

## PROSECUTOR'S COMPETENCIES OUTSIDE THE CRIMINAL FIELD

### Answers to the questionnaire

1. Pursuant to the laws of the Republic of Lithuania, the prosecutor's office has been granted certain competencies outside the criminal field as well.
2. **a.** Fulfilling the functions assigned to him, the prosecutor protects the public interest in the cases prescribed by law, in accordance with the procedure and measures established for civil and administrative proceedings. The legislation of the Republic of Lithuania provides no clear explanation of the concept 'public interest', however, this concept ought to be perceived generally as the society interest, which, in individual cases, might be defined to be a specific sphere of social relations or of social group. Besides, the fact that the state interest always equals with the public interest is beyond doubt. The protection of the public interest is an exception to one of the main principles of private law (and of civil procedure as well) – the principle of dispositiveness, according to which any person is entitled to protect the violated rights himself. This exception has been determined for the purposes of protecting a weaker party which is not always capable of applying to the court with a request that the violated right be protected.

**b.** On 20 March 2003, the 'Law on the Amendment of Article 118 of the Constitution' was adopted, wherein it was declared that 'prosecutors shall, in the cases prescribed by law, defend rights and lawful interests of an individual, society and the State.' During the period of 2000-2003, new legal acts were also adopted and came into force, namely: the new Civil Code, the new Code of Civil Procedure as well as the revised version of the 'Law on the Prosecutor's Office.' Accordingly to Subparagraph 7, Paragraph 2, Article 2 of the 'Law on the Prosecutor's Office', the prosecutor's office shall, based on the grounds and in accordance with the procedure prescribed by law, protect the public interest. Paragraph 1, Article 19 of the said Law provides as follows: 'Upon establishing a violation of the rights and lawful interests of a person, society or the State, the prosecutors shall protect the public interest in the cases and according to the procedure provided for by laws upon the notification, proposal, application or complaint filed by the person, state or municipal institution or agency, or on their own initiative as well as in cases when the officers, employees of other institutions or persons having equivalent status, who are under the obligation to protect the said interest, failed to take any measures to rectify the violation.' Such legal formula indicates that, when the legal basis regulating this sphere had been reformed, the prosecutor's competencies were extended accordingly.

Furthermore, reference should also be made to the fact that, upon the establishment of administrative courts in Lithuania, in 1999, the prosecutor fulfills the function of protecting the public interest in accordance with the procedure of administrative proceedings as well, in cases when administrative legal acts adopted by the administrative entities of the State or municipalities violate the public interest. Subparagraph 3, Paragraph 3, Article 5 of the 'Law of the Republic of Lithuania on Administrative Proceedings' provides that the court shall handle an administrative case 'upon the application of the prosecutor [...], filed in cases prescribed by law, for the purposes of protecting State interests or any other public interests.' Paragraph 1, Article 56 of the said Law provides as follows: 'in the cases prescribed by law, the prosecutor [...] may file an application before the court for the purposes of protecting the public interest or the rights of the State, municipalities, persons, and the interests safeguarded by the laws.' In this case, the prosecutor has the procedural rights and duties of the party in a case.

Pursuant to the 'Law on Administrative Proceedings', the prosecutor is also entitled to apply to the court with a request to resume proceedings of an administrative case provided that there are certain grounds established by law. Besides, the prosecutor has a right to apply to the court with a petition to investigate whether an administrative act (or part of it) corresponds with a law or a governmental resolution; he also has a right to apply to the court with a request to investigate the legitimacy of the act of general character, when this act has been adopted by a social organization, a community, a political party, a political organization, or an association.

Hence, to sum up, it can be asserted that, in Lithuania, the prosecutor's activities outside the criminal field constitute quite a significant part of all the functions assigned to the prosecutor.

**c.** The prosecutor's activities involving the protection of the public interest are not restricted to specific cases, therefore, acting in the protection of the public interest, the prosecutor is entitled to file an action, an application, or a petition before the court whenever he establishes such violation of legal acts which, accordingly to the prosecutor's opinion, substantially influences the rights and lawful interests of a person, groups of persons, society or the State, as well as constitutes reasonable grounds for the legal material claim presented by the prosecutor to be satisfied.

**d.** Article 3 of the 'Law on the Prosecutor's Office' stipulates as follows: 'The prosecutor shall make his decisions independently and individually, based on laws and the principles of reasonableness, respect human rights and freedoms, presumption of innocence as well as the principle of equality of persons before the law, state institutions and officials, irrespective of their social and family status, duties, occupation, convictions, views, origin, race, gender, ethnic origin, language, religious beliefs and education.' This Article also provides that '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.' These provisions are applicable to all activities of the prosecutor and all the functions performed by him, thus including the prosecutor's activity outside the criminal field as well. As mentioned above, the 'Law of the Republic of Lithuania on the Prosecutor's Office' and the Code of Civil Procedure, while guaranteeing the prosecutor's function to protect the public interest, also oblige him to lay an action before the court in the cases prescribed by law, and provide for the prosecutor's right to take the initiative to apply to the court if there are reasonable grounds to assume that the public interest has been violated. Therefore, acting outside the criminal field, the prosecutor is entitled to decision-making, and he acts independently and individually while reaching those decisions.

