



State Prosecutor's Authorizations Related to Criminal Report-Kosovo Context

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Abstract: State prosecutor in the Republic of Kosovo is a state authority which in criminal proceedings is competent to conduct investigations, file indictments, gather evidence, filing regular and extraordinary legal remedies. The legislator has granted authorizations to the state prosecutor even in pre-trial procedure especially when it comes to situation to decide concerning criminal report filed by police or other authorized subjects. Decision-making of state prosecutor concerning criminal report may be addressed in four directions: dismissal of criminal report, request for additional information, conduct investigation and direct indictment. What kind of decision shall be made it depends from the concrete case and circumstances characterizing it as well as by assessment of criteria fulfillment which are stipulated by law for each form of decision-making. Regarding this matter, in this scientific paper shall be indicated the practical activity of three of the seven Basic Prosecutions operating in Kosovo for a period of time of three years. During the preparation of this article I have used the legal, comparative, statistical and analytical methods.

Keywords: Prosecutor; ruling; investigations; indictment; criminal report

Introduction

State prosecutor is a fundamental subject in criminal proceedings. The Law on State Prosecutor and the Criminal Procedure Code granted to him/her a range of competences, which essentially relate to his/her authority in terms of exercising the criminal prosecution function. These competences extend except in criminal proceedings also in pre-trial procedure. They essentially refer to conducting investigations and filing indictment, gathering of evidence, lawful and fair decision-making, objectivity and dignified treatment of the defendant as well as decision-making related to criminal report received by police or other authorized subjects.

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During decision-making related to criminal report, the state prosecutor, among other things, should consider legal solutions which address criteria on basis of which shall be addressed lawful decision-making related to criminal report, relevant evidence which guarantee fair decision-making related to criminal report, specification of different requests that are in function of providing relevant information concerning a concrete criminal case and their efficient management as well as informing about the decision-making manner addressed regarding criminal report to subjects stipulated by law. Within this scientific paper, essentially, has been handled the activity of Kosovo state prosecutor, concretely the practical activity of the Basic Prosecution of Prishtina, Prizren and Mitrovica concerning decision-making related to criminal report received for a period of time of three years (2015 – 2017). In this case has been presented and elaborated the number and type of decision-making addressed by these prosecutions related to criminal report as well as has been explained reasons which determined the ascertained factual situation, including the causes that determined it.

1. Meaning of State Prosecutor and its General Competences in Criminal Proceedings

State Prosecutor in the Republic of Kosovo is a constitutional and legal body that is organized and functions according to provisions addressing its activity. “Consequently, according to Constitution of the Republic of Kosovo the state prosecutor is an independent institution with authority and responsibility for prosecution of persons accused of any criminal offense or any other offense as regulated by law” (Constitution of the Republic of Kosovo, 2008, Article 109 paragraph 1). Whereas, according to the Law on State Prosecution, the state prosecutor is an independent body exercising its functions impartially (Law on State Prosecutor, 2013, Article 3 paragraph 1). In fact, the state prosecutor is a fundamental subject and a party to the criminal procedure “which within this procedure exercises the function of criminal prosecution” (Sahiti & Murati, 2013, p. 152). “Bearing this in mind, criminal proceedings cannot be filed and conducted in court without an indictment of state prosecutor”.

The independence of state prosecutor consists in the fact that Kosovo legislator through concrete legal solutions has decisively forbidden that natural and legal persons whoever they are to interfere, obstruct and impact to the state prosecutor

work while performing prosecutorial functions concerning any investigation, procedure or individual cases (Hajdari, 2014, p. 120).

State prosecutor competences are numerous and diverse. In this regard, in accordance with article 7 of the Law on State Prosecutor, this state body has the following duties and competences: a) to exercise prosecutorial functions in an independent, fair, objective and impartial manner and to ensure that all persons are treated equally before the law; b) to exercise the highest standards of care during the performance of official functions; c) to conduct himself or herself honorably and professionally in personal and professional life and pursuant to applicable law and the code of professional ethics; d) to maintain the honor and dignity of the State Prosecutor; e) to protect the legal rights of victims (Alan, 2000, p. 897), witnesses, suspects, accused and convicted persons; f) to undertake the necessary legal actions for the detection of criminal offences and discovery of perpetrators, and the investigation and prosecution of criminal offences in a timely manner; g) to make decisions on the initiation, continuation or termination of criminal proceedings against persons suspected or accused of committing criminal offences; h) to file indictments and represent them before the court; i) to exercise regular and extraordinary legal remedies against court decisions; j) to cooperate with police, courts, and other institutions; k) to undertake all other actions specified by law.

