

Act on the Office of a Special Prosecutor

No. 135, 11 December 2008

Entered into force on 12 December 2008.

Amended with Act No. 25/2009 (entered into force on 1 April 2009), Act No. 80/2009 (entered into force on 7 August 2009) and Act No. 52/2010 (entered into force on 12 June 2010)

Article 1

[The office of the Special Prosecutor shall investigate suspicions of criminal actions connected with the operations of financial undertakings and by those who have held shares in those undertakings or have exercised voting rights in them, and similarly suspicions of criminal actions on the part of the managers, advisors and employees of financial undertakings and other persons who have been involved in the activities of the undertakings. As appropriate, the office shall follow up these investigations by instituting criminal proceedings.]1)

The authority of the office to carry out investigations and bring charges shall cover matters including economic crime, crimes of enrichment and tax offences, including offences which have been investigated by the Financial Supervisory Authority, the Competition Authority and the National Director of Tax Investigations, and have been referred to the police. The special prosecutor shall, as necessary, work with the Financial Supervisory Authority, the Competition Authority and the National Director of Tax Investigations and other law-enforcement and supervisory bodies. [If requested, these bodies, and also resolution committees and others who are engaged in financial restructuring, compositions, or dissolution or bankruptcy proceedings regarding financial undertakings, shall provide the Special Prosecutor with information on the standing of matters other than those listed in the first sentence of this paragraph, and with materials which these parties have in their keeping and which the Special Prosecutor considers are of significance for the investigation of a criminal case or deciding on whether to initiate such an investigation. The same obligation shall apply to those financial undertakings that were set up to manage parts of the operations of the aforementioned financial undertakings under Article 5 of the Act No. 125/2008, authorising Funding from the State Treasury due to Special Circumstances on the Financial Market, etc. 'Materials' here include, amongst other things, reports, memos, minutes and contracts. Compliance with a demand from the Special Prosecutor to provide information or materials shall be obligatory, even though they may be covered by a non-disclosure obligation, e.g. according to the regulations on financial undertakings' activities, and submission in such cases shall not depend on whether or not a charge has been made to the police regarding an alleged offence.]2)

Complaints and indications regarding suspected criminal actions covered by this Act shall be submitted to the office as from the time of its establishment. If a resolution committee, an assistant working on financial restructuring, the supervisor of a composition, a temporary board, a winding-up committee involved in winding-up proceedings or the trustee in bankruptcy of a financial undertaking becomes aware in the course of its work of facts which are considered as giving rise to a reasonable suspicion that the financial undertaking, or other

parties, may have committed a criminal act, a notification to this effect shall be sent to the Special Prosecutor's office in accordance with this provision.

1) Act No. 52/2010, Art. 1, 2) Act No. 25/2009, Art. 1

Article 2

[The Minister of Justice shall appoint a Special Prosecutor who shall head the investigatory and prosecutory office provided for in Article 1. Furthermore, the Minister of Justice shall appoint three independent prosecutors to the office of the Special Prosecutor. The Special Prosecutor and the prosecutors at his office shall all meet the conditions for appointment to the position of a district court judge, but the age limit of 70 years applying to district court judges may be waived. The provisions of the Civil Servants' Rights and Obligations Act, No. 70/1996, regarding a five-year term of appointment and the right to severance pay, shall not apply to these employees. Their appointment shall expire when the office of the Special Prosecutor is abolished or merged with another government body (cf. Article 7), but they shall continue to receive wages without change for three months from that date. If a judge is chosen for any of these positions, the Minister of Justice shall grant him release from his position for the duration of the appointment.

The special prosecutor shall have the position and general authorisations of a commissioner of police as set forth in the Police Act and the Code of Criminal Procedure, and shall exercise command of the police officers who work at his office. The Special Prosecutor and the prosecutors working at his office shall constitute prosecutors in the sense of the Code of Criminal Procedure. The Special Prosecutor shall divide tasks between himself and the prosecutors attached to his office. A prosecutor may be entrusted with the direction of the investigation of a case. When the investigation is complete, the Special Prosecutor shall assign the case either to himself or to one of the other prosecutors attached to the office, and the person involved shall then take a decision regarding the institution of proceedings, issue an indictment in the case, as appropriate, and plead the case, unless the Special Prosecutor entrusts another person with the case under the fourth paragraph of this Article. The Special Prosecutor, or a prosecutor attached to his office, shall take a decision regarding referrals to the Supreme Court in cases which he institutes. The Special Prosecutor shall supervise the work of the other prosecutors attached to the office and shall ensure consistency in their work. In special circumstances he may take over a case which he has assigned to one of the prosecutors or entrust it to another prosecutor.

