

Prosecutor's Office Act

Passed on 22 April 1998,

(RT* I 1998, 41/42, 625),

entered into force 20 May 1998,

amended by the following Acts:

19.04.2000 entered into force 01.07.2000 - RT I 2000, 35, 222

14.03.2000 entered into force 16.04.2000 - RT I 2000, 28, 167

08.12.1999 entered into force 01.01.2000 - RT I 1999, 95, 839

11.02.99 entered into force 24.02.99 - RT I 1999, 18, 303;

25.11.98 entered into force 31.12.98 - RT I 1998, 110, 1812.†

Chapter 1

General Provisions

§ 1. Prosecutor's Office

(1) The Prosecutor's Office is a government agency within the area of government of the Minister of Justice, the duty of which is to:

1) supervise the legality of registration of reports of criminal offences and the legality of pre-trial criminal proceedings;

(19.04.2000 entered into force 01.07.2000 - RT I 2000, 35, 222)

2) (Repealed - 19.04.2000 entered into force 01.07.2000 - RT I 2000, 35, 222)

3) supervise the legality of surveillance by surveillance agencies pursuant to the Surveillance Act (RT I 1994, 16, 290; 1995, 15, 173; 1996, 49, 955; 1997, 81, 1361; 93, 1557; 1998, 47, 698; 50, 753; 51, 756; 61, 981; 101, 1663);

4) represent public prosecutions;

5) (Repealed - 19.04.2000 entered into force 01.07.2000 - RT I 2000, 35, 222)

6) perform duties arising from international co-operation;

7) perform other duties imposed on the Prosecutor's Office by law.

(2) The Prosecutor's Office is divided into the Public Prosecutor's Office and into county and city prosecutor's offices subordinate to it.

§ 2. Prosecutors

(1) Prosecutors are the prosecutors of the Public Prosecutor's Office and the prosecutors of the county and city prosecutor's offices.

(2) Prosecutors shall be independent in the performance of their duties and act only pursuant to law and according to their conscience.

Chapter 2

Organisation of Prosecutor's Office

§ 3. Chief Public Prosecutor

(1) The Chief Public Prosecutor shall direct the Prosecutor's Office and perform other duties imposed on him or her by law.

(2) If the Chief Public Prosecutor is temporarily unable to perform his or her duties due to illness or other hindrance, the Minister of Justice shall designate a substitute for him or her from among the public prosecutors.

§ 4. Public Prosecutor's Office

(1) The prosecutors of the Public Prosecutor's Office shall represent public prosecutions in the Supreme Court and circuit courts and perform other duties imposed on them by law.

(2) The prosecutors of the Public Prosecutor's Office are the Chief Public Prosecutor and the public prosecutors.

(3) The Public Prosecutor's Office may be divided into departments, which shall be approved by the Minister of Justice. The Chief Public Prosecutor shall designate the prosecutors who direct the departments and the public prosecutors who belong to the departments.

(4) (Repealed - 11.02.99 entered into force 24.02.99 - RT I 1999, 18, 303)

§ 5. County and city prosecutor's offices

(1) The prosecutors of the county and city prosecutor's offices shall supervise the legality of pre-trial procedure in criminal matters, represent public prosecutions in the county and city courts and perform other duties imposed on them by law.

(2) The prosecutors of the county and city prosecutor's offices are senior county or city prosecutors, county or city prosecutors and assistant prosecutors.

(3) The Minister of Justice shall establish the county and city prosecutor's offices and approve their territorial jurisdiction on the basis of the requirements for effective and economical judicial administration.

(4) County and city prosecutor's offices may be divided into departments, which shall be approved by the Minister of Justice. Senior county or city prosecutors shall designate the prosecutors who direct the departments and the county or city prosecutors and assistant prosecutors who belong to the departments.

(5) (repealed - 11.02.99 entered into force 24.02.99 - RT I 1999, 18, 303)

§ 51. Number of prosecutors

(1) The number of public prosecutors shall be twenty-four.

(2) The total number of prosecutors in the county and city prosecutor's offices shall be one hundred and sixty-four.

(11.02.99 entered into force 24.02.99 – RT I 1999, 18, 303)

§ 6. Senior county and city prosecutors

(1) Senior county and city prosecutors shall direct the county and city prosecutor's offices and perform other duties imposed on them by law.

(2) If a senior county or city prosecutor is temporarily unable to perform his or her duties due to illness or other hindrance, the Minister of Justice shall designate a substitute for him or her from among the county and city prosecutors.