Whereas, according to relevant provisions of Criminal Procedure Code (Criminal Procedure Code of the Republic of Kosovo, 2013, Article 49 paragraph 1), the state prosecutor possesses also these competences: a) to represent public interests before Republic of Kosovo courts and to seek from them concrete measures stipulated by law; b) to negotiate and accept voluntary agreements or guilty plea with the defendant concerning criminal offences prosecuted *ex-officio* or by proposal of the injured party.

Undoubtedly one of the most fundamental competences of state prosecutor is the one of collecting and providing evidence which refers to a concrete criminal case. Kosovo legislator granted authorizations to the state prosecutor also in pre-trial procedure, especially when it comes to deciding related to criminal report filed by police or other authorized subjects by law. Also, the state prosecutor is entitled and obliged to monitor and study important phenomena and social relationships for accomplishment of prosecutorial duties and for performed observations to notify the relevant institutions (the Prosecutorial Council and the Assembly of Kosovo) as well as to present proposals for prevention of harmful and dangerous phenomena to society and strengthening the rule of law. Finally, the state prosecutor is entitled and

obliged to inform the public regarding situation of criminality in country as well as about other generally important problems and phenomena that he/she observed during his/her work (Hajdari, 2014, p. 121). All these competences should be in function of protecting state property, life and individual property as well (Dinka, 2001, p. 199).

2. State Prosecutor's Authorizations Related to Criminal Report

In order to exercise prosecutorial functions in accordance with the requirement of legislator, such that provide legality and objectivity of the state prosecutor concerning initiation and conducting criminal proceedings, respectively the prosecution of criminal cases, the legislator clearly defined the authorizations of this state body also in terms of addressing his/her acting manner and decision-making concerning criminal report received by police or other subjects authorized by law. It is a rule that state prosecution related to decision-making, whatever it is, must be concretized by a special ruling. What shall be the acting manner of state prosecutor is a matter depending on concrete case circumstances. These matters shall be handled in the following of this scientific paper.

2.1. Dismissal of Criminal Report

According to Article 82 paragraph 1 of the Criminal Procedure Code, the state prosecutor shall dismiss the criminal report received by the police or other authorized subjects when the criminal report and the accompanying evidence indicate that:

1. There is no reasonable suspicion that a criminal offence has been committed;
2. The period of statutory limitation for criminal prosecution has expired;
3. The criminal offence is included by amnesty or pardon;
4. The suspect is protected by immunity and a waiver is not possible or not granted by the appropriate authority; or
5. There are other circumstances that exclude prosecution.

As it results, some of these criteria become subject of autonomous assessment of state prosecutor, because he/she is the one who concludes whether these criteria has been fulfilled or not for example a reasonable suspicion that a criminal offence has been committed, whereas other matters do not depend at all by state prosecutor assessment for instance the inclusion of a criminal offence by amnesty or pardon.

In these cases should be ascertained the fact of their fulfillment. Consequently, the ruling for dismissal of criminal report is rendered based on data contained in criminal report as well as based on additional data. It is essential that such data to be supported by relevant facts and evidence. "It is a legal rule that decision-making by means of which is addressed the dismissal of criminal report to be concretized within 30 days from the day of criminal report receipt, a rule that in practice in many cases (by avoiding legal obligations) is not respected" (Hajdari, 2016, p. 203).

As other circumstances excluding criminal prosecution is implied the situations when it is concluded that a criminal case is adjudicated, when for the reported criminal offence criminal procedure is conducted against another person and a reported person is not accomplice of a criminal offence, when the prosecution of a criminal offence perpetrator committed outside of the territory of the Republic of Kosovo can be done only with the approval of the Chief State Prosecutor of Kosovo, when the suspect dies etc. (Sahiti, Murati & Elshani, 2014, pp. 260 – 261).

Permanent mental illness appeared after commission of a criminal offence, also is considered to be a circumstance that excludes criminal prosecution, although it is deemed that the fact of liability has to be proven in criminal proceedings (Povlica & Lutovac, 1985, p. 246).

For dismissal of criminal report the state prosecutor should notify the police. Such notification duly is done with the submission of decision for dismissal of criminal report. This notification must be made immediately, and mainly is linked with cases when a criminal report is filed by police or when it was done through it. Kosovo legislator did not specify exactly what is the time within which state prosecutor should notify the police for such an action, but it is assumed this day should be matched with the day when criminal report has been dismissed. The aim of this information should be to paralyze the undertaking of additional actions by police referring to the concrete case, when they are not of that level confirming suspicion grounds for existence of a criminal offence and a suspect as its perpetrator (Hajdari, 2016, p. 202).

