



Cooperation between the Prosecution and the Police

- Stories of prosecutors,
police officers and judges -

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This research is conducted as part of the project of Institute Alternative dedicated to strengthening inter-institutional cooperation in the criminal justice system of Montenegro.*

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Introduction

Comments on the lack of effective cooperation, lack of communication and coordination between the Police Administration (hereinafter: Police) and the State Prosecution (hereinafter: Prosecution) in Montenegro have become platitudes in public discussions and problem which everyone agrees upon. Poor assessments of this cooperation are coming even from the representatives of these state authorities, who are responsible for the joint work of the Prosecution and the Police. However, it was never specified what are the barriers to a more effective cooperation, in which manner are they manifested and how to overcome them.

Given the need to further investigate what are the reasons and what are the barriers to a better joint work of the Police and the Prosecution in criminal cases, a research team of Institute Alternative prepared the concept with six thematic areas and 30 questions related to the work of the Police and the Prosecution. Based on this concept, 27 interviews were conducted at the local level in three municipalities – Bar, Pljevlja and Podgorica, on the principle of equitable regional representation. Interviews were conducted with representatives of the Basic Prosecution, Security Centers and the Basic Court in these three cities, in May 2014. We owe special thanks to the Supreme State Prosecution, the Ministry of Interior, and the Supreme Court which have enabled us to conduct interviews and thereby contributed to our research.

The attitudes of the respondents are presented in the report in front of you, which consists of 14 thematic chapters and includes different aspects of the work of the Police and the Prosecution, as well as conclusions and recommendations for improving the identified problems. The special value of this report is the large number of very specific examples, which illustrate the functioning of these bodies, relations between them, joint work on cases, problems at work and sources of dissatisfaction of police officers, prosecutors and judges. The statements of the respondents are presented originally, with only minor corrections.

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Project is composed of four components and includes the following analyses:

- a) Comparative models of institutional and legal framework for fight against corruption and organized crime¹*
- b) Content and dynamics of the process of drafting the annual reports of the State Prosecution and the Ministry of Interior - Police Administration²*
- c) Cooperation between local prosecution and local police in three municipalities*
- d) Annual budgets of the Police and the Prosecution.*

1 The comparative study is available at <http://institut-alternativa.org/parlamentarni-nadzor-u-oblasti-bezbjednosti-i-odbrane-monitoring-izvjestaj-za-2013-godinu-i-analiza-uticaja/?lang=en>

2 The analysis is available at <http://institut-alternativa.org/zadovoljena-forma-ili-sustina-analiza-sadrzine-godisnjih-izvjestaja-o-radu-drzavnog-tuzilastva-i-uprave-policije/?lang=en>

Qualitative analysis of the cooperation between the Basic Prosecution and the Police Administration (organizational units at the local level)

1. Attitudes on the application of the concept of the prosecutorial investigation in relation to the practice prior to the adoption of the new Criminal Procedure Code

The respondents expressed different opinions on the application of the concept of prosecutorial investigation. Some of them believe that the concept contributes to the efficiency and to the cost-effectiveness of the process, but that it negatively affects its quality. Hence, they were not able to state clearly whether this solution is better than the previous one or not. The others explicitly stated that the prosecutorial investigation represents a worse solution than the previous one. On the other hand, some respondents stated that the current solution is better than the one prior to the adoption of the new Criminal Procedure Code, when the investigation was in the competence of the courts. In addition, they think that all the agents managed the application of the new concept well, and that this concept contributes to the efficiency and the quality of the investigation. Differences in opinion of respondents are clearly divided, depending on the institutions they come from.

The interviews conducted with the respondents from the Police clearly express the dissatisfaction with the change of the concept of investigation. In order to illustrate this, we cite some of the statements:

- "The competences of the Police are reduced to a large extent, making the detection of criminal offences even more difficult."
- "The concept is better because it is more efficient and shortens some procedures... In my opinion, that contact with the prosecutor, although we have a telephone contact, should be maintained in joint premises, where we could work and decide as a team... The judges performed some activities better than the prosecutors. They had more time and I personally think that the investigation procedure was conducted better."
- "The previous solution was much better, the Police had more competences, and we weren't obliged to strictly stick to the instructions from the Prosecution... The fact that we don't have the support of the Prosecution is making our work even more difficult. In great number of cases we don't have their understanding."

