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“Supervision of the prosecution services on lawfulness of holding persons in custody and execution of criminal sentences”

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Supervision of the prosecution services on lawfulness of holding persons in custody and execution of criminal sentences

According to the Section 2 of the Prosecution Office Law one of the functions of the Prosecution Office is to supervise execution of sentences. In the Section 15 of the mentioned law this function is determined as supervision over execution of liberty deprivation sentence. The Prosecutor according to procedure provided for by the law supervises the execution of liberty deprivation sentence imposed by a court, and places, where arrested, detained and persons under watch are kept, and attend the court hearings where changes on term or conditions of imposed sentence are decided. While supervising the Prosecutor has a right and obligation immediately to take decision and release from correctional institutions any person who is hold there illegally, as well as to lodge a protest regarding unlawfully imposed sentence to person put into a correctional institution.

Basing on the provisions established in Section 16 and 17 of the Prosecution Office Law, the Prosecutor upon receipt of information about violation of law, pursuant to procedure established by law performs an examination in case if rights and lawful interests of imprisoned persons are violated. If during an examination a violation is found, the Prosecutor depending of nature of violation has an obligation:

- 1) To warn about the impermissibility of the violation of the law;
- 2) To submit protest or an application on the necessity of eliminating the violation of the law;
- 3) To submit a claim to court;
- 4) To initiate criminal proceedings;
- 5) To propose to take a decision on charging with the administrative or disciplinary liability.

So that to implement such function of the Prosecution Office more effectively the Prosecutor General has applied to possibility provided for by the Section 28 of the Prosecution Office Law and has established Specialized Prosecution Office of several Spheres, as well as has adopted internal legal act - order No.8 "On competence of specialized Prosecution Offices". According to the mentioned Order the competence of the Specialized Prosecution Office of several Spheres includes ensuring execution of supervision, criminal prosecution, maintaining of state prosecution and other functions provided for by the Criminal Procedure Law in relation with the criminal offences committed in prisons, investigation prisons and camps for illegal immigrants, as well as fulfilment of obligations provided for by the Section 15 and 16 of abovementioned Prosecution Office Law.

Special Laws, which provides for Prosecutor's obligations when implementing the function for supervision of liberty deprivation sentence execution, are Code of the Punishments Execution of Latvia, the Law governing holding in Custody, as well as the Criminal Procedure Law.

As Section 12 of the Code of the Punishments Execution of Latvia provides for, the Prosecutor General of the Republic of Latvia and Prosecutors subordinated to him ensures supervision over execution of the liberty deprivation sentence, accurate and uniform compliance to the laws of the Republic of Latvia in the imprisonment institutions in order to correct convicted persons and prevent commission of new criminal offences. The Section 50¹² of the abovementioned code provides for that the Prosecutor has to attend the meetings of administrative commissions of imprisonment institution, where decisions on mitigation or strengthening of sentence execution regime for convicted in prison of one certain type or their transfer to imprisonment institution of another type are taken, to lodge with a court the proposals on conditional early release of convicted, as well as regarding diminishing of additional sentence - police supervision or release of that.

The Section 5 of the Law governing holding in the custody contains the similar provision as the Section 12 of the Code of the Punishments Execution of Latvia, namely, the Prosecutor General of the Republic of Latvia and Prosecutors subordinated to him supervises pursuant to procedure established by the Prosecution Office Law accurate and uniform compliance to the laws of the Republic of Latvia in the investigation prisons.

The Section 651 of the Criminal Procedure Law provides for the obligation of the Prosecutor to attend the court hearings where issues related to execution of sentence are decided. Such issues are related with changes of determined sentence term or conditions, including conditional early release

from liberty deprivation sentence, or additional sentence - diminishing of police supervision term or release from that.

The mentioned legal acts establish the functions of the Prosecution Office while implementing supervising of lawfulness of holding persons in custody and execution of criminal sentences.

