national legal system, the position of the Public Prosecution Office as a representative of the state, guardian of the law and public prosecution body is somehow governed by relevant legal provisions. The way it is governed is influenced by the traditions in the country concerned, the overall situation and objective processes running in society, as well as by the influence of other legal systems. This is particularly true for the countries of Continental Europe. Each country, on its own account and in cooperation with other countries, is seeking ways to strengthen the possibilities for its Public Prosecution Office to counteract and prevent crime. The existing legal system in the Republic of Bulgaria ensures the independence of the Public Prosecution Office within the judiciary and this is explicitly provided for in Chapter VI of the national Constitution. However, some of the amendments made over the past years to the Code of Criminal Procedure and the Judiciary Act entailed a restriction of the powers conferred on the Public Prosecution Office, as far as the prosecution and prevention of crime, as a social phenomenon, and of specific offences, are concerned.

3. According to the existing national legal system of the Republic of Bulgaria the Public Prosecution Office is vested with powers of supervisory and safeguarding nature in the field of family law, commercial law, civil procedure, administrative and penal administrative law. The powers of the Public Prosecution Office in these areas are governed by the Family Code, the Commercial Act, the Citizens' Property Act, the Administrative Procedure Act, the Administrative Violations and Sanctions Act, the Supreme Administrative Court Act and the Code of Civil Procedure. Such powers, which go beyond the functions of the Public Prosecution Office as a mere prosecution authority dealing with the prosecution of persons liable for the commission of crimes, emphasise the important role of the Public Prosecution Office as a representative of the state and guardian of the law.

LITHUANIA/LITUANIE

PROSECUTOR'S DUTIES OUTSIDE THE CRIMINAL SECTOR

Alongside traditional functions of the Prosecutor's Office of conducting criminal prosecution, Lithuanian national law system provides for the activity of the prosecutor in the sphere of civil and administrative justice of acting in protection of public interests. Grounds for this activity are set by the basic law of the State – Constitution of the Republic of Lithuania, and Paragraph 2 Article 118 thereof says, that "Prosecutor shall, in the cases prescribed by law, protect rights and lawful interests of an individual, society and the State". Laws that specify the said constitutional provision and determine particular rights and duties of the prosecutor when acting in protection of public interests are as follows: Law on Prosecutor's Office of the Republic of Lithuania, Code of Civil Procedure of the Republic of Lithuania, Civil Code of the Republic of Lithuania, Law on Administrative Proceedings of the Republic of Lithuania.

Functioning legislation regulates duties of the prosecutor in the field of protection of public interests in two different ways: establishes a legal norm of general character, which provides a right to the prosecutor to apply to the court with the complaint or petition to protect public interests, or specify particular cases, when prosecutor is allowed to apply to the court.

Functioning procedural laws establish a general provision according to which prosecutor has the right to apply to the court in order to protect public interests in cases specified by the laws. According to the provision set in the new Law on Prosecutor's Office, which came into force on 1 May 2003, protection of public interest is a removal of violations of legislation with the help of powers granted to Prosecutor's Office. Law on Prosecutor's Office, which does not limit the prosecutor's competence in this sphere in particular cases, determines his right to lay an action, application or petition in the court. Therefore the prosecutor may apply to the court following proceedings set by the Law on Civil Procedure or Law on Administrative Proceedings in all the cases after establishing violations of legislation which, to opinion of the prosecutor, significantly influences rights and lawful requirements of the individuals, groups, State and the society.

In should be noted, that legislation of the Republic of Lithuania, when specifies functions of the Prosecutor's Office acting in protection of public interest, does not define the very public interest. This allows assuming, that conception of a public interest should be perceived generally as a public interest, which in certain cases might be defined to be a certain field of social relations or social group.

Civil Code and Code of Civil Procedure of the Republic of Lithuania specify particular cases when prosecutor may lay an action, application or petition in the court. Prosecutor may apply to the court in accordance with the civil procedures with the view of the following: to recognize a natural person to be incapable due to mental disease or dementia; to limit capacity in respect of a natural person, who abuses alcohol beverages, narcotics or toxic substances; to recognize transaction conducted by an incapable natural person to be void; to recognize transaction conducted by a natural person, who abuses alcohol beverages and narcotics substances, to be void; to declare a natural person to be dead; to recognize a natural person to be at unknown location; to restrict the right of a juvenile from 14 to 18 years of age to manage his finances; to designate a temporary administrator of the

