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THE STATE PROSECUTOR'S OFFICE AND ITS ROLE IN CRIME PREVENTION

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Introduction

The State Prosecutor's Office plays one of the most important roles in crime prevention. Namely, an effective prosecutor's office in every country is a weapon in the fight against all forms of crime, especially in the field of organized crime and the most serious crimes. In order to fulfill these goals, first of all, a good organization of the prosecutor's office, a precisely defined structure, competences, rights and obligations of the prosecutor's office is necessary. The legislator is obliged to draft positive legislation and provisions related to the prosecution according to the most modern standards in this field. Because from the very nature of organized crime, which almost always takes on a transnational character, it is the state's obligation to keep up with the countries of the region, as well as Europe and the world. Because it will create preconditions for more effective prevention and fight against all types of crime.

In this presentation, we will try to explain the role and ways in which the State Prosecutor's Office participates in crime prevention, starting from the domestic legislation, that is, the State Prosecutor's Office of Montenegro, with reference to the Opinion of the Consultative Council of European Prosecutors.

State Prosecutor's Office of Montenegro

„The State Prosecutor's Office shall carry out the activities of prosecution of perpetrators of criminal offences that are prosecuted ex officio and of misdemeanors and it shall carry out other activities stipulated in the law.“

„Duties of the State Prosecutor's Office shall not be carried out under any influence and no person shall exert any influence on the State Prosecutor's Office in carrying out its duties.“

„Duties of the state prosecutor shall be carried out impartially and objectively, and in line with the principles of legality and equality before the law.“

„State prosecutors shall have the right to and the duty of professional advancement so that they can ensure more successful carrying out of the duties of their office.“



The following shall be established within the State Prosecutor's Office:

Supreme State Prosecutor's Office,
Special State Prosecutor's Office,
High state prosecutor's offices and
Basic state prosecutor's offices.



Basic State Prosecutor's Office

The Basic State Prosecutor's Office is established for the territories of one or several basic courts. The Basic State Prosecutor's Office undertakes all activities from within its competences before courts with subject matter and territorial jurisdiction.

„Basic state prosecutor's offices are actually competent for prosecuting perpetrators of criminal offenses for which a fine or a prison sentence of 10 years is prescribed, regardless of the status, position or profession of the person being prosecuted, unless the jurisdiction of the Special or High State Prosecutor's Office is not prescribed by a special law for some of these criminal offenses.“

The most common criminal offenses under the jurisdiction of the basic state prosecutor's office are: theft, aggravated theft, robbery, extortion, fraud, violent behavior, causing grievous bodily harm, tax evasion.

VIŠE DRŽAVNO TUŽILAŠTVO PODGORICA

“High State Prosecutor’s Office shall be established for the territory of the High Court.

High State Prosecutor’s Offices are:

- 1) High State Prosecutor's Office in Bijelo Polje, to proceed before the High Court in Bijelo Polje; and
- 2) High State Prosecutor's Office in Podgorica, to proceed before the High Court in Podgorica.”

High State Prosecutor's Office shall undertake all activities from within its competences before the court and other authorities with subject matter and territorial jurisdiction.

This prosecutor's office is actually responsible for prosecuting the perpetrators of criminal offences for which the main penalty is imprisonment for more than 10 years, as well as criminal offenses such as: rape, homicide in the heat of the moment, unauthorized production, possession and distribution of narcotic drugs, calling for a violent change of the constitutional arrangements...

High state prosecutors also conduct investigations against defendants for whom there is reasonable suspicion. High State Prosecutor's Offices participate in acts upon appeal in proceedings against the decisions of Basic Courts.

Supreme State Prosecutor's Office

„Supreme State Prosecutor's Office shall proceed before the Supreme Court of Montenegro, Court of Appeals of Montenegro, Administrative Court of Montenegro and other state authorities, according to the law .“

Supreme State Prosecutor's Office shall, according to the law, file the motions for protection of compliance with the law.

Supreme State Prosecutor's Office is also in charge of supervising the work of the Special, High and Basic State Prosecutor's Offices. This supervision is carried out by direct insight into the work of subordinate prosecutor's offices.

This prosecutor's office, as well as the overall prosecutorial organization, is managed by the Supreme State Prosecutor.

Supreme State Prosecutor's Office also acts in cases of international legal assistance in accordance with the law and ratified international agreements.