When it comes to the respondents from the Judiciary, it can be noted that there is a significant dissatisfaction with the application of this procedure in two municipalities, while in one municipality the respondents think that the current procedure is yielding better results than the previous one.

Here we list three statements of the respondents from the Judiciary:

- "I think that now, in the prosecutorial investigation, the quality is being sacrificed for the sake of speed. You will surely get the data from the Prosecution on the duration of the investigation and you will see that the time needed is now shortened, but I fear that we need a vast amount of time during the main hearing to get the basic data about the parties, not to mention to obtain evidence. Specifically, I had a case where the electric power company "Elektro-

"I think that now, in the prosecutorial investigation, the quality is being sacrificed for the sake of speed."

distribucija" filed a criminal complaint against one person. They have written the name of that person, but the identification number of his brother who attended the control. It took us a long time to determine what was actually happening. You have to issue orders for compulsory apprehension and to determine the identity of the individual with help from the Police and you end up confused. After a year, I finally have the type of evidence that I should have had at the beginning of the investigation."

- "Earlier when the judiciary investigation was applied, obtaining of evidence was done more thoroughly, but not all of them were needed. Now we don't even obtain the evidence which is really necessary..."
- When the implementation of prosecutorial investigation began, I said that it was going to have a negative impact. The Police and the entire prosecutorial system have lost the psychological advantage that existed when the party was in the Police and under the police investigation. Of course, I don't mean to allude on any kind of pressure. Because now, after the arrest, the individuals are aware that the Police station is only a passing station and the Police has definitely lost the advantage it once had. The Police is now in more unenviable position than before, because it has a lot of operational information which the Prosecutor doesn't have. I think that this investigation was one step backwards and that the Police should be given back the competences it used to have, such as the right to examine parties, the accused, etc, as it was stipulated earlier under the Criminal Procedure Code."
- "It's not better, it's worse. I don't know if it's the lack of gumption of the Prosecution or something else... Only few cases come from the Prosecution, there are very few indictments."
- "This is a major shift, a kind of revolution in criminal proceedings... I think that the prosecutors handled it quite well. (...) However, there were certain complaints from the attorneys via the press and the media indicating that the files and the evidence within those files are unknown for both the defendant and the defense attorney. Only after the indictment enters the confirmation phase, the attorneys find out what evidence exists against their clients."

"Earlier when the judiciary investigation was applied, obtaining of evidence was done more thoroughly. Now we don't even obtain the evidence which is really necessary."

When it comes to the Prosecution, the opinions of the respondents from this institution are in favor of the view that this concept is better than the previous one and that the prosecutors, despite the lack of spatial and financial capacities, work well. The statements of three respondents are as follows:

- "A huge difference can be noted when it comes to the timeliness of the process, we act faster, the prosecutor knows exactly what s/he needs in the process, decides on his/her own, brings indictment based on the evidence, the indictment has to pass the control ... Sometimes it could happen that the Police incorrectly passes on the information from the field..."
- "The procedure is much better and more expeditious, we work more efficiently."
- "This solution is much better. The investigation is better, more efficient, faster..."

In regard to this question, one representative of the NGO³ stated:

- "It is unclear to me how the state prosecutor estimates whether to file a criminal or a misdemeanor charge, since s/he does not take into consideration the chronology of the case, or the criminal record."

"The Prosecution does not take into consideration the chronology of the case."

3 Respondent from NGO sector who works on the project "Monitoring the application of Criminal Legislation in the field of family violence"

The respondent mentioned the example of a woman who filed “5 or 6 complaints” and added: “Five separate procedures were led before regional misdemeanor bodies and a different judge was put in charge of each of them. After some time, one verdict was delivered: a suspended sentence of one month up to one year. Subsequently, she filed two additional complaints which are also prosecuted as misdemeanor charges, because the state prosecutor did not follow the chronology of the case, i.e. he wasn’t informed that the person has violated the suspended sentence.”