The number of imprisoned persons in Latvia has significantly decreased within recent years. Comparing with 2004 the number of imprisoned persons in 2008 has decreased by 20%. If on January 1, 2004 there were in total 8231 inmates in Latvian prisons (both arrested and convicted with liberty deprivation sentence), then on January 1, 2008 - 6496 inmates. Such decrease in number of inmates was caused both by new Criminal Procedure Law, that took effect on October 1, 2005, and fact that type of sentence not related with deprivation of liberty - community service, is becoming even more popular in Latvia. Its execution is arranged by the State Probation Service. The Section 272 of the Criminal Procedure Law provides for that custody must be applied only in such cases when there are grounds to believe that applying of another security measure can not be ensured. Another security measure instead of custody can be applied, if there are grounds to believe that person will not commit a new criminal offence, will not impede or will not evade an investigation or court, will not abscond from execution of sentence.

The most grievous criminal sentence provided for by the Criminal Law of Latvia is deprivation of liberty, in 2007 it was imposed to 2554 persons or approximately to 25% of total number of convicted persons.

The execution of liberty deprivation sentence and security measure - arrest in Latvia is ensured by 15 prisons - investigation, closed, partially closed and open prisons, as well as a correctional institution for juveniles.

Latvia as Member State to the Council of Europe and European Union has to comply strictly with legal provisions binding to the Member States governing procedure for holding persons in prisons. During recent years Latvia has received serious criticism from the side of prison experts of the Council of Europe for inability to ensure full compliance of sentence serving conditions to Latvian and international legal provisions.

The European Court of Human Rights in its case law repeatedly has emphasized that imprisonment itself causes suffer to person, but such suffer should not be too large. It means that imprisoned persons must be granted normal imprisonment conditions.

During the visits of the Prisons Expert's of the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment of the Council of Europe, Latvia was exposed to a critics that prisons are overpopulated and living space per one inmate do not correspond to European prisons standarts provided for by Prison's Rules to the Member States of the Council of Europe. In Latvia the number and locations of prisons is inherited from Soviet times, many prison's buildings are very old, built up at the end of 19th century. New prisons since regaining of independence of Latvia have not been built. Only some prisons are partially reconstructed. Such situation is due to insufficient funding, but these allegations do not convince experts.

The problems related to arrangements of Latvian prisons system operation in general require overall and long-term solution. So the Ministry of Justice, under which supervision is Department of Correctional Institutions, in recent years has devoted an utmost attention to problems of correctional institutions. It developed, and in 2005 the government approved the Correctional Institutions Development Concept for 2006 – 2014, aimed to find the solutions for arrangements related with execution of criminal sentences, namely, deprivation of liberty and security measure – arrest in accordance with Latvian and international legal provisions. The concept provides for a gradual renovation of existing correctional institutions and construction of new ones. Solution offered in this concept encompass resolving of sentence serving conditions problems as regards to all categories of convicted persons– it relates to solving of problems in ensuring of exploitation of premises, buildings and prisons for all concerned ones, namely, arrested and convicted persons, juveniles and adults, women and men.

The Specialized Prosecution Office for several Spheres within its supervision activities most often receives complaints from imprisoned persons related with living conditions in prisons, problems related to employment, education, medical aid and food. Taking into consideration that all prisons are under authority of the Department of Correctional Institutions, it is only its competence to solve problems related with living conditions mentioned in complaints of inmates. Hence Prosecutors

forward complaints of such nature according to competence to the Department of Correctional Institutions.

In 2007 the Prosecution Office institutions in total received 1983 complaints from imprisoned persons, amongst them 1072 or more than 50% were forwarded according to competence to other institutions for deciding, mostly to the Department of Correctional Institutions or the Ministry of Justice. The trend of this year must be noticed - imprisoned persons had started to complain about their living conditions problems firstly to prison's chiefs or the Department of Correctional Institutions, not to the Prosecutor.

At the same time the Specialized Prosecution Office of several Spheres receives complaints of imprisoned persons regarding possibly illegal actions of prison officials. For examination of such complaints checks are arranged. If during an examination is found that facts mentioned in complaint regarding illegal actions of officials, in certain cases - violent actions as well, are reasoned, criminal proceedings are instituted, or a proposal is made to charge respective officials with administrative or disciplinary responsibility.