property of the owner, whose location is unknown; to recognize a legal person to be unlawfully incorporated, when purposes of its incorporation are unlawful or do not comply with the public order; to investigate activity of a legal person, when activity of a legal person, its management bodies or its members disagree with public interests; to overrule authorization of the court in respect of one spouse to perform certain actions on behalf of both spouses; to annul marriage in the event of violation of conditions set when entering into it; to annul sham marriage; to terminate marriage under conditions of marriage termination specified in the law in protection of interests of an incapable spouse; to establish measures for protection of children's rights, when parents or guardians (carers) violate children's rights; to restrict authority of parents or to separate children from their parents; to annul separation of a child from the parents; to dismiss parents from management of property belonging to a juvenile; to change the rate and form of maintenance of a child; to reclaim maintenance of a child from parents, guardians (carers), who used it not for the benefit of a child; to annul guardianship and care granted in respect of a natural person after disappearance of circumstances, on the grounds of which he was recognized as incapable or partially capable; to dismiss a guardian (carer) from the position, when said persons perform heir duties unduly, do not guarantee protection of the rights and interests of the person under guardianship or care, exploit their rights for personal gain; to establish permanent guardianship (care) in respect of a child; to designate a guardian for the child, who was granted permanent guardianship (care); to grant care and designate a carer for a capable natural person, who is unable to exercise his rights and duties on his own due to his health state.

According to the provisions under Law on Administrative Proceedings the prosecutor is given a right to apply to special administrative courts with the petition to investigate whether administrative act (part of it) complies with law or governmental regulation, also with the petition to investigate legitimacy of act of general character enacted by a particular social organization, community, political party, political organization or association.

It should be noted, that Code of Criminal Procedure and Law on Prosecutor's Office provides, that prosecutors, conducting public prosecution in criminal cases in the court, when acting in protection of public interest should lodge a civil action if it was not lodged when damage of crime was inflicted on the State or person, who is unable to protect his rights or lawful interests because of being a juvenile, or due his illness, dependence on a defendant or because of other reasons.

Thus legislation not only grants prosecutor a right to apply to the court to protect public interest after establishing violations, but in certain cases even obligates to do this in case of violations of the State property rights or lawful interests of socially weaker persons, who are incapable to exploit possibilities to protect their rights awarded by the laws.

When lodging a claim, application or petition according to the civil or administrative proceedings the prosecutor becomes a discretional party to the procedure, because in the case, which was initiated on his initiative, he is a plaintiff or claimant with all procedural rights and duties given to such party to the case. When the prosecutor's claim, application or petition concerns particular rights of the persons, the said persons upon their request or request of a claimant, or on court's initiative may be involved into proceedings as third parties or co-claimants.

Moreover, functioning laws give a right to the prosecutor, when acting with the view to protect public interest, in accordance with specified grounds and procedure to submit petition to the court to resume proceedings in civil and administrative cases, which were concluded by effective decision of the court (Ruling). It should be noted, that petition to

resume proceedings in the civil case may be submitted only by the Prosecutor General. The functioning procedural laws provide specific grounds for resumption of the proceedings, list of which is completed. Code of Civil Procedure specifies 9, and Law on Administrative Proceedings 12 cases, when initiation of the resumption of proceedings is possible.

Answers to your questions:

In considering whether or not to prosecute, does your prosecution service have discretionary powers either in law or practice, or is it governed by the legality principle in the meaning that it must prosecute when an offence has been committed and the suspect is known?

Criminal prosecution in the Republic of Lithuania is regulated by the Code of Criminal Procedure of the Republic of Lithuania.

Article 2 of this Code sets that prosecutor or pre-trial investigation authorities, in all cases when indications of a criminal act are established, must, within their competence, take all actions prescribed by law in order to conduct investigation in the shortest period of time and to establish criminal act. Prosecutor after he receives a claim, application or report on the criminal act in accordance with the requirements under Article 169 of the Code of Criminal Procedure, makes decision immediately, whether to open, or not, pre-trial investigation. The prosecutor also has to open pre-trial investigation when he himself establishes indications of a criminal act.

Article 3 of the Code of Criminal Procedure sets provisions, when criminal proceedings may not be instituted, and if instituted - must be terminated, e.g. in case of commission of act, having no indications of crime or misdemeanour; or in presence of circumstance eliminating criminal liability, specified in Section V of the Criminal Code (self-defence, execution of professional duty and others); and in presence of other enumerated conditions.

The prosecutor may initiate pre-trial investigation on the grounds off criminal acts specified in Article 167 of the Code of Criminal Procedure only in case the claim of the victim, or application of his legal representative exists, or upon decision of the prosecutor that pre-trial investigation must be opened when victim is unable to protect his rights or lawful interests because of being in a helpless state, under dependence on the defendant or for other reasons, or when solving a crime is of major importance to the society.