The Special Prosecutor shall engage the employees of the office other than the prosecutors. When they are engaged, Article 7 of the Civil Servants' Rights and Obligations Act, No. 70/1996, shall not apply.

At the district court level, the Special Prosecutor or a prosecutor attached to his office shall plead the cases that he institutes, and also referrals connected with them before the Supreme Court. The Special Prosecutor may also entrust a prosecutor's deputy attached to the office, a police commissioner, a Supreme Court attorney or a district court attorney to plead these cases before a district court. If an attorney is entrusted with pleading a case, he or she shall have the same obligations as a prosecutor. The Director of Public Prosecutions shall take decisions on lodging appeals against district court judgements, and the pleading of such appeals before the Supreme Court shall be subject to the ordinary rules; the Director of Public Prosecutions may also entrust this task to the Special Prosecutor or to one of the prosecutors attached to the Special Prosecutor's office.

[Where the conduct involved entails an offence or offences other than those under the purview of the Special Prosecutor according to Article 1, the Director of Public Prosecutions shall decide whether the special prosecutor is to handle the case. The Director of Public Prosecutions shall determine the scope of the powers of the Special Prosecutor vis-à-vis other prosecutors if doubt arises on this point. The Director of Public Prosecutions may moreover commission the Special Prosecutor with the handling of cases other than those covered by Article 1, or commission another prosecutor to handle the cases covered by that Article, this including instances in which the investigation of the case has already begun.]1)2)

1) Act No. 52/2010, Art. 2, 2) Act No. 80/2009, Art. 1

Article 3

The special prosecutor shall make public information on his shareholdings in financial companies which have been affected by government actions under the Act No. 125/2008, his liabilities towards those companies and his professional connections, and those of his spouse and close relatives, with those who have served in managerial positions in the financial companies referred to or those state bodies that come under investigation by the office. The same shall apply regarding other matters that may have an effect on the particular competence of the special prosecutor. This information shall cover the five years immediately preceding the commencement of this Act, sums of money over ISK 5 million and also shares in excess of that amount in companies that held shares in the financial companies referred to on 1 September 2008.

Article 4

[The prosecutors, police officers and legally-qualified employees of the Special Prosecutor attached to the office shall exercise police powers in accordance with the first paragraph of Article 9 of the Police Act.]1) Other specialists employed by the office shall be empowered to take statements from suspects and witnesses during the investigation phase.

The special prosecutor may consult experts, domestic and foreign, as is considered necessary.

1) Act No. 80/2009, Art. 2

Article 5

The Director of Public Prosecutions may decide, subject to the conditions of the second paragraph of this Article and after receiving a proposal, backed with reasons, from the special prosecutor, that a person who takes the initiative on offering or submitting information or materials to the police or a prosecutor is not to be indicted even though the information or materials establish a likelihood that the person himself has committed an offence.

The conditions for a decision as provided for under the first paragraph of this Article are that the information or materials relate to an offence that comes under the investigative and prosecutory powers of the special prosecutor under this Act and that it is considered likely that the information or materials will lead to the investigation or proof of an offence, or constitute an important addition to evidence already obtained. Furthermore, it shall be a condition for the application of this authorisation that there is a reasonable suspicion that the information or materials relate to a serious offence, that it is evident in advance that the guilt of the person supplying such things is considerably smaller than that of the person or persons

against whom the materials or information are directed and that there is reason to believe that it would be difficult to adduce satisfactory proof of an offence without them.

Article 6

Other aspects of the functions of the office shall be subject to the provisions of the Police Act and the Code of Criminal Procedure where no provisions to the contrary are made in this Act.

Article 7

After 1 January 2011, the Minister of Justice may, after obtaining the opinion of the Director of Public Prosecutions, propose that the office be abolished. In that case, he shall submit a bill to this effect to the Althingi. The functions of the office will then be transferred to the police or the public prosecutors in accordance with the general provisions of the Police Act and the Code of Criminal Procedure.

Article 8

This Act takes effect immediately.

Interim Provision

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1) Act No. 80/2009, Art 3