Very important for implementation of supervision is participation of the Prosecutors of the Prosecution Office of several Spheres in hearings of correctional institutions administrative commissions. There the Prosecutor express his/her opinion regarding issues at stake, related with mitigation or strengthening of sentence execution regime, transfer of convicted person to another prison. Similarly the Prosecutor in hearings of the commission express his/her opinion about possibility to lodge with a court a claim regarding early conditional release of convicted person, or additional sentence - diminishing of police supervision term or release from that.

The State Probation Service, which in Latvia was established in 2003, provides enormous support as regards to impair deciding of issues in the administrative commissions. Pursuant to the request of the correctional institution administration, the State Probation Service prepares evaluation report regarding convicted person, including references about him, his/her attitude to work and educational activities during entire sentence serving period, as well as a report on readiness of convicted person to reintegrate into life after release from correctional institution.

Basing on experience of foreign colleagues and through participation in different projects, the State Probation Service has developed and approbated to the real life 9 various licensed social behaviour correction programs. Their participants are convicted persons, persons, released from correctional institutions, as well as persons imposed a sentence not related with deprivation of liberty. The involvement of convicted persons into such programs takes place on voluntary grounds. In 2007, 243 convicted persons voluntarily involved into such programs as "Violence Prevention Program", "Respectful Relationships Creating Program", "Easy about Complicated", "Way Back Home".

Hence the official of the State Probation Service, who has dealt with convicted person in the correctional institution, can to provide qualitative evaluation report, assisting in work of administrative commission of correctional institution.

According to the Section 50.¹³ of the Code of the Punishments Execution of Latvia the convicted person can to lodge with court a complaint, but the Prosecutor – protest regarding decisions of the administrative commission. It should be noticed that Prosecutor this right provided for by the Law applies very rarely, only in cases when his opinion in specific matter has not been taken into consideration at commission's hearing.

Since October 1, 2005, when the Criminal Procedure Law took effect, the investigation judges started to perform their duties in Latvia. Their task is to supervise compliance with human rights in the criminal proceedings. Investigation judges take decisions regarding applying of security measure – arrest, and once in two months revise necessity to apply further arrest. Hence since that the Prosecutors only in some cases (2-3 times per year) have to fulfil their duty provided for by the Prosecution Office Law regarding release of persons unlawfully hold in custody.

In its turn the Prosecutor's protest provided for by the Section 15 of the Prosecution Office Law regarding disciplinary penalty unlawfully imposed to a person put into correctional institution has lost its topicality. In 2004 the Administrative Procedure Law took effect in Latvia and Administrative District Court was put into operation. The prisoners have possibility to apply this court so that to defend their rights and challenge penalty imposed in the correctional institution. The prisoners do so and appeal themselves the disciplinary penalties imposed to them in the correctional institutions.

At present time discussions take place in Latvia regarding amending of Section 15 of the Prosecution Office Law. The role of Prosecutor regarding supervision of liberty deprivation sentence and security measure - arrest, should be specified accordingly to practice of recent years in country. New institutions with competence to solve specific aspects of living conditions of imprisoned persons are established. Present legal regulation creates a situation when Prosecutors receive complaints from imprisoned persons regarding living conditions and other issues, solving of which is not in their competence.

We consider that the Prosecutors should to carry out supervision over execution of liberty deprivation sentence, focusing on disclosure and prevention of criminal offences committed in the correctional institutions. Similarly the Prosecutors should to attend the hearings of the administrative commissions in the correctional institutions and court hearings where matters in relation with execution of criminal sentence are dealt. Determining the Prosecutor's supervision over execution of the criminal sentence in such extent, the Prosecutor's role as regards to fulfilment of this function in no case will be diminished. If the Prosecutor receives the information that rights and lawful interests of imprisoned persons have been violated, an examination pursuant to the Section 16 of the Prosecution Office Law will be instituted and respective Prosecutor's reaction measures will be applied.