§ 7. Assistant prosecutors

(1) During a clerkship or probationary period, assistant prosecutors shall be supervised by county or city prosecutors or senior county or city prosecutors.

(2) During a clerkship or probationary period, assistant prosecutors shall not perform duties imposed on prosecutors in matters concerning crimes in the first degree.

(3) Assistant prosecutors shall not be members of the prosecutors' competition and evaluation committee or the prosecutors' disciplinary committee.

§ 8. Plan for division of duties

(1) After considering the opinion of the public prosecutors, the Chief Public Prosecutor shall determine their division of duties. A senior county or city prosecutor shall determine the division of duties of the county or city prosecutors and assistant prosecutors after considering the opinion of the county or city prosecutors.

(2) Duties shall be divided according to type of criminal offence, offender or other general criteria. The procedure for the substitution of prosecutors shall also be determined in a plan for the division of duties.

(3) A plan for the division of duties shall be prepared one year in advance and may be amended during the year only with good reason.

§ 9. Supervisory control

(1) The Minister of Justice shall exercise supervisory control over the Prosecutor's Office. The supervisory control exercised by the Minister of Justice shall not pertain to decisions that prosecutors make in performing their duties imposed by law and shall not prejudice the independence of prosecutors.

(2) The Chief Public Prosecutor shall exercise supervisory control in the Prosecutor's Office, and senior county and city prosecutors shall exercise supervisory control in the county and city prosecutor's offices.

(3) Persons exercising supervisory control have the right to demand explanations and information from prosecutors under their supervisory control.

§ 10. Substitution

The Chief Public Prosecutor or a senior county or city prosecutor may, with good reason, substitute for a subordinate prosecutor in a criminal proceeding or impose such obligation on another subordinate prosecutor, who shall not be a subordinate of the person substituted. A substitution order shall be in writing, shall set out the extent to which one person substitutes for another and shall justify the need for substitution.

§ 11. Reporting

(1) Senior county and city prosecutors shall submit activity reports of the county and city prosecutor's offices to the Chief Public Prosecutor twice a year.

(2) The Chief Public Prosecutor shall submit a consolidated activity report of the prosecutor's offices to the Minister of Justice twice a year.

§ 12. Statutes of Prosecutor's Office

The Minister of Justice shall approve the statutes of the Prosecutor's Office.

Chapter 3

Prosecutors' Assembly

§ 13. Prosecutors' Assembly

(1) The Prosecutors' Assembly is a meeting of all prosecutors, which shall be convened at least once a year. Assistant prosecutors shall participate in the assembly with the right to speak.

(2) The Prosecutors' Assembly shall:

1) elect a total of two prosecutors from the county and city prosecutor's offices, and one public prosecutor as members of the prosecutors' competition and evaluation committee;

2) elect a total of three prosecutors from the county and city prosecutor's offices, and one public prosecutor as members of the disciplinary committee;

3) approve the procedures of the Prosecutors' Assembly;

4) hear reports of the Minister of Justice and the Chief Public Prosecutor concerning the activities of the prosecutor's offices;

5) consider issues concerning the activities of the prosecutor's offices and prosecutors' service and shall make proposals for the resolution thereof;

(3) The Chief Public Prosecutor shall convene the Prosecutors' Assembly and direct its activities.

Chapter 4

Prosecutors' Service

Division 1

General Provisions

§ 14. Application of Public Service Act in respect of prosecutors

The Public Service Act (RT I 1995, 16, 228; 50, 764; 97, 1664; 1996, 15, 265; 45, 850; 1997, 1, 4; 29, 447; 1998, 34, 486; 38, 563; 41/42, 625; 50, 753; 57, 858; 110, 1809) applies to the prosecutors' service unless otherwise provided by this Act.

Division 2

Appointment to Office

§ 15. Requirements for prosecutors

(1) An Estonian citizen with active legal capacity who has attained at least 21 years of age, has completed an academic higher education in law, is proficient in Estonian to the extent established by or pursuant to law, is of high moral character and has the necessary abilities and personal characteristics may be appointed as a prosecutor.

(2) The following shall not be appointed as a prosecutor:

1) a person in respect of whom a conviction for an intentionally committed criminal offence has entered into force;

2) a person who has been released from the public service for a disciplinary offence;

3) a person who has been disbarred from the Estonian Bar Association or expelled from the notarial profession;

4) a person closely related by blood (parent, brother, sister, child) or by marriage (spouse, spouse's parent, brother, sister, child) to the prosecutor to whom he or she is directly subordinate;

5) a person who due to his or her state of health is unable to work as a prosecutor. In the case of doubt, a medical committee shall determine the state of health of a person.

