

II PART

Does the public Prosecution Office has separate internal service for dealing with matters out of criminal law field?

In the Prosecutor General Office according to Law on Prosecution Office there is established the Department for Protection of Rights of Persons and State, within competence thereof is to protect a lawful interests of persons and state out of the criminal law field. Pursuant to procedures provided for by the Law on Prosecution Office and other special laws, abovementioned department shall protect lawful interests of persons and state, as well as shall submit claim applications or submissions to the court in the cases provided for by the law.

What are powers of Prosecution Office when acting out of criminal law field?

- ***Does the Prosecution Office is empowered with special powers, or it has the same powers as other parties involved into proceedings?***

The Law on Prosecution Office provides for an action of prosecutor when information on breach of law is received and if it concerns to protection of lawful interests of person and state. Prosecutor upon receipt of information regarding a breach of law shall to conduct an examination pursuant to procedures provided for by law.

The Prosecutor's duty shall be to take all the necessary measures for the protection of rights and lawful interests of persons and the State if:

- 1) the Prosecutor General or Head Prosecutors recognize the necessity of such an examination;
- 2) the task of examining the facts concerning the violation of the law is entrusted by President of the State, the Saeima (Parliament) or the Cabinet of Ministers;
- 3) it is provided for by other laws.

The prosecutor shall to perform an examination also in the case if an application is received from person on violation if his / her rights or lawful interests, moreover this application has been already examined by a competent public institution and its refusal to eliminate a violation of law specified in the application is received, or there is not provided any answer in duly time prescribed by law at all. Such an application shall be submitted to Prosecution Office in written form.

Powers of prosecutor, when examining an application, are prescribed by the law.

The Prosecutor while examining the application in accordance with the procedure prescribed by law shall have the right:

- 1) To demand and to receive legal acts, documents and other information from public institutions, banks, the State Control, local governments, enterprises, institutions and organizations as well as to have an unrestricted entry into the premises of the said institutions;
- 2) To require that managers and other officials of enterprises, institutions and organizations carry out examinations, audits and expert's review and to submit statements as well as to provide expert's assistance during examinations conducted by the Prosecutor;
- 3) To invite any person and to receive his/her explanation concerning the violation of the law. If the said person intentionally fails to appear upon the Prosecutor's invitation the Prosecutor may take the decision on the enforced appearance of the said person which shall be performed by the police.

- ***Does there exist any specific regulation for execution of these functions?***

The Law on Prosecution Office determines the duties of prosecutor when a violation of law is found. In case if a violation of law is found, basing on its nature a prosecutor shall have an obligation to take any of following actions:

Prosecutor's warning

In the event of founding elements of a violation of the law or features indicating the possibility of an unlawful action the Prosecutor shall issue a written **warning** to the said person on impermissibility of such a violation of the law.

Prosecutor's protest

The protest shall be submitted concerning legal acts which have been enacted by the Cabinet of Ministers, Ministries, Departments and other public administrative institutions, banks, the State Control, local government institutions, inspectorates and public services, enterprises, institutions and organizations and officials which do not comply with the law. The protest shall be submitted to the institution or official who has enacted the said act or to a senior institution or official.

In the event of unjustified rejection of the protest or failure to submit any reply the Prosecutor shall have the right within a month from the expiration of the term for the examination of the protest to submit to court a petition on the revocation of the unlawful act and liability of the responsible person prescribed by law. The Prosecutor's petition to court shall suspend the operation of the act for which the protest has been submitted.

Prosecutor's submission

In the event of the necessity to terminate an unlawful action, to eliminate the consequences of such action or to prevent a violation the Prosecutor shall apply with a written submission to the respective enterprise, institution, organization, official or person.

In the event of failing to comply with the claims expressed in the submission or failure to reply the Prosecutor shall have right to apply with a submission to the court or any other competent institution on the liability of the said person prescribed by law.

