

## ORGANIZATION AND FUNCTIONS OF THE PROSECUTION OFFICE IN LATVIA

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Recent political, economic and social developments in Europe and the world in general have resulted in important institutional changes for a lot of countries. And this is undoubtedly true for Latvia that joined the EU in May 2004.

This is an outline of some most essential reforms in the field of justice introduced right after the restoration of Latvia's independence, during the period the country prepared for the EU membership, and since our accession to the EU. I will also dwell on how the Prosecution Office of Latvia was founded and what activities it carries out.

The Prosecution Office of the Republic of Latvia was set up in 1990, on September 26, soon after the state regained its independence. In 1994, when the Parliament adopted the Law on Prosecution Office, major innovations were made, and that Law, with some later amendments, has been in effect since then.

The Latvian Law on Prosecution Office has become an attempt to incorporate all basic principles contained in the UN Guidelines on the role of prosecution. And it has to be noted that certain provisions formulated later in the Recommendations (2000) 19 of the Council of Europe had already been entered in our Law of 1994.

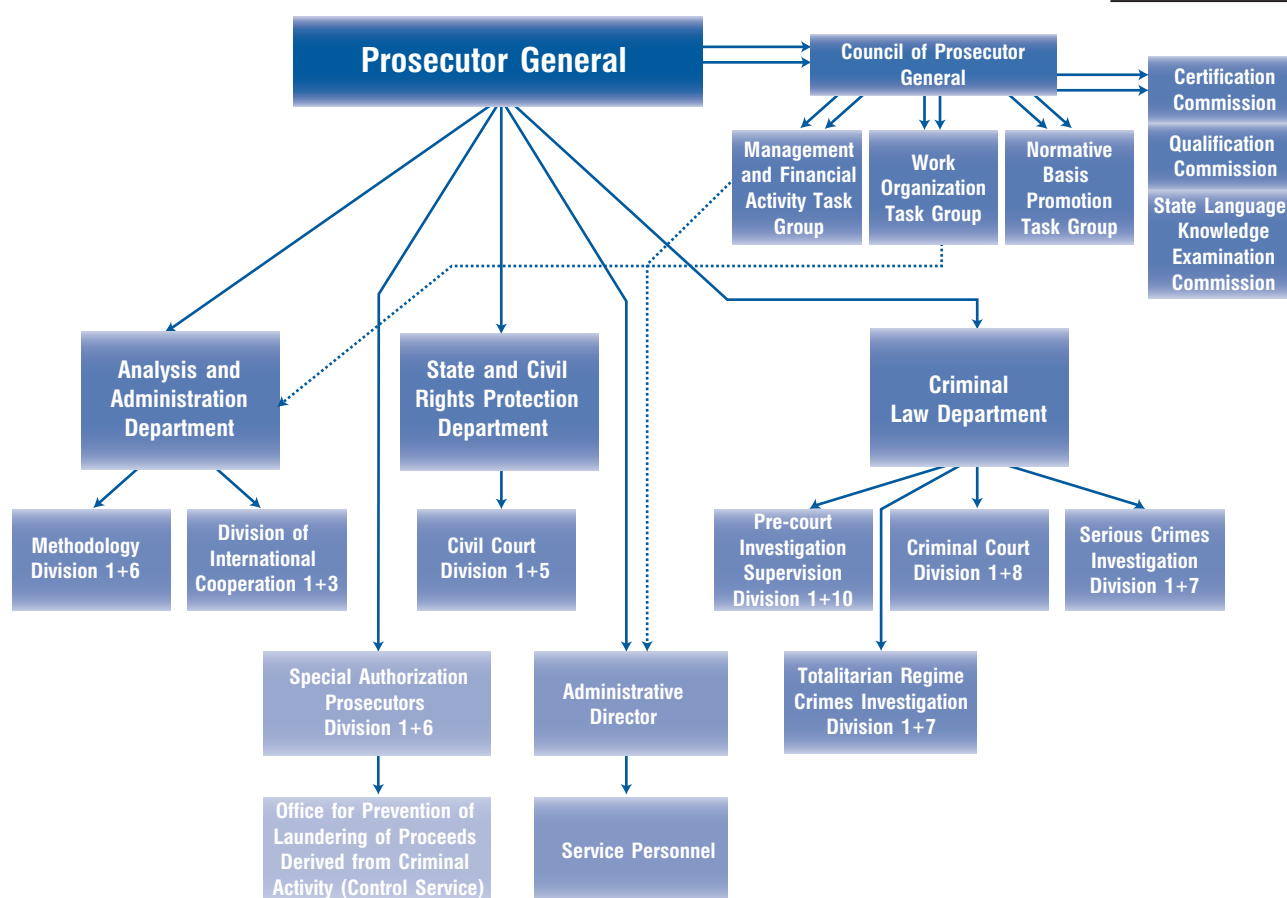
According to Article 1 of the Law, the Prosecution Office of the Republic of Latvia is an institution of judicial power which is one of the possible models mentioned in the Recommendations.

