

1. What is a criminal complaint?

Criminal complaint is any submission implying a reasonable suspicion that a crime has been committed.

Criminal complaint may be made in writing, orally on the record, in electronic form with certified electronic signature according to special legal enactment, by telegraph, facsimile or telex. Anyone who makes a submission in electronic form according to a special legal enactment will, at the same time, state his certification services provider that issued his certificate and keeps a record thereof, or will attach the certificate to his submission.

In pre-trial proceedings the submissions made orally on the record are accepted by police authorities and Public Prosecutor's Offices having subject-matter and territorial competence (most often District Public Prosecutor's Offices). If there are important reasons to do so, they may be accepted in exceptional cases also by Public Prosecutor's Offices of higher level. These important reasons may consist e.g. in urgent nature of the submission or in the fact that the seriousness medical condition of the filing person justifies immediate submission of the criminal complaint.

In case the criminal complaint is not filed with the Public Prosecutor's Office having subject-matter and territorial competence, it must be immediately forwarded to the Public Prosecutor's Office competent to handle it. The same applies to criminal complaints delivered to Public Prosecutor's Office that is not competent to handle it.

Criminal complaints may be divided into several groups. Ideal situation is when it describes what allegedly happened and what is supposed to constitute a criminal offense. Then it is quickly handed over to the police authorities to for investigation. These may include e.g. complaints that former spouse does not pay child support etc. In case of some other submissions it is not entirely clear whether the described conduct fulfills the merits of a criminal offense, however it is prudent to investigate it by the means of proceeding conducted prior to initiating criminal prosecution. For example a business partner ordered delivery of goods and it was found that he owes money to several persons and that he faces distraint orders. In such cases it is necessary at first to establish and prove the existence of fraudulent intent in time the goods were ordered, however these and other unclear circumstances do not preclude initiation of criminal proceedings and pre-trial criminal proceedings.

On the other hand. some submissions are clearly not criminal complaints, despite being labelled as such, since they do not contain even the basic matters of fact implying a crime has been committed (information about the alleged crime, its perpetrator, damage or other harm caused and other substantial facts).

Submissions are always assessed solely by their contents.

Criminal complaints are not in particular the following:

- regular remedial measure applied according to the Code of Criminal Procedure

- incentive to apply an extraordinary remedial measure according to the Code of Criminal Procedure

- complaint against delays in performance of duties of the Public Prosecutor's Office or against conduct unbecoming of public prosecutors, senior clerks or other employees of the Public Prosecutor's Office

- submissions conveying dissatisfaction with the procedure of public prosecutor (in criminal or non-criminal matters)

- incentives to perform reviews within the Public Prosecution system

- submissions conveying dissatisfaction with court decisions

- submissions by which the filing person asserts civil law claims

Generally it applies that whenever a submission labelled as criminal complaint is delivered to Public Prosecutor's Office, public prosecutor will review it in order to ascertain whether it contains the basic facts concerning a suspicion that a crime has been committed. If the submission does not contain such facts, the public prosecutor will return it to the filing person

with advice on how to remedy such shortcomings and what will be the consequences of failing to remedy them within a time limit set for this purpose. In exceptional cases he may also order the police authority to verify the submission and perform actions according to the Police Act or the Act on the General Inspection of Security Corps in order to clarify the nature of the submission.

Submissions that do not contain the necessary information indicating a suspicion that a crime has been committed even after being supplemented, will be shelved or forwarded to competent authorities to be dealt with as an administrative or other offenses or disciplinary offenses, despite the fact the filing person claims it is a criminal complaint. In other cases the filing person is notified that the suspicion of criminal conduct is clearly unsubstantiated.

Submissions that are not signed by the filing person (anonymous submissions) will be shelved without further ado, if they do not provide enough grounds to substantiate a suspicion that a crime has been committed. Other submissions that are not criminal complaints will be dealt accordingly to their nature – the public prosecutor will either return them to the filing person with brief advice or forward them to the competent authorities. The filing person will always be notified of the measures taken in relation to his submission.

2. How to proceed in case one is not satisfied with the proceeding of Public Prosecutor's Office or in case it is idle?

If you are dissatisfied with the procedure of the Public Prosecutor's Office or if it is idle, you may request review of procedure of the Public Prosecutor's Office.