Paragraph 4, Article 3 of the 'Law of the Republic of Lithuania on the Prosecutor's Office' stipulates that the acts and decisions of the prosecutor may be appealed against to a superior prosecutor following the procedure established by law. This right to appeal is granted to every interested person who holds that the prosecutor's decision violates his rights or lawful interests. This mechanism starts to operate in the sphere of the protection of the public interest when persons lodge complaints, file applications or petitions to the prosecutor's office, and the prosecutor in charge of handling of these documents makes respective decisions. In the case when, acting in the protection of the public interest on his own initiative, under an obligation prescribed by law or upon the request of interested persons or competent institutions, the prosecutor reaches a procedural decision and applies to the court following the procedure established by the Code of Civil Procedure or the 'Law on Administrative Proceedings',

respective procedural provisions are applied, and the rules for appealing against the decisions of the court to the court of higher instance become effective.

### 3. Statistics

<b>Documents presented by a prosecutor to the court while defending public interest</b>	<b>Year 2007</b>	<b>Year 2006</b>	<b>Year 2005</b>	<b>Year 2004</b>
<b>Total:</b>	<b>1708</b>	<b>1740</b>	<b>2079</b>	<b>1828</b>
Claims and statements according to civil procedure rules	1094	1015	992	862
Civil claims according to criminal procedure rules	572	671	1038	930
Requests according to the rules of the Law on Administrative Justice	42	54	49	36

While defending public interest prosecutors presented 1708 procedural documents to the courts in 2007. Total amount constituted 71.3 million litas.

In the 2007 the courts granted 1045 claims of prosecutors (requests, statements). Total amount constituted 22,4 million litas.

1164 requests to defend public interest were received in 2007. 627 (54%) of them were granted, 537 (46%) requests were rejected (having failed to establish legal grounds for the claims stated in the requests).

#### Protection of children rights and legal interests

<b>Procedural documents presented to the court</b>	<b>Year 2007</b>	<b>Amount thousands Lt.</b>	<b>Year 2006</b>	<b>Amount thousands Lt.</b>	<b>Year 2005</b>	<b>Amount thousands Lt.</b>	<b>Year 2004</b>	<b>Amount thousands Lt.</b>
<b>Total and amount (Lt)</b>	1708	71337	1740	55217	2079	42579	1828	36572
<b>of them when defending children rights and legal interests</b>	331	1147	234	743	206	367	184	41
<b>of them when defending children rights and legal interests</b>	19.4%	1.6%	13.4%	1.3%	10%	0.9%	10%	0.1%

#### Protection of rights and legal interests of the State (municipalities) and other legal entities

While defending rights and legal interests of the State (municipalities) and other legal entities Lithuanian prosecutors presented the courts with 870 claims (requests and statements) during the 2007. Total amount constituted 56 032 946 litas.

Prosecutors presented the courts with 8 procedural documents regarding remuneration of environmental harm in 2007. Total amount constituted 5 049 571 litas.

4. Due to the fact that, as mentioned above, both the amendment of the Constitution of the Republic of Lithuania concerning the status of the prosecutor's office, and new legal acts regulating the prosecutor's activities in the sphere of the protection of the public interest were adopted and came into force only in the period of 2000-2003, this legal basis is not planned to be reformed. It is assumed that legal regulation of the prosecutor's activities in the protection of the public interest may vary insofar as it is related to the coordination of legal acts of the European Union (Lithuania became its member on 1 May 2004), and incorporation thereof into the national legal framework.

On the other hand, because of a changed legal regulation, the above-discussed sphere of the prosecutor's activities is currently undergoing rapid alterations with respect to working practice, which inevitably causes quite a number of problems which, hopefully, may be solved shortly by harmonizing the practice of Lithuania's courts in the cases when certain issues concerning the participation of the prosecutor, who protects the public interest, in the proceedings are being dealt with.

## **Part II**

### **5. No.**

**6 (a-b-c).** The Code of Civil Procedure guarantees the prosecutor's right to lay an action to protect the public interest. Paragraph 1, Article 49 of this Code provides that the prosecutor, state and municipal institutions and other persons may, in the cases prescribed by law, lay an action to protect the public interest. Under such legal regulation, the prosecutor participates in the civil proceedings as an absolutely independent party, as, the case having been instituted on his initiative, the prosecutor himself is the plaintiff or the claimant. In addition, Paragraph 2, Article 365 of the Code of Civil Procedure provides that, when intending to protect the public interest, the Prosecutor General of the Republic of Lithuania may file an application to the court for the resumption of the civil proceedings in accordance with the procedure established by the rules that regulate the resumption of the proceedings.