Pre-trial investigation is not initiated on the grounds of crimes specified in Article 407 of the Code of Criminal Procedure and in such cases only private prosecution is possible. However following Paragraph 1 Article 409 of the Code of Criminal Procedure prosecutor has the right to initiate pre-trial investigation on the grounds of the said criminal acts, when those acts are of social importance, or they caused damaged for the person, who is unable to protect his lawful interests due to substantial reasons.

In case of exercising discretionary powers, what are different types of decisions it can take in the way of diversion measures, and if so on what conditions?

Laws of the Republic of Lithuania do not establish possibility for the prosecutor to make decisions on application of diversion measures or alternatives to prosecution.

If prosecution is obligatory, is the judge empowered to refrain from prosecution in the case of some offences, and if so on what conditions?

Judge has the right to discontinue an initiated pre-trial investigation or a criminal case, when conditions and grounds eliminating criminal liability, specified in certain articles of the Criminal Code, exist, i.e. when a person or a criminal act lose their dangerousness; due to little importance of the crime; in presence of extenuating circumstances; when the person actively assisted in disclosing criminal acts committed by members of an organized group or criminal association; and other.

If prosecution is discretionary, what safeguards do defendants have against arbitrary decisions of the prosecution service? Are there any guidelines on the implementation of the discretionary prosecution? If these are public, you are kindly requested to provide a copy.

Under provisions set forth in Article 63 of the Code of Criminal Procedure parties to the proceedings may appeal against action and decisions of the prosecutor to the superior prosecutor. In case the superior prosecutor rejects the claim, the said decision may be appealed against to the Judge of pre-trial investigation.

Discretionary powers of the prosecutor are established by Article 118 of the Constitution of the Republic of Lithuania (Article 118, edition of the Law of the Republic of Lithuania No. IX-1379 of 20 March 2003) (in force from 21 April 2003) (publicized in "Valstybės žinios", 2003, No. 32-1316): "Prosecutors shall organise and direct pre-trial investigation, and prosecute criminal cases on behalf of the State. Prosecutors shall, in the cases prescribed by law, defend rights and lawful interests of an individual, society and the State. When discharging their functions, prosecutors shall be independent and shall observe only the law. The Prosecutor's Office of the Republic of Lithuania shall comprise the Office of the Prosecutor General and territorial prosecutor's offices. Prosecutor General shall be appointed and dismissed from office by the President of the Republic, with the consent of the Seimas. The procedure for the appointment and dismissal from office of prosecutors, as well as their status shall be established by law." As well as by Law on Prosecutor's Office:

Article 3. Legal Grounds of Activities of the Prosecutor's Office

1. In its activities the prosecutor's office shall be governed by the Constitution of the Republic of Lithuania, this Law, other legal acts as well as international treaties to which the Republic of Lithuania is a party (hereafter - international treaties).

2. The prosecutor shall make his decisions independently and individually based on laws and the principles of reasonableness, respect for human rights and freedoms, presumption of innocence as well as the principle of equality of persons before the law irrespective of their social and family status, duties, occupation, convictions, views, origin, race, gender, ethnic origin, language, religious beliefs and education.
3. Lawful demands and decisions of the prosecutor shall be binding on all state and municipal institutions and agencies, their officials, public servants and employees, natural and legal persons and must be complied with in the entire territory of the State of Lithuania. Failure to comply with the demands and decisions of the prosecutor shall make the above-listed entities liable under law.

4. The acts and decisions of the prosecutor may be appealed against to a superior prosecutor and court following the procedure established by law.

5. Damage caused to individuals by unlawful acts or omission of the prosecutor shall be compensated for in accordance with the procedure established by the Law on Compensation for the Damage Caused by Unlawful Actions of Government Institutions or the Civil Code and the Code of Civil Procedure.

Article 4. Control over Activities of the Prosecutor's Office

1. The prosecutor's office shall be headed by the Prosecutor General of the Republic of Lithuania (hereafter - the Prosecutor General). He shall be accountable for his activities to the President of the Republic and the Seimas of the Republic of Lithuania.

2. The Seimas of the Republic of Lithuania shall set the priorities for the activities of the prosecutor's office and exercise parliamentary control over the activities.

3. Procedural actions of prosecutors shall be controlled by the superior prosecutor and the court. The superior prosecutor shall establish violations of procedural laws and reverse unlawful decisions.

4. The economic and financial activities of the Office of the Prosecutor General, territorial offices of prosecutors shall be controlled by the Prosecutor General (the prosecutors authorised by him), the State Control and other authorised state institutions.

5. The Prosecutor General shall submit information about the prosecutor's office to the Government of the Republic of Lithuania and the public.