(3) A person who has been employed as a prosecutor, judge or sworn advocate for at least two years immediately before appointment to office, or an assistant prosecutor released from clerkship after the end of the probationary period may be appointed as a county or city prosecutor. The clerkship period of an assistant prosecutor shall be included in the period of employment as a prosecutor on the condition that the prosecutor has passed the prosecutor's examination.

(4) A person who has been employed as a prosecutor for at least three years immediately before appointment to office may be appointed as a senior county or city prosecutor or public prosecutor. The clerkship period or probationary period of an assistant prosecutor shall not be included in the period of employment as a prosecutor.

(5) A person who has been employed as a public prosecutor or senior county or city prosecutor for at least three years immediately before appointment to office may be appointed as the Chief Public Prosecutor.

§ 16. Appointment of prosecutors to office

(1) The Government of the Republic shall appoint the Chief Public Prosecutor to office on the proposal of the Minister of Justice after considering the opinion of the Legal Affairs Committee of the Riigikogu†.

(2) The Minister of Justice shall appoint senior county and city prosecutors to office on the proposal of the Chief Public Prosecutor.

(3) The Minister of Justice shall appoint public prosecutors, county and city prosecutors and assistant prosecutors to office on the proposal of the prosecutors' competition and evaluation committee.

(4) A person may be appointed as the Chief Public Prosecutor or a senior county or city prosecutor if he or she gives written consent for such appointment.

(5) A person shall not be appointed as a prosecutor if he or she does not meet the requirements for prosecutors. A decision not to appoint a person as a prosecutor shall be justified.

§ 17. Prosecutors' term of office

(1) The Chief Public Prosecutor shall be appointed to office for a term of five years.

(2) Senior county or city prosecutors shall be appointed to office for a term of five years.

(3) Public prosecutors, county and city prosecutors and assistant prosecutors shall be appointed to office for an unspecified term.

§ 18. Public competition

(1) Public prosecutors, county and city prosecutors and assistant prosecutors shall be appointed to office on the basis of a public competition.

(2) The Minister of Justice shall announce a public competition for a vacant position of prosecutor in the *Riigi Teataja Lisa*** . Applicants shall be given at least two weeks after the date of publication of the notice for submission of their applications.

(3) The Chief Public Prosecutor and senior county and city prosecutors shall be appointed to office without a public competition.

§ 19. Assessment of participants in public competition

(1) The prosecutors' competition and evaluation committee shall assess the suitability of an applicant for a position.

(2) If a prosecutor applies for a vacant position, the prosecutor to whom the applicant is directly subordinate shall present a reasoned opinion on the applicant to the prosecutors' competition and evaluation committee.

§ 20. Clerkship and probationary period of assistant prosecutors

- (1) Persons appointed as assistant prosecutors shall undergo a clerkship. The duration of a clerkship shall be two years.
- (2) During a clerkship, an assistant prosecutor shall acquire the theoretical knowledge and professional skills necessary for a prosecutor under the supervision of a senior county or city prosecutor, or county or city prosecutor.
- (3) The Minister of Justice shall exempt from a clerkship a person who has undergone a clerkship earlier and passed the prosecutor's examination, and may exempt from a clerkship a person who has been employed as a prosecutor, judge or sworn advocate for at least two years.
- (4) An assistant prosecutor exempted from a clerkship shall be appointed to office with a probationary period of six months. During a probationary period, the compliance of the professional skills, abilities and personal characteristics of an assistant prosecutor with the requirements for prosecutors shall be assessed.
- (5) The prosecutors' competition and evaluation committee shall assess the results of the probationary period of an assistant prosecutor after considering the opinion of the prosecutor supervising the assistant prosecutor. The prosecutors' competition and evaluation committee shall make a proposal to the Minister of Justice to terminate the probationary period or release the assistant prosecutor from service due to unsatisfactory completion of the probationary period.
- (6) The Minister of Justice may shorten the duration of the clerkship of an assistant prosecutor, but for not more than one year.

§ 21. Prosecutor's examination

- (1) Assistant prosecutors who are in clerkship shall take a prosecutor's examination. A prosecutor's examination shall be held not earlier than two months before the termination of a clerkship.
- (2) An assistant prosecutor's theoretical knowledge and skill in solving practical problems shall be assessed during the prosecutor's examination. The Minister of Justice shall establish the requirements and procedure for taking the examination.
- (3) The results of the prosecutor's examination shall be assessed as "pass" or "fail".
- (4) If an assistant prosecutor does not pass the examination, the prosecutors' competition and evaluation committee shall propose that the Minister of Justice release the assistant prosecutor from service or extend his or her clerkship. The Minister of Justice may extend a clerkship by up to six months.
- (5) If a clerkship is extended, the re-examination shall take place not earlier than two months before the termination of the extended clerkship.
- (6) If an assistant prosecutor does not pass a re-examination, the Minister of Justice shall release the assistant prosecutor from service.