The lawgiver not only empowers the prosecutor (after establishing certain violations) to apply to the court for the purposes of protecting the public interest, but also, in particular cases, obliges him to act in this way if the rights and lawful interests of socially weaker persons have been violated, and these persons themselves are incapable of making use of possible legal remedies provided by the laws. At the present time, the Civil Code and the Code of Civil Procedure of the Republic of Lithuania provide for the prosecutor's right to lay an action, an application or a petition before the court in the following cases: to recognize the transaction concluded by an incapable natural person to be void; to recognize the transaction concluded by a natural person who abuses alcoholic beverages and narcotic substances to be void; to recognize a natural person to be incapable due to mental disease or dementia; to limit legal capacity of a natural person who abuses alcoholic beverages, narcotic or toxic substances; to declare a natural person to be dead; to recognize a natural person to be at unknown location; to restrict the right to independently manage one's finances in respect of a juvenile from 14 to 18 years of age; to designate a temporary administrator in respect of the property of a person whose location is unknown; to recognize a legal person to be unlawfully incorporated, when the purposes of its incorporation are unlawful or in conflict with the public order; to investigate the activities of a legal person, when the activities of a legal person, its managing bodies or their members are in conflict with public interests; to annul the court authorization issued to one spouse to perform specific actions on behalf of both spouses; to annul marriage in the event of violation of conditions set when entering into marriage; to annul false marriage; to terminate marriage in the interests of an incapable spouse, given the conditions of marriage termination; to determine measures for the protection of children's rights, when their parents or guardians (carers) violate children's rights; to restrict the authority of parents or to separate children from their parents; to annul the separation of a child from his parents; to remove the parents from the management of property that belongs to a juvenile; to change the extent and the form of the maintenance ordered to be provided for a child; to reclaim the maintenance of a child from his parents, guardians (carers), who have used it not for the benefits of a child; to annul the guardianship and care granted in respect of a natural person, when the circumstances, on the grounds of which he was recognized to be incapable or partially capable, ceased to exist; to dismiss a guardian (carer) from his position, when he unduly performs his duties, does not guarantee that the rights and interests of the person under guardianship or care be protected, exploits his rights for personal gain; to

establish permanent guardianship (care) for a child; to designate a guardian (carer) for the child to whom permanent guardianship (care) has been granted; to grant care and to designate a carer for a capable natural person who, because of his condition of health, is unable to exercise his rights and duties independently. Having guaranteed the prosecutor's right to apply to the court in these specific cases, the lawgiver raises the presumption of the presence of the public interest. Moreover, Paragraph 4, Article 19 of the 'Law on the Prosecutor's Office' ought to be highlighted here, providing as follows: 'acting in the protection of the public interest, the prosecutors who prosecute on behalf of the State shall file a civil action, provided it has not been filed, if damage has been caused by a criminal act to the State or a person who, because of his minority, illness, dependence on the accused or due to other reasons is unable to defend his rights or legitimate interests in court.'

7. The Constitutional Court of the Republic of Lithuania has also announced its opinion on these prosecutor's activities in its Ruling of 14 February 1994, holding that 'in case some circumstances aggravate the opportunity to exercise one's right to legal protection or make it impossible at all, the declarativeness of the said constitutional right would have to be recognized. Therefore, empowering of state institutions or their officials by law in order to help people in necessary cases to realize the protection of their constitutional rights, is expedient and justifiable but only on condition that it is in compliance with the Constitution.' By this ruling of the Constitutional Court of the Republic of Lithuania, only one aspect of the public interest was analysed, namely: when the prosecutor applied to the court in accordance with civil procedure for the purposes of protecting the rights and lawful interests of those natural persons who, due to certain objective reasons (minority, senility, physical or psychical disability, etc.), were unable to protect themselves. Another aspect of the public interest is the security of public or state interests and the protection thereof. In the Ruling of 22 February 2001, the Constitutional Court held that the formula 'the rights and interests of the state and other persons safeguarded by laws' employed in Article 55 of the Code of Civil Procedure is to be construed as 'including the rights and interests of the state and various persons in cases of infringement whereof the public interest would be violated also. Alongside, the said formula is to be construed as including such rights and interests which cannot, due to certain circumstances, be defended by their direct possessor by himself or who has very restricted opportunities to defend them, which also covers his appeal to court.'

8. All competences of the public prosecution service acting outside the system of criminal justice, which were discussed above, are considered to be very important. Perhaps the main focus could be given on the rights of the children and defence of their lawful interests.