The review is always conducted by the closest superior Public Prosecutor's Office, which means that procedure of District Public Prosecutor's Office is reviewed by Regional Public Prosecutor's Office, procedure of Regional Public Prosecutor's Office is reviewed by High Public Prosecutor's Office and procedure of High Public Prosecutor's Office is reviewed by the Prosecutor General's Office.

The Prosecutor General's Office is not entitled to deal with incentives for conducting reviews concerning District or Regional Public Prosecutor's Offices. The law simply does not allow it. The Prosecutor General's Office must immediately forward such incentives to the High or Regional Public Prosecutor's Office (as the case may be).

It is thus always necessary to address the competent Public Prosecutor's Office.

The purpose of reviews is above all to secure effective control of whether public prosecutors duly perform their duty to represent public interest and exercise their statutory competence, and whether the cases entrusted to them are dealt with without undue delay.

If the review finds that the procedure of the Public Prosecutor's Office was incorrect, the superior Public Prosecutor's Office will issue instruction for rectification. The instruction is binding for the inferior Public Prosecutor's Office.

The instruction may be refused by the inferior Public Prosecutor's Office, if they believe it is contrary to the law. If the superior Public Prosecutor's Office still insists on following its instruction and they do not apply a different procedure, they must withdraw the case from the inferior Public Prosecutor's Office and handle it themselves.

Similar procedure applies in case the inferior Public Prosecutor's Office is idle.

The results of the review of procedure of Public Prosecutor's Office are always notified to the petitioner who requested the review. At the same time the petitioner is always advised that his eventual following incentives of the same content will not be considered and he will not be notified of their receipt.

3. Is it possible to seek cancellation of a final and effective decision of the public prosecutor on discontinuation of criminal prosecution or on forwarding the case to a different authority?

Public prosecutor may decide to discontinue criminal prosecution or to forward the case to another authority either in the course of investigation or after its conclusion. If such decision becomes final and effective, only the Prosecutor General may cancel it within three months from the day the decision became final and effective. Any person concerned by the decision may give incentive for such procedure.

Resolution on discontinuation of criminal prosecution is understood only as a resolution, by which the criminal prosecution was in fact discontinued (e.g. because it was not established the act was committed by the accused person). The above stated exclusive competence of the Prosecutor General does not apply to resolutions on adjourning the case (i.e. prior to initiation of criminal prosecution), resolutions on conditional discontinuation of criminal prosecution etc.

Forwarding a case is understood as forwarding it to another authority (i.e. a case, where the results of pre-trial proceedings imply that the act in question does not constitute a criminal offense, but it could be assessed by a competent authority as a petty offense, another administrative wrong or disciplinary offense.)

In case the resolution on discontinuation of criminal prosecution is cancelled, the proceeding will

be continued by the public prosecutor, who decided in the case in the first instance. He will be bound by the legal opinion rendered by the Prosecutor General in his decision and will be obliged to take actions and supplementations ordered by the Prosecutor General. Such actions include e.g. interviewing a witness, expert or the accused person. The authority, to which the case has been ordered, is obliged to take also other actions, which are deemed necessary to ascertain the facts of the case. After supplementing the evidence it is necessary to make a new decision in the case.

4. What is review of a closed case and what meaning does it have?

The Prosecutor General may order that the Prosecutor General's Office or a Public Prosecutor's Office designated by it performed a review of a closed case, in which the Public Prosecutor's Office in question was involved, and in case any faults are found, that remedial measures are taken.

This power of the Prosecutor General is understood as exceptional and it is used only if there are no other ways to achieve rectification.

The review may concern any closed case that falls within the statutory competence of the Public Prosecutor's Office, i.e. both in criminal and non-criminal area.

Review of a closed case is designed to assess the case once more and decide whether the proceeding should be continued. This is possible only in the event of a closed case. Such case may be a case where there is no remedial measure available to contest the decision, meaning the case is closed finally and effectively, or a case that was dealt with in another manner with final effect. For example filing an indictment (motion for punishment) in criminal proceedings does not close the case.

After the review is performed the Prosecutor General may order certain procedure as a remedial measure or convey certain legal opinion that is binding for the inferior Public Prosecutor's Office. If the Prosecutor General believes that the procedure of the inferior Public Prosecutor's Office is insufficient even after performing the review of the closed case, he may either order conducting a new review or apply other more effective measures, as the case may be.