Other powers of Prosecutor

In the event if the Prosecutor has found a violation of the law which has no elements of crime, but it has failed or it has been impossible to restore lawfulness by warning, protest or submission, the Prosecutor shall apply with a submission to court.

The Prosecutor shall have also other rights and duties in reviewing and deciding cases provided for by Procedure Laws.

- ***Does the Prosecution Office have any other powers and rights?***

The powers and rights of the Prosecution Office when acting out criminal law field are regulated and provided for by the Law on Prosecution Office, as well as by several special laws.

As of February 1, 2004, the ***Administrative Procedure Law*** came into force in Latvia, that mainly regulates a supervision by court both over statutory acts issued by institutions of public administration and actual actions. This law provides for that within the meaning of the Administrative Procedure Law an institution is a subject of law, which is assigned with certain powers of state authority within field of public administration by means of statutory acts or public agreements. Regardless to fact that the Prosecution Office pursuant to power division principle belongs to judiciary, thereby institutionally it is separated from executive power, moreover functionally a duties of the Prosecution Office includes performance of functions of executive power (inter alia an examination of submissions and complaints), that is determined both by the Law on Prosecution Office, and Administrative Violations Code, and Law on Constitutional Court.

Wherewith in the administrative proceedings the Prosecution Office participates in a cases of administrative violations by issuing and administrative acts and performing an actual actions, or acting as subject of law who has rights to be a defendant of lawful interests and rights of private persons.

For example:

Immigration Law provides for that a decision on including a foreigner into a list of persons (hereinafter – “list”) to whom an entrance into the Republic of Latvia is forbidden shall be taken by the Minister of Interior. The decision of the Minister of Interior on including into the list can be challenged following the procedure provided for by the Administrative Procedure Law. When examining the case, the court can to invite Prosecutor General Office to provide an opinion within the frameworks of its competence.

The protection of the state secret

The Law on State Secret provides for that persons shall be granted a special permit to access a state secret. The ruling on refusal to issue a special permit can be challenged to the Director of Bureau for Protection of Constitution within 10 days as of day when person was informed on such ruling. The decision of Director of Bureau for Protection of State Secret a person can to challenge within 10 days as of day when he / she was informed on such decision, to Prosecutor General, whose decision is final and irreversible.

State Security Agencies

If a person is of an opinion that state security agencies with their actions has violated his / her lawful interests and freedoms, such person has rights to submit a **complaint to prosecutor** , who after an examination shall to issue a statement on conformity of actions of official of the state security agency to law, or to apply with a claim to court.

The competence of prosecutor in relation with administrative violations

The objective of administrative violations legislation in Latvian state is to protect a public order, property, socially economical, political and individual rights and freedoms of citizens, as well as the rights and lawful interests of businessmen, institutions and organizations, established administration order, public and state order, to strengthen a legitimacy, to prevent a violations of rights, to foster a citizens in the virtue of exact and strong compliance with law, to develop their respectful attitude towards rights, dignity and self-esteem of other citizens, the rules of social life, conscientious attitude to their obligations and responsibility before a society. In order to reach this objective the Administrative Violations Code provides for what kind of action or inaction shall be regarded as administrative violation, what administrative penalty and which institution (official), and following what procedure can to impose to on person who has committed an administrative violation.

In order to comply with provisions of law when imposing a penalty for administrative violations, a systematic **supervision** by higher institutions and officials, and **prosecutor** is performed, rights of appeal are foreseen, as well as other means provided for by the law.

The illegitimate, accusable action or inaction (intentional or due to negligence) shall be found to be an administrative violation in Latvia, which creates a threat to social or public order, property, the rights and freedoms of citizens, or established administration order, and an administrative liability thereof is provided for by the law.

The administrative liability for violations specified in the Administrative Code shall be applied, if for such violations due to their nature in accordance with law being in force a criminal liability is not foreseen.