Division 3

Benefits Related to Office and Guarantees of Independence

§ 22. Salary

- (1) The salary of a prosecutor shall be the salary rate at the highest level of the salary scale for state public servants multiplied by a coefficient specified in this Act.
- (2) The coefficient of the salary of the Chief Public Prosecutor is 1.5.
- (3) The coefficient of the salary of a prosecutor who directs a department of the Public Prosecutor's Office is 1.3.
- (4) The coefficient of the salary of a public prosecutor or senior county or city prosecutor is 1.2.
- (5) The coefficient of the salary of a prosecutor who directs a department of a county or city prosecutor's office is 1.1.
- (6) The coefficient of the salary of a county or city prosecutor is 1.0.
- (7) The coefficient of the salary of an assistant prosecutor is 0.7, or 0.5 during a clerkship.

§ 23. Additional remuneration for supervision

A prosecutor supervising an assistant prosecutor shall receive remuneration for supervision equal to 5 per cent of the salary of the supervising prosecutor for each supervised person.

(08.12.1999 entered into force 01.01.2000 - RT I 1999, 95, 839)

§ 24. Compensation for proprietary damage

The state shall compensate a prosecutor and his or her family members for any proprietary damage which they suffer during the performance of the duties of the prosecutor.

§ 25. Prosecutor's old-age pension

(1) A prosecutor who has been employed as a prosecutor for at least twenty-five years has the right to receive a prosecutor's old-age pension when he or she attains the pensionable age.

(2) A person who has been employed as a prosecutor for at least fifteen years and as a judge for at least ten years prior thereto also has the right to receive a prosecutor's old-age pension.

(3) The amount of a prosecutor's old-age pension is 65 per cent of the prosecutor's last salary.

(4) If the salary of a prosecutor in the position in which the person who receives a prosecutor's old-age pension was employed is changed, the prosecutor's old-age pension shall be recalculated. In such case, the pension shall be paid in the altered amount as of the first day of the following month.

(5) The portion of a prosecutor's old-age pension which exceeds the general old-age pension shall be paid from the state budget.

§ 26. Prosecutor's disability pension

(1) A person who becomes disabled during his or her employment as a prosecutor and whose length of service as a prosecutor is at least fifteen years has the right to receive a prosecutor's disability pension.

(2) If a prosecutor becomes disabled due to the performance of his or her duties as a result of an attack made against him or her or as a result of the prevention of a criminal offence by the prosecutor, he or she has the right to receive a disability pension regardless of his or her length of service.

(3) The amount of a prosecutor's pension for a category I disabled person is 65 per cent, the pension for a category II disabled person is 50 per cent and the pension for a category III disabled person is 30 per cent of the prosecutor's last salary.

(4) If the category of a disabled person or the salary of a prosecutor in the position in which the person who receives a prosecutor's disability pension was employed immediately before becoming disabled is changed, the prosecutor's disability pension shall be recalculated. In such case, the pension shall be paid in the altered amount as of the first day of the following month.

(5) The portion of a prosecutor's disability pension which exceeds the general disability pension shall be paid from the state budget.

§ 27. Official attire

(1) Prosecutors shall wear robes as official attire at court sessions.

(2) The state shall give official attire to prosecutors without charge.

(3) The Government of the Republic shall determine the description of official attire.

Division 4

Duties

§ 28. Obligation of professional secrecy

A prosecutor shall not disclose information which becomes known to him or her in connection with the performance of his or her duties if this may prejudice the administration of justice. The obligation of professional secrecy has an unspecified term.

§ 29. Duty to supervise

(1) County and city prosecutors are required to supervise assistant prosecutors and trainees during their clerkships and probationary periods on the orders of senior county or city prosecutors.

(2) No county or city prosecutor shall be required to supervise more than one assistant prosecutor or trainee at a time.

§ 30. Restrictions on service of prosecutors

(1) Prosecutors shall not be employed elsewhere outside of their professional duties, except for teaching or research.

(2) A prosecutor shall not be a founder, managing partner, member of the management board or supervisory board of a commercial undertaking, director of a branch of a foreign commercial undertaking, or a member of a political party.