For dismissal of criminal report the state prosecutor should notify also the injured party. This notice must be made within eight days from the day the criminal report was dismissed. The goal of this notification should be to facilitate to the injured party the possibility of assessment of fact of fulfillment respectively failure to fulfill requirements on grounds of which the state prosecutor did not commence criminal prosecution so he could repeat such initiative for instance: provides evidence that creates greater obedience for the existence of a concrete criminal offence.

2.2. Request for Additional Information

If the state prosecutor by relying in filed criminal report cannot be determined that allegations contained herein are possible or data attached to criminal report do not provide a sufficient ground for initiation of investigations and if the state prosecutor heard that there is a commission of a criminal offence, if he/she cannot provide necessary information by himself/herself, he/she asks the police to gather such data, which is obliged to act in any case when it comes to lawful requests of the state prosecutor. The state prosecutor may gather data by himself/herself through other state bodies by including conversation with witnesses, the injured party and his/her legal representative, including the defendant. "Police, state prosecutor and other state bodies when it comes to gathering data must act with discretion in terms of not damaging the dignity and reputation of the person to whom such information refers" (Sahiti & Murati, 2013, p. 309).

In practice may occur that data contained in criminal report not to be sufficient to resolve the dilemma whether to dismiss a criminal report or to initiate investigations.

Such situations may usually arise in anonymous criminal reports or unknown persons from which no additional information may be required, or when there is no criminal report at all, but the widespread news that a criminal offense has been committed has reached up to the state prosecutor. Therefore, in such situation the state prosecutor requests additional information from the police that is obliged to act upon his/her request (Çollaku, 2013, p. 64).

The state police are obliged without delay to inform the state prosecutor for undertaken measures with the aim of providing additional information. In these cases information should include the evidence of provided data in case of application of undertaken measures.

The state police are also obliged to report to the state prosecutor also about the reasons for not being able to undertake the required measures. In this case the police should present to the state prosecutor a written report. Such report may be the one which reflects the impossibility of questioning a particular witness based on the fact that he/she is not accessible.

2.3. Conducting Investigation

When the state prosecutor upon receipt of criminal report or upon gathering the additional information, is convinced that there is a reasonable suspicion that a particular person has committed a criminal offence that is prosecuted *ex-officio* and

that in such a case that matter should be investigated he/she renders a ruling on initiation of investigations and enforces them (Hajdari, 2013, p. 29). In such situations, conducting investigations is considered to be a rule (Pajčić, 2013, p. 634), excluding cases where the state prosecutor in accordance with Criminal Procedure Code decides on direct filing of indictment. In any case, the persuasion for existence of reasonable suspicion must be linked to the concrete evidence of a case.

While conducting investigation the state prosecutor is dedicated to gather all the evidence referring to the concrete case, so concerning criminal case involved under investigation to address legitimate and objective decision-making. Their result may lead to filing an indictment or dismissal of investigation by means of which comes to dismissal of criminal proceedings. While conducting investigation, the state prosecutor assesses not only aggravating circumstances but also mitigating circumstances as well and makes sure that the evidence has been obtained which may not have been available at the main trial (Markus, 2006, p. 69).

2.4. Filing an Indictment

When it comes to filing an indictment the state prosecutor has two possibilities: The first possibility refers to the cases when the state prosecutor considers that information available to him/her for a criminal offence and its perpetrator present a sufficient ground for filing a direct indictment (without conducting investigations). Whereas the second possibility refers to cases related to completion of investigation.

In order for the state prosecutor to be able to file a direct indictment, it is required to be for a criminal offence, respectively criminal offences none of which is punishable by more than three years of imprisonment, and to assess that in relation to such a case (such cases) there is a well-grounded suspicion to support the indictment, respectively he/she should have sufficient and convincing evidence proving the existence of a criminal offence and its relation with a particular person alleged to have committed that criminal offence.

“Therefore, in cases when the defendant is charged with several criminal offences but one of them is punishable by imprisonment of more than three years, the state prosecutor is not allowed to file a direct indictment” (Hajdari, 2013, p. 210).

In fact, in practice up to filing an indictment mainly comes after completion of investigation (Pavišić, 1998, p. 257). This conclusion refers without exception to all cases where investigation involves a person suspected of committing a criminal offense punishable by more than three years of imprisonment, but also cases

involving criminal offenses punishable less than three years of imprisonment for which the state prosecutor has not filed a direct indictment.