Prosecutor's supervision over exercising of law in cases of administrative violations

The prosecutor while performing a supervision over exercising of law in cases of administrative violations shall have rights: to initiate a proceedings for administrative violation; to familiarize himself with materials of case; to verify a lawfulness of actions of institutions (officials) in the proceedings; to participate in case hearings; to submit an applications, to provide a statements on issues arisen within course of case review; to verify a correctness of penalties applied for administrative violations by respective institutions (officials); to submit a protest against decision in case and decision which was taken regarding complaint in the case of administrative violation; to suspend an execution of decision , as well as to perform other functions provided for by the law. The protest submitted by the prosecutor suspends an execution of decision till such protest will be examined. Prosecutor can to submit a protest regarding decision taken in respect of complaint concerning a decision taken in the case of administrative violation. The protest regarding decision in respect of complaint shall be submitted to higher institution (official) by the institution (official), which has taken a decision on complaint.

The prosecutors ***within their competence*** are designated to attend a different working parties aimed to draft a statutory acts, involved into various consultancy councils, groups of experts established in the state.

The Head Prosecutors of the Departments of Prosecutor General Office have rights to attend a sessions of the Cabinet of Ministers and to express their opinion on conformity of statutory acts under revision to the Constitution and laws. The prosecutors of judiciary regions have rights to attend a sessions of municipalities and their institutions of their respective regions. The prosecutors of districts (Cities of Republic) have rights to attend a sessions of respective municipalities and their institutions.

In Latvia there exists a possibility to set up a ***parliamentary investigation commission***. It is designated by Parliament and consists of Parliament deputies, its purpose is to conduct a parliamentary investigation. The parliamentary investigation commission shall be formed for certain cases, if that requests at least one third deputies of Parliament. Basing on motivated proposal of parliamentary investigation commission Prosecutor General shall immediately to designate one or several prosecutors for participation in the work of parliamentary investigation commission.

The prosecutor shall attend a sessions of parliamentary investigation commission and with permission of session's Chair asks questions to invited persons. The task of prosecutor is to verify whether information in possession of the parliamentary investigation commission contains indications regarding committed or planned criminal offence. With this purpose prosecutor organizes, manages and performs an inspection following a procedure prescribed by the Law on Prosecution Office. The Prosecutor informs the parliamentary investigation commission on results of inspection or preliminary investigation in the extent what he considers to be possible. If prosecutor finds sufficient indications regarding commission of the criminal offence, he shall institute a criminal case. The members of parliamentary investigation commission and prosecutor shall have the rights to get acquainted in accordance with procedure provide for by law with state secrets. The members of parliamentary investigation commission and prosecutor shall have the rights to get acquainted with cases of operational intelligence in the extent what is considered to be possible by Chief of operational institution.

7. a) No

b) On 20th December of 2006 the Constitutional Court of the Republic of Latvia took a judgment wherein a place and role of Prosecution Office within system of public institutions were analysed.

The Constitutional Court found that:

- The state itself can determine a place of Prosecution Office in the system of public institutions, ensuring a such status for Prosecution Office that is needed for fulfilment of its functions.
- The Parliament, when decided on status of the Prosecution Office, has based on considerations of historical succession and usefulness.
- The Prosecution Office is the judicial institution, and legal provisions of the Law on Prosecution Office governing a status of Prosecution Office complies with the Constitution of the Republic of Latvia.
- As the Prosecution Office is judicial institution, a conformity of its status to 58 Section of Constitution shall not be examined (while evaluating an institutional status of Prosecution Office, essential is a will of legislator, that was expressed during adoption of Constitution, The Law on Judiciary and the Law on Prosecution Office)

The 58 Section of Constitution states that: “The public administration bodies shall be subordinated to the Cabinet of Ministers”.

8. In our opinion the most substantial field of competence for strengthening the rule of law and human rights protection within competence of public prosecution office out of criminal law system field is protection pursuant to procedures provided for by the Law on Prosecution Office a lawful interests and rights of those persons, who have limited possibilities to defend their rights themselves (for example, under-age persons, disabled persons etc.).