Division 5

Disciplinary Liability

§ 31. Disciplinary penalties

(1) A disciplinary penalty may be imposed on a prosecutor for a disciplinary offence.

(2) Disciplinary penalties are:

- 1) a reprimand;
- 2) a fine of up to one month's salary;
- 3) a reduction of salary;
- 4) release from service.

§ 32. Reduction of salary

As a disciplinary punishment, a prosecutor's salary may be reduced by not more than one quarter and for not longer than one year.

§ 33. Disciplinary committee

(1) The prosecutors' disciplinary committee shall consider disciplinary offences committed by prosecutors.

(2) The disciplinary committee shall be comprised of one public prosecutor, a total of three prosecutors from county and city prosecutor's offices, and one judge elected by the representative body of judges. The disciplinary committee shall be elected for three years.

(3) The disciplinary committee shall elect the chairman of the disciplinary committee and his or her substitutes from among its members who are prosecutors.

(4) The Minister of Justice shall approve the procedures of the disciplinary committee.

§ 34. Right to impose disciplinary penalties

(1) The Minister of Justice has the right to impose disciplinary penalties on the proposal of the disciplinary committee.

(2) The Government of the Republic shall decide the release of the Chief Public Prosecutor from service as a disciplinary punishment on the proposal of the Minister of Justice within one month.

§ 35. Initiation of disciplinary proceedings

(1) Disciplinary proceedings may be initiated by:

- 1) the Minister of Justice or the Chief Public Prosecutor against all prosecutors;
- 2) a senior county or city prosecutor against prosecutors subordinate to him or her.

(2) A disciplinary proceeding shall be initiated by a directive that shall be promptly communicated to the prosecutor against whom the disciplinary proceeding is initiated.

(3) A person who initiates a disciplinary proceeding may gather evidence and demand explanations concerning the disciplinary offence. It is compulsory to demand explanations from the prosecutor against whom a disciplinary proceeding is initiated. The Minister of Justice may assign the task of gathering evidence and demanding explanations to the Chief Public Prosecutor; the Chief Public Prosecutor or a senior county or city prosecutor may assign such task to the prosecutor directly subordinate to him or her. The task cannot be assigned to a prosecutor who is a member of the disciplinary committee.

(4) A person who initiates a disciplinary proceeding may suspend the prosecutor for the time of the disciplinary proceeding. During the suspension, the prosecutor shall continue to receive his or her salary together with additional remuneration.

(5) On the basis of gathered evidence, the person who initiated a disciplinary proceeding shall bring a disciplinary charge or terminate the disciplinary proceeding.

§ 36. Disciplinary charge

(1) A disciplinary charge is a written document, which shall set out:

- 1) the given name, surname and title of the accused;
 - 2) the description and time of commission of the offence;
 - 3) the evidence proving commission of the offence;
 - 4) the person who brings the charge, the date and place of preparation of the charge.
- (2) A disciplinary charge shall not be brought and a disciplinary proceeding shall be terminated if more than one year has passed from the commission of the disciplinary offence.

§ 37. Preparation for session of disciplinary committee

- (1) The chairman of the disciplinary committee shall determine the time and place of sessions of the disciplinary committee.
- (2) The person who brings a disciplinary charge and the prosecutor whose disciplinary offence is considered shall be invited to the session. In the case of a disciplinary proceeding initiated against an assistant prosecutor, his or her supervising prosecutor shall also be invited to the session of the disciplinary committee.

§ 38. Right to examine disciplinary charge materials

- (1) A disciplinary charge shall be given to the prosecutor against whom a disciplinary proceeding is initiated at least three days before the session of the disciplinary committee is held.
- (2) A prosecutor against whom a disciplinary charge is brought has the right to examine the materials of the disciplinary charge. The materials of a disciplinary charge brought against an assistant prosecutor may also be examined by his or her supervising prosecutor.

§ 39. Session of disciplinary committee

- (1) The disciplinary committee shall consider a disciplinary offence in a closed session.
- (2) The disciplinary committee has a quorum if at least three members of the disciplinary committee, including the chairman, participate in the session.
- (3) The chairman of the disciplinary committee shall chair sessions of the disciplinary committee.
- (4) A member of the disciplinary committee cannot participate in the consideration of the disciplinary charge brought against him or her.