Special State Prosecutor's Office

„Special State Prosecutor`s Office shall be established for the territory of Montenegro within the State Prosecutor`s Office which is a unique and autonomous Authority.


Special State Prosecutor`s Office shall take all the actions falling within its jurisdiction before the Special Division of the High Court in Podgorica.“

„Special State Prosecutor`s Office shall have jurisdiction for the prosecution of criminal perpetrators as follows:

- 1) organized crime, regardless of duration of the prescribed punishment;
- 2) high-level corruption
- 3) money laundering;
- 4) terrorism;
- 5) war crimes, and
- 6) violations of electoral rights prescribed by Chapter Sixteen of the Criminal Code of Montenegro.“



„Special State Prosecutor's Office shall also have its own divisions. The Division for International Cooperation shall carry out tasks involving cooperation with the competent authorities and bodies of other states and international organizations, appointment of members of the joint investigative team which is set up on the basis of an international treaty for the purpose of criminal prosecution for the criminal offences that fall within jurisdiction of the Special State Prosecutor`s Office.“

A photograph showing two police officers standing in front of a grey metal fence. The officer on the left is wearing full tactical gear, including a helmet and a balaclava, and is holding a rifle. The officer on the right is wearing a dark uniform and a cap. In the background, there is a multi-story building with several windows and air conditioning units.

Relations with the police and other state authorities

1. In relation to the police and other state authorities participating in the investigation, state prosecutors shall act in such a way as to ensure the existence of appropriate functional cooperation for issuing the binding orders or the immediate managing and directing the work of those authorities. If they do not act in accordance with the binding orders within the deadlines set by the state prosecutor, their supervisors will be informed in writing without delay.

2. State prosecutors shall give instructions to the police and other state authorities participating in the investigation, so that actions of the police and other state authorities are without prejudice in a legal and orderly manner, and if it is determined that the abuse was done or acted in violation of the law, the necessary measures will be taken in accordance with its powers.



EUROJUST

EUROJUST

Montenegro is a signatory to the agreement with EUROJUST, which ensures closer cooperation in the fight against cross-border crime with EU member states.

The agreement defines the scope of cooperation between Montenegro and EUROJUST, determines the competent bodies for its implementation, mechanisms and institutes for mutual cooperation, such as the appointment of the state prosecutor, that is, the magistrate for liaison with EUROJUST, contact persons, modalities of information exchange with with special reference to the issue of privacy and protection of personal data and data security, as well as the relationship of that body with competent authorities of other countries.

„Opinion no. 1 (2007) on ways of improving international judicial cooperation in the criminal justice field:“

In order to improve the institutional, normative and inter-personal conditions for the development of a genuine legal culture of cooperation in the criminal field among European states, the CCPE recommends to the Committee of Ministers and member states of the Council of Europe:

1. to act on the normative framework of international cooperation,
2. to act on the quality of international cooperation,
3. to extend exchanges between legal practitioners,
4. within the framework of the Council of Europe, to foster cooperation with third countries and relevant European and international institutions and organizations;
5. to increase budgetary and human resources allocated to international cooperation within the courts and the prosecution offices.



„Opinion no. 11 (2016) on the quality and efficiency of the work of prosecutors, including when fighting terrorism and serious and organized crime“

TERRORISM

„Most member states of the Council of Europe have become aware of the fact that serious and organized crimes have become more complex and more expressed internationally. Terrorism has severely hit many countries and is currently a major priority in the work of public prosecutor's offices. Illegal migration poses new challenges in the field of terrorism, organized crime and human trafficking.“

Prosecutors are on the front line of prosecuting serious crimes and therefore they have an essential role in preserving public safety and protecting the rule of law.

In cases of terrorism and serious and organized crime, member states should take appropriate and proportionate measures to allow prosecutors the use of special investigation techniques.

„In order to improve and facilitate international cooperation, including extradition, legal assistance and recovery of criminal proceeds, three main aspects should be considered: legal basis for smooth and effective cooperation; adequate implementation of international legal instruments in every participating state and creation of practical and operational tools for cooperation.“

Literature:

1. *Law on the State Prosecutor's Office of Montenegro, Official Gazette no. 76/2020*
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4. *Opinions adopted by the Consultative Council of European Prosecutors, November 2020.*
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