Our Prosecution Office is a uniform, centralized three-tier system, consisting of the Prosecution General Office, regional and district (or city) court prosecution offices. Such a structure corresponds to the Latvian three-tier judicial system. The Law also empowers the Prosecutor General with authority to establish, in the event of necessity, specialized branch prosecution offices. The criminological situation in the country and the specifics of criminal investigation should serve as grounds for creation of such specialized branch prosecution offices. Thus, in light of the present situation, there operate 6 structures of the kind, among which are: a specialized prosecution office dealing with corruption and organized crime; a prosecution office for customs matters; a specialized prosecution office prosecuting cases of financial and economic crimes, etc. Prosecutors working in these branch offices receive special training indispensable for their particular lines of activity.

The Prosecution Office also supervises the operation of a special service, combating money laundering. The head of the service is appointed by the Prosecutor General.

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All departments and divisions of the Prosecution Office are administered by Head Prosecutors appointed to their positions for a term of 5 years by the Prosecutor General who, while making his decision, has to take into account the statement of the Attestation Commission.

The maintenance of the Prosecution Office and its financial administration is secured by the Administrative Director and the technical personnel.

The Prosecutor General, who is at the top of the Prosecution Office hierarchy, conducts and controls activities of all prosecution offices and, in accordance with budget allocations, determines the inner structure of the institution as well as its staff.

The Prosecutor General is appointed by the Latvian Parliament for a term of 5 years following the recommendation of the Supreme Court Chair. The Law provides for criteria a candidate has to comply with to be considered for the position, as well as reasons why the Prosecutor General may be dismissed before his/her term in office is over (for example, if the Prosecutor General has violated any of restrictions envisaged by a special Law on Prevention of the Conflict of Interests in the Work of Public Officials, or has committed a crime, etc.) And, what is even more important, the Law determines the procedure for such a dismissal. In our opinion, it is the procedure itself that reveals whether the Prosecutor General of the state is assessed as a political figure or a professional.

The question of the Prosecutor General's dismissal before his term in office expires is not considered only by the Parliament – that is, by politicians. A very important role here is played by the Supreme Court that carries out the examination of the Prosecutor General's work and renders its own legal assessment. If judges of the Supreme Court do not find violation of any laws in the Prosecutor General's activities, the Parliament loses its rights to consider the said question.

The Prosecutor General's Office consists of departments. Currently there are 3 of them, which could be provisionally referred to as: Criminal Law Department, Department for Protection of Rights and Legal Interests of Persons and the State, and Department dealing with prosecutors' work management and analysis. Head prosecutors in charge of these departments are responsible for their respective lines of activity within the whole country; they simultaneously hold the position of deputies to the Prosecutor General, and one of them performs Prosecutor General's duties in case of his/her absence.

With such an organizational structure the principle of "prosecutor's independence" stipulated by the Law proves to be very important. Every prosecutor investigating a case is independent in his/her decisions which he/she takes individually, proceeding from the laws and his or her beliefs and convictions. A prosecutor holding a higher position can give instructions to a prosecutor below him or her in rank with regard to assembly of evidence for a concrete case, but he cannot instruct the latter in how to qualify the criminal offence, nor how to evaluate the evidence.

Prosecutors take independent decisions whether to bring or drop charges against a person. The main principle provided for by the Law is that a senior prosecutor has the right to take over into his/her jurisdiction any case, although he/she has no right to instruct his subordinate prosecutor to perform actions contrary to the conviction of the latter. There is a special provision in our Law on Prosecution Office stipulating that the prosecutor shall be independent in his/her activities from any influences of other public and administrative institutions or officials and shall comply only with the Law. In case there is an attempt to influence a prosecutor in order to interfere with the investigation or so that an unlawful decision is taken by him or her, the Law envisages criminal liability.

The Law also guarantees that in case of a prosecutor's detention, arrest or any other human rights restricting measures, the Prosecutor General shall be immediately notified to exclude the possibility of illegally pressurizing the said prosecutor.

The Prosecutor General appoints prosecutors for an unlimited term of authority, mainly proceeding from the principles of professional and ethical adequacy. The unlimited term of authority serves as another safeguard for prosecutors' independence.

If in the first years after the restoration of Latvia's statehood it was difficult to find candidates for the position of a prosecutor, the situation has drastically changed now. A very strict selection procedure involving prosecutors' Qualification and Attestation Commissions has been worked out. A person can be appointed to the position of a prosecutor only having acquired a degree

in Law and completed in-service training at the Prosecution Office, as well as having passed a special qualification examination and received a positive statement by both above mentioned commissions.

The Law allows rotation of staff within the institutions of judiciary. Thus the prosecutors have the right to transfer to work as judges, while judges have the right to become prosecutors. The Law authorizes the Prosecutor General to establish Prosecutor General's Council, to which Head Prosecutors in charge of Departments and Head Prosecutors of judicial regions are members. This is an advisory body that considers major organizational and work problems of the Prosecution Office. The Council establishes Attestation and Qualification Commissions whose decisions are vital in the appointment of a candidate to a prosecutor's position, as well as any kind of promotion in the course of his/her career.