§ 40. Decision of disciplinary committee

- (1) By a decision of the disciplinary committee, a proposal to impose or not to impose a disciplinary penalty shall be made to the Minister of Justice, or the disciplinary proceeding shall be terminated if there was no disciplinary offence.
- (2) If it is necessary to gather supplementary evidence, the disciplinary committee shall defer the consideration of the disciplinary offence, determine the time and place of the next session and assign the task of gathering supplementary evidence to one member of the disciplinary committee or the person who brought the disciplinary charge.
- (3) The disciplinary committee shall make a decision by a simple majority of the members of the disciplinary committee participating in the session. If the votes are divided equally, the chairman of the disciplinary committee shall cast the deciding vote.

§ 41. Imposition of disciplinary penalties

The Minister of Justice shall decide the imposition of disciplinary punishments or the making of a proposal specified in subsection 34 (2) of this Act, within one month after receipt of a proposal of the disciplinary committee.

§ 42. (Repealed - 11.02.99 entered into force 24.02.99 - RT I 1999, 18, 303)

Division 6

Evaluation

§ 43. Prosecutors' competition and evaluation committee

- (1) The prosecutors' competition and evaluation committee shall evaluate persons applying for the position of prosecutor if the position is filled by way of a public competition, shall organise prosecutor's examinations and assess the results of the probationary periods of assistant prosecutors.

(2) The prosecutors' competition and evaluation committee shall be comprised of the Chief Public Prosecutor, one public prosecutor, a total of two prosecutors from county and city prosecutor's offices, one judge elected by the representative body of judges, a jurist designated by the Dean of the Law Faculty of the University of Tartu and an official of the Ministry of Justice designated by the Minister of Justice. The term of authority of a member of the prosecutors' competition and evaluation committee, excluding the Chief Public Prosecutor and an official of the Ministry of Justice, shall be three years.

(3) The Chief Public Prosecutor shall be the chairman of the prosecutors' competition and evaluation committee.

(4) The prosecutors' competition and evaluation committee has a quorum if at least five members of the committee, including the chairman, participate in the session.

(5) The Public Prosecutor's Office shall manage the operations of the prosecutors' competition and evaluation committee.

§ 44. Requirements and method of evaluation

The Minister of Justice shall establish the evaluation requirements for prosecutors and the method of evaluation.

Division 7

Release from Service

§ 45. Release from service at own request

A prosecutor may be released from service at his or her own request.

§ 46. Release of assistant prosecutor from service

An assistant prosecutor shall be released from service if he or she fails the prosecutor's examination or re-examination.

§ 47. Release from service due to age

A prosecutor may be released from service when he or she attains sixty-five years of age.

§ 48. Release from service due to bankruptcy

A prosecutor shall be released from service if he or she is declared bankrupt.

§ 49. Release from service for disciplinary offence

A prosecutor shall be released from service for a disciplinary offence pursuant to the procedure provided for in Division 5 of this Act.

§ 50. Release of Chief Public Prosecutor or senior county or city prosecutor from service due to expiry of term of office

(1) Upon the expiry of the term of office of the Chief Public Prosecutor or a senior county or city prosecutor, the Minister of Justice shall release him or her from office and shall appoint:

- 1) the Chief Public Prosecutor as a public prosecutor or senior county or city prosecutor;
- 2) a senior county or city prosecutor as a senior county or city prosecutor of another county or city, or as a county or city prosecutor.

(2) The Chief Public Prosecutor shall be appointed as a county or city prosecutor upon the existence of a vacant position if he or she so requests after the expiry of his or her term of office.

(3) The appointments to office provided for in subsections (1) and (2) of this section shall be effected without a public competition.

(4) The Chief Public Prosecutor and senior county and city prosecutors may be reappointed to office for a new term of office.

(5) The Chief Public Prosecutor and senior county and city prosecutors may be appointed to a position provided for in subsection (1) of this section or reappointed to office, with their written consent.

(6) If the Chief Public Prosecutor or a senior county or city prosecutor does not consent to be appointed to a position provided for in subsection (1) of this section, if the Chief Public Prosecutor does not wish to be appointed as a county or city prosecutor, or if there is no vacant position of county or city prosecutor, he or she shall be released from service.

§ 51. Exceptions to release from service

The bases for release from service provided for in clauses 117 (1) 4) and 6) of the Public Service Act do not apply to prosecutors.

Division 8

Engagement of Prosecutors in Performance of Administrative Duties

§ 52. Engagement of prosecutors in performance of administrative duties

(1) After hearing the opinion of the Chief Public Prosecutor, the Minister of Justice may appoint a prosecutor, with his or her consent, to a position on the staff of the Ministry of Justice or the Public Prosecutor's Office in order to perform the duties of administration of prosecutor's offices.