Consequently, the state prosecutor concludes investigation and files an indictment before the competent court when considers that the case has been clarified sufficiently, respectively that have been conducted all the possible actions and have been gathered all the necessary data (Sahiti, Murati, 2013, p. 309).

For completion of investigation the state prosecutor duly should notify the defendant and his defense counsel.

3. Matters that should be considered by State Prosecutor when Deciding on Criminal Report

During decision-making related to criminal report the state prosecutor must consider the following issues:

1. Legal solutions addressing criteria on basis of which is addressed lawful decision-making concerning criminal report. The state prosecutor before addressing any type of his/her decision-making regarding criminal report received by state police or other subjects authorized by law he/she is obliged to consider the respective legal criteria. These three types of decision-making, such is the case with request for additional information, conducting investigation and direct filing of indictment are of a principled character, and only in cases of dismissal of criminal report they are also of a concrete character. The criteria of principled character refer to the discretionary assessment of the prosecutor, whose assessment relates to his persuasion for their completion, which is concretized with specific decision-making. Whereas the criteria of concrete character are those that the legislator counts decisively, so they compose the only possibility determining concrete decision-making such is the statutory limitation period of prosecution which as a criterion determines the dismissal of a criminal report. Of course, these two criteria is required to be accompanied by relevant evidence, before the state prosecutor renders any decision related to criminal report.

2. Relevant evidence guaranteeing fair decision-making related to criminal report-From what was emphasized above it results that criteria determining the concrete decision-making of the state prosecutor related to criminal report constitute the formal aspect of problem. These are undoubtedly very important and being as such opens paths to lawful decision-making of the state prosecutor. Nevertheless, in order

for decision-making of state prosecutor to be in full compliance with law requirements and to be acceptable by actors involved in criminal process and in general opinion is required to fulfill also its material aspect. This implies that the concrete decision-making of state prosecutor should be supported with relevant evidence. Hence, in cases when criminal report is dismissed due to amnesty, to this decision-making should be attached also the respective law which addresses the issue of amnesty.

3. Specification of various requests in function of providing relevant information concerning a concrete criminal case and their effective management. In several cases the concrete decision-making of state prosecutor cannot be addressed without providing additional information. These are cases when the state prosecutor has some information available, but they are such that do not create a clear picture, such that do not give persuasion to the state prosecutor not even for decision-making that would result by dismissal of criminal report nor for issuing a ruling for conducting investigation. In such cases the state prosecutor should address requests for providing additional information whether by police or other public bodies. These requests should be managed by the state prosecutor in terms of seeking concrete reports pointing out the provision of additional information or failure to do so as well as to scrutinize them so based on which to specify the concrete decision-making.

4. Informing about the manner of addressed decision-making related to criminal report to subjects specified by law. Legal provisions have granted the obligation for state prosecutor that for his/her decision-making related to criminal report to make information for persons and concrete subjects. "Thus, for all types of his/her decision-making he/she should notify the subject which filed the criminal report, whereas when he/she dismisses the criminal report he/she should notify the injured party as well" (Novosel, 2008, p. 693). The aim of this information is to enable realization of rights and respect of obligations belonging to them after concretization of decision-making granted by the state prosecutor.

4. Several Data Concerning Decision-Making of State Prosecutor Related to Criminal Report in Kosovo during the Period of Time 2013-2017

In order to come to sustainable conclusions and providing concrete and useful recommendations serving to state prosecutor institution, other relevant institutions and the society in general, it was necessary to research and study practical activity of state prosecution in relation to its types of decision-making concerning criminal

report in Kosovo for the period of time 2015-2017. The presentation and elaboration of these data shall include the activity of three of the seven basic prosecutions currently operating in Kosovo. This due to the fact concerning Basic Prosecutions work there are no published data that would entirely serve to structure and goal of this scientific paper. Conducted researched prove that such data have not been reflected and published at all in reports which are published by Kosovo Prosecutorial Council (<http://kpk-rks.org/raporte/213/raport-pune-2017/213>). Therefore, in the following handlings, the presentation of data concerning decision-making related to criminal report shall be done on basis of data provided by the criminal records of the Basic Prosecution of Prishtina, Prizren and Mitrovica (Criminal Records of the Basic Court of Prishtina, Gjilan, Mitrovica and Peja for the period of time 2013 – 2015).