In accordance with the Law prosecutors shall fulfill the following functions: supervise the field work of investigative agencies; organize, conduct and perform pre-trial investigation; initiate and conduct criminal prosecution; prosecute on behalf of the state in all courts; submit protests; supervise execution of penalties securing due course of law.

Our legislation successfully balances the distribution of tasks and authority between investigative agencies, on the one hand, and the prosecution office on the other. There are at the moment 10 institutions (such as the State Police, Financial Police, Security Police, etc.) entitled to carry out pre-trial investigation. Since the State Police deal with the largest amount of investigation, I would like to focus more on the work of this public structure using it as an example of interaction between the prosecution office and an investigative agency.

It has to be noted that there is no administrative link between the two institutions. However, they practice very close cooperation when it comes to matters of procedure. The police are responsible for the collection of confirmed admissible evidence and disclosure of crimes, while the task of the prosecution is to organize and supervise the process of investigation following the Criminal Procedure Law and to give instructions to the police which are obligatory for the latter. Besides, as the Law stipulates, a prosecutor is the only person who, upon receipt of all documents from the police, evaluates all evidence existing in a case and decides whether or not to initiate criminal prosecution against a suspect.

It is noteworthy, however, that the police, provided they do not agree with the prosecution, have rights to appeal a prosecutor's decision to a higher-ranking prosecutor.

To investigate cases of most dangerous or serious and specific crimes joint investigation teams involving both police officers and prosecutors are formed.

Since the prosecution is responsible for the lawfulness and effectiveness of the pre-trial investigation process in general, prosecutors have the mandate to supervise compliance with the law by the police. Having revealed any violations of the law, prosecutors can either apply to the police administration notifying them of a concrete violation, or initiate a disciplinary or criminal case against the offender.

There is no legal provision in Latvia which would consider investigation of any particular criminal offence as a matter of priority. However, it does not exclude the possibility for the Prosecutor General using his/her authority to sanction investigation of some particularly urgent crimes as priority cases *de facto*.

The prosecutor's competence extends the boundaries of an exclusively criminal sphere. The Law obliges the prosecutor to carry out examinations in the following cases:

- If the rights and lawful interests of persons who have restricted ability to defend their rights (for example, disabled persons, minors, etc.) are to be protected;
- If the President of the State, the Parliament or the government entrusts the prosecutor with the task of examining facts concerning violation of the law;
- Upon receipt of information on a possible violation of the law which poses threat to the State the necessity for an examination is recognized by the Prosecutor General or a Head Prosecutor.

Besides, in the event the possibility of an unlawful action has been stated, the prosecutor issues a written warning on impermissibility of the violation of the law in the future.

The prosecutor also has the right to submit a protest concerning unlawful normative or legal acts, as well as take all the necessary measures to protect the rights and lawful interests of the state, local municipalities, or the above – mentioned persons. I have to stress here that the interests of victims of criminal offences to which the prosecutor is a guarantee, are defended in accordance with the order specified by the criminal procedure.

In light of the fact that the Latvian Law provides for a relatively wide range of rights for the prosecutor in the so-called non-criminal sphere, we are interested in the way this question is and will be addressed in other countries taking into account the decisions of the Prosecutor Generals' Conferences. To that, we have to admit that the very concept of a "non-criminal sphere" is interpreted differently in different countries.

With regard to the international cooperation in legal matters, it has to be noted that the Prosecution Office's role here is that of the main subject of international mutual assistance in the field of criminal law, and a prosecutor from the Prosecutor General's office is designated as Latvia's Eurojust representative in the Hague.

At the last meetings of Prosecutors General in Slovakia and Germany the Code of Ethics for prosecutors and its elaboration was in the focus of attention.

As far as Latvia is concerned, the Prosecutor General's Council endorsed the respective Code of Ethics in 1998. The document contains provisions and principles of professional conduct non-compliance with which results in sanctions of a moral character (such as reprimand or apology in public, etc.) In cases of gross violation of ethical norms the law envisages disciplinary liability.

Besides the Code of Ethics, the Law on Prosecution also specifies violations for which a prosecutor is subject to disciplinary liability, as well as possible disciplinary penalties. In cases when more severe penalties are imposed (demotion in position, for example, or dismissal) the Prosecutor General, who has the right to impose any disciplinary penalty on any prosecutor, shall first receive a statement of the Attestation Commission with regard to the prosecutor in question.

In accordance with the Recommendations R (2000) 19 the law shall provide for the conditions of prosecutor's work, that is – remuneration, pensions, and other social guarantees. The Latvian Law on Prosecution stipulates that prosecutors' remuneration shall be equal to 90-95% of the remuneration received by judges of corresponding ranks.

In 1999 a special Law on Long-Service Bonus Pensions for Prosecutors was adopted, where the conditions for this kind of pension were specified in detail. The Law also stipulates that the State shall provide prosecutors with the mandatory life and health insurance.

In many respects the Latvian Law on Prosecution is in tune with the provisions of Recommendation R (2000) 19. However, I wouldn't claim that all necessary changes have been completed as far as the structure of the prosecution office or the scope of the prosecutor's authority is concerned. We have only set the foundation for further development.