(2) Upon appointing a prosecutor to a position on the staff of the Ministry of Justice or the Public Prosecutor's Office, the prosecutor shall retain the benefits related to office prescribed for prosecutors.

(3) A prosecutor who has been employed in the Ministry of Justice or the Public Prosecutor's Office on the basis specified in subsection (1) of this section for at least two years shall be reappointed as a prosecutor at his or her request without a public competition. In such case, the Minister of Justice cannot refuse to reappoint the prosecutor upon the existence of a vacant position of prosecutor.

(4) The period of service in the Ministry of Justice or the Public Prosecutor's Office shall be included in the period of service in the position in which the prosecutor was employed before appointment to a position on the staff of the Ministry of Justice or the Public Prosecutor's Office.

Chapter 5

Implementing Provisions

§ 53. Appointment of prosecutors to office

(1) Prosecutors who are in office on the date of entry into force of this Act shall be appointed by the Minister of Justice as follows:

1) a county or city prosecutor as a senior county or city prosecutor;

2) a deputy county or city prosecutor as a county or city prosecutor;

3) an assistant county or city prosecutor as a county or city prosecutor if he or she has completed an academic higher education in law specified in subsection 15 (1) of this Act;

4) an assistant county or city prosecutor as an assistant prosecutor if he or she does not meet the requirement specified in clause 3) of this subsection;

5) a prosecutor-designate as an assistant prosecutor.

(2) Assistant prosecutors appointed to office pursuant to clause (1) 4) of this section are not required to undergo a clerkship or probationary period. Assistant prosecutors appointed to office pursuant to clause (1) 5) of this section shall undergo a clerkship. The period of employment as a prosecutor-designate shall be included in the clerkship period.

(3) The Government of the Republic shall appoint the Chief Public Prosecutor to office on the proposal of the Minister of Justice within one month after the entry into force of this Act. Until the appointment of the Chief Public Prosecutor to office, his or her duties shall be performed by the public prosecutor or acting public prosecutor who is in office on the date of entry into force of this Act.

(4) The Minister of Justice shall appoint public prosecutors to office on the basis of a public competition on the proposal of the evaluation committee within one year after the entry into force of this Act. Until the appointment of public prosecutors to office, the duties of public prosecutors shall be performed by the prosecutors who are in office in the Public Prosecutor's Office on the date of entry into force of this Act.

(5) If a deputy public prosecutor or a prosecutor of the Public Prosecutor's Office who is in office on the date of entry into force of this Act is not appointed as the Chief Public Prosecutor or a public prosecutor, the Minister of Justice shall transfer the prosecutor, with his or her consent, to a vacant position of prosecutor in a county or city prosecutor's office without a public

competition. If a prosecutor does not give his or her consent, the Minister of Justice shall release him or her from service due to redundancy.

(6) The Minister of Justice shall appoint all the senior county and city prosecutors to office on the proposal of the prosecutors' competition and evaluation committee for the term provided for in subsection 17 (2) of this Act, within one year after the entry into force of this Act. If a current senior county or city prosecutor who was appointed to office pursuant to clause (1) 1) of this section is not appointed as a senior county or city prosecutor, the Minister of Justice shall transfer the prosecutor, with his or her consent, to a vacant position of prosecutor in a county or city prosecutor's office without a public competition. If the prosecutor does not give his or her consent, the Minister of Justice shall release him or her from service due to redundancy.

(11.02.99 entered into force 24.02.99 - RT I 1999, 18, 303)

(7) The Minister of Justice shall appoint prosecutors to the vacant positions of prosecutor in county and city prosecutor's offices on the basis of a public competition and on the proposal of the evaluation committee, within one year after the entry into force of this Act.

(8) Subsections 15 (3)–(5) of this Act do not apply to the appointments to office provided for in this section.

(9) The period of service of a prosecutor in a position of prosecutor prior to appointment to office pursuant to this section shall be included in his or her period of service in the new position within the meaning of § 15 of this Act.

§ 54. Prosecutor's salary in Public Prosecutor's Office

(1) A public prosecutor or acting public prosecutor specified in the second sentence of subsection 53 (3) of this Act shall receive the salary of the Chief Public Prosecutor during the time he or she performs the duties of the Chief Public Prosecutor.

(2) A deputy public prosecutor specified in the second sentence of subsection 53 (4) of this Act shall receive the salary of a prosecutor who directs a department of the Public Prosecutor's Office during the time he or she performs the duties of a public prosecutor.