Table 1, the number of cases for which the Basic Prosecution of Prishtina, Prizren and Mitrovica has issued a decision for dismissal of criminal report, requested additional information, issued a ruling for the conduct of the investigation or filed direct indictment during the period of time 2015-2017.

| Years | Dismissal of criminal report | Request for additional information | Conduct investigations | Direct filing of indictment |
|-------------|------------------------------|------------------------------------|------------------------|-----------------------------|
| 2015 - 2017 | 8212 | 8721 | 34192 | 10603 |

According to these data during the period of time 2015-2017 in the Basic Prosecution of Prishtina, Prizren and Mitrovica were issued 61728 rulings that addressed the concrete decision-making related to criminal report received by state police or other authorized subjects. In this regard, the abovementioned prosecutions have issued 8212 rulings on dismissal of criminal report, in 8721 cases have requested additional information from the police and other subjects authorized by law, have issued 34192 rulings for conducting investigations and in 10603 cases have filed direct indictments.

Indicated data prove that Basic Prosecution of Prishtina has addressed the biggest number of decision-making related to criminal report filed by police or other authorized subjects by law during the researching period of time 2015-2017.

This prosecution has implemented this decision-making in 31236 cases. This situation was expectable, because the level of criminality presence in the region of Prishtina was the highest and this based on the fact that Basic Prosecution of Prishtina extends his activity in a territory where almost half of Kosovo's population resides. In these terms, the impact of crime appearance has come also through the heterogeneity of the population living in this region, as well as numerous problems (economic, social and infrastructure) faced by its citizens. The second place

concerning the number of addressed decision-making related to filed criminal report takes Basic Prosecution of Prizren with a total of 21355 cases. This is also explained by the fact that the Prizren Region constitutes the territorial space of Kosovo, where after Prishtina more crimes are committed (indicated by statistical data) always related to the fact that a majority of citizens live there, giving this Region a second position after Pristina Region. Impact, here too is expressed by the relatively high level of problems faced by the citizens of this region, especially the economic ones. Lastly, concerning decision-making related to criminal report is listed Basic Prosecution of Mitrovica. This prosecution has handled 9137 cases of criminal reports mainly of the southern part of the Ibër River. This is explained by the fact in the northern Mitrovica region there is still no full functionality of the prosecutorial system. There, for political reasons, in 2017 were made appointments of first prosecutors after Kosovo's declaration of independence (2008), so that crime-related issues, to a relatively large extent, were out of the reach of Kosovo state prosecutor. In handling cases of criminal reports the work of these prosecutions offices was accompanied by numerous problems. Among them should be mentioned also those referring to the lack of proper professionalism, external interventions etc. which makes it necessary to organize proper training programs (especially recently appointed new prosecutors), but also coherent consideration of legal solutions providing independence and impartiality in the work of prosecutors.

Conclusion

The state prosecutor in the Republic of Kosovo is a constitutional and legal body that is organized and functions in accordance with legal provisions addressing its activity. This body in criminal proceedings is entitled to exercise criminal prosecution, hence to conduct investigations for the commission of criminal offences and to file indictments, to provide evidences supporting its allegations concerning criminal case, to file legal remedies (regular and extraordinary ones) etc. The state legislator has granted to the state prosecutor authorizations also in pre-trial procedure, when it comes to decision-making related to criminal report filed by police or other subjects authorized by law.

Concerning criminal report the state prosecutor has four available options: to dismiss criminal report, to request additional information, to conduct investigations and to file direct indictment. Which type of this decision-making shall be applicable it depends from a concrete case and circumstances characterizing it, and especially

from assessment made by the competent prosecutor to the fact of legal requirements fulfillment specified for each of them.

During decision-making related to criminal report the state prosecutor should consider the following issues: a) legal solutions addressing criteria based on which shall be addressed the lawful decision-making related to criminal report; b) relevant evidence guaranteeing fair decision-making related to criminal report; c) specification of different requests that are in function of providing relevant information regarding a concrete criminal case and their effective management; and d) Informing about the manner of addressed decision-making related to criminal report of subjects specified by law.

During the period of time 2015-2017 in the Basic Prosecution of Prishtina, Prizren and Mitrovica were issued 61728 verdicts through which have been addressed the concrete decision-making regarding the criminal charges received by the state police or other authorized subjects. In this regard, the abovementioned prosecutions have issued 8212 rulings for dismissal of criminal reports, in 8721 cases have requested additional information by police or other subjects authorized by law; have issued 34192 rulings for conducting investigations and in 10603 cases have filed direct indictments. From indicated data results that Basic Prosecution of Prishtina has addressed the biggest number of decision-making related to criminal report (31236 cases), and then Basic Prosecution of Prizren (21355 cases) and at the end Basic Prosecution of Mitrovica (9137 cases). This situation is dictated by the level of crime presence that is the consequence of the impact of demographic, social, infrastructural and political factors etc.

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