(3) The salary of a prosecutor of the Public Prosecutor's Office specified in the second sentence of subsection 53 (4) of this Act during the time he or she performs the duties of a public prosecutor shall be the salary rate specified in subsection 22 (1) multiplied by 1.15.

§ 55. Convention of first Prosecutors' Assembly

(1) The Chief Public Prosecutor shall convene the first Prosecutors' Assembly within one month after appointment to office.

(2) The first Prosecutors' Assembly shall elect the members of the prosecutors' competition and evaluation committee and of the disciplinary committee from among the prosecutors.

(3) As long as the representative body of judges has not elected a member of the prosecutors' competition and evaluation committee or the disciplinary committee from among the judges, the Board of the Association of Judges shall do so.

(4) The member of the disciplinary committee and the member of the prosecutors' competition and evaluation committee who are public prosecutors shall be elected after the appointment of public prosecutors to office.

§ 56. Evaluation of prosecutors

(1) All prosecutors, except the Chief Public Prosecutor, are subject to evaluation within five years after the entry into force of this Act.

(2) In the course of evaluation, the knowledge and professional skills of prosecutors shall be assessed.

(3) The Minister of Justice shall determine the requirements for and the method and time of evaluation.

§ 57. Specifications for application of subsection 15 (1) of this Act

Persons who have completed an academic higher education in law in a university in private law may be appointed as prosecutors if they have completed such higher education on the basis of an accredited curriculum.

§ 58. Specifications for application of § 22 of this Act

Within ten years after the entry into force of this Act, the Government of the Republic may increase the salary of prosecutors employed in some regions by up to one quarter.

§ 59. Specifications for application of §§ 25 and 26 of this Act

(1) Sections 25 and 26 of this Act apply in respect of persons who are employed as prosecutors on the date of entry into force of this Act or after the entry into force of this Act.

(2) The period of employment as a preliminary investigator of a Prosecutor's Office shall be included in the period of employment as a prosecutor.

§ 59.1. Specifications for application of subsections 27 (1) and (2) of this Act

Subsections 27 (1) and (2) of this Act apply as of 1 July 2001.

(08.12.1999 entered into force 01.01.2000 - RT I 1999, 95, 839)

§ 60. (Repealed - 14.03.2000 entered into force 16.04.2000 - RT I 2000, 28, 167)

§ 61. Oath

Until 31 December 2000, persons applying for the position of prosecutor who have not yet taken an oath shall take a written oath.

§ 62. Amendments to Code of Enforcement Procedure

The Code of Enforcement Procedure (RT I 1993, 49, 693; 1997, 43/44, 723; 1998, 41/42, 625; 51, 756; 61, 981; 103, 1695) is amended as follows:

1) Section 81 is added to the Code and worded as follows:

§ 81. Supervision of legality in penal institutions

The supervision of legality in penal institutions shall be exercised by a prosecutor who has the right to:

1) monitor at any time and unconditionally compliance with the law in penal institutions and examine documents which are the basis for the imprisonment in a penal institution or taking into custody of a person;

2) release promptly a person who is in detention without legal basis;

3) question persons in penal institutions, and take oral and written explanations. ”;

2) in subsections 141 (2) and (9) and subsection 142 (3), the word “public prosecutor” is substituted by the word “Chief Public Prosecutor” in the appropriate case form.

[§§ 63–65 omitted]††

§ 66. Repeal of Prosecutor's Office Act

The Prosecutor's Office Act (RT 1993, 11, 184; RT I 1994, 10, 134; 16, 290; 40, 654; 68, 1170; 1995, 16, 228; 1996, 89, 1590) is repealed.

§ 67. Entry into force of Act

(1) This Act enters into force on the day following publication in the *Riigi Teataja*.

(2) Subsection 51 (2) of this Act enters into force on 1 January 2001. Until 31 December 2000, the total number of prosecutors in the county and city prosecutor's offices shall be one hundred and forty-seven.

(08.12.1999 entered into force 01.01.2000 - RT I 1999, 95, 839)

(3) Prosecutors of the county and city prosecutor's offices shall begin to perform the duties which before the entry into force of this Act were performed by the prosecutors who were employed by the Public Prosecutor's Office, within one year after the entry into force of this Act.

* RT = *Riigi Teataja* = *State Gazette*

† Any amendment to the Act contained herein is noted with the date of passage, date of entry into force and *Riigi Teataja* citation. If a whole or a part of a section has been amended, reference to the amending Act appears in brackets immediately after the amended whole or part.

‡ Riigikogu = the parliament of Estonia

** *Riigi Teataja Lisa* = *Appendix to the State Gazette*

†† The omitted sections amend other legislation.