2. Attitudes on the cooperation between the Prosecution and the Police

The essence of attitudes expressed by the respondents from the Basic Prosecution is that their cooperation with the Police in conducting investigation is efficient. In support of these attitudes they emphasize the following:

- “The cooperation between the Police and the prosecutors, as two components meant to work with each other is really good... There is nothing that could slow the work down or anything else what could occur in that part... If there is a problem, it is more a practical matter or not a problem at all, but something like a minor issue, so to call it, which is being solved very quickly. Only rarely, if something happens in relation to a new phenomenon in society, not in our work, but in society, then we have a good system and we organize meetings where we discuss and agree how to act in all similar cases in the future. This leads to the conclusion that we have a really good cooperation and that we always look ahead, which means that we solve all potential problems which could occur.”
- “The cooperation is excellent. They wake us up in the middle of the night over some silliness, but they still ask for our opinion.”
- “They really are working, even doing some things that don’t fall into their scope of work. They use their own cars, just to get the job done.”
- “I have decent cooperation, sometimes minor issues occur, such as when the Police does something differently from what I have told them, but that can be solved. (...) We constantly maintain communication over the phone, at least once a week, and afterwards I only ask from them to inform me in writing about the information they gather.”

However, one of the respondents emphasized the importance of obtaining legally valid evidence, which is often ignored by the Police. He stated the following:

- “... The Police wants to complete the case at all costs. They have to gather all the evidence first. It is not enough that one person says ‘He has beaten me.’ Simply, they find the perpetrator, but the Prosecution has no evidence against him.”

“Guidelines of the prosecutor to the Police are as follows: ‘It is necessary, according to your competence, to take appropriate measures and actions and to inform us about that in a timely manner.’”
(end of quote from the official document)

However, almost all respondents from the Police expressed their dissatisfaction with the cooperation with the prosecutors. In addition, they presented reasons for their dissatisfaction and suggestions for improvement. In several testimonies, representatives of the Police suggested that it would be good to have joint meetings more frequently to discuss the course of actions within certain cases, in order to overcome any doubts and problems that may occur. Let’s mention a few statements in which the respondents from the Police expressed their views on the cooperation with prosecutors, as well as the complaints and suggestions for the improvement of their cooperation:

- "... The prosecutor has to be more present when it comes to working with the suspects."
- As the fundamental problems of the Prosecution the respondent stated a lack of dedication to work and a lack of courage. "It's a matter of a personality type. The prosecutor must demonstrate authority. We often work with reoffenders and the prosecutor has to show even more courage and authority towards them. Someone yells at the prosecutor, and then they try to find an officer's mistake. It seems that filing a complaint against a police officer is the easiest thing to do. In the Police, the transfer of responsibility occurs often. The senior officer avoids meeting with the prosecutor, so s/he orders me to do it."
- "I would like to communicate more with the prosecutor in writing, not by telephone or via official note composing. Prosecutors go to the crime scene very rarely." Respondent further stated that it would be better if the prosecutor on duty worked in the premises of the Security Center. He pointed out that the documents about cases are being transferred "hand to hand" and that there is no courier or a filing system which would issue the confirmation that the documents are received.
- "I don't like oral communication. Based on prior experience, I don't think it is good. We need to conduct monthly meetings, the prosecutors need to come to our offices in order to see how we work at night, when you don't sleep from 11 p.m. until morning..."

"Prosecutors are not sufficiently present in dealing with suspects and very rarely go to the crime scene."

"They never want to come, here especially at night and they work only via phone."

Most respondents from the Police believe that the Prosecution should be more involved, more active from the start, especially when it comes to serious offenses. One of them pointed out: "You have to phone him twenty times." As stated by this respondent, it occurs that they come to the scene and that the prosecutor instructs them not to carry out a crime scene investigation, but to only make an official annotation.

A respondent from the Police mentioned the example of a recent assault on a person in a discotheque, when he was told by the state prosecutor over the phone that he does not have to carry out preliminary investigation. Respondent believes that, if the assaulted person had died, the responsibility would have been solely his and that he would have been held accountable for malpractice in office, because he would not be able to prove that the prosecutor ordered him not to go out to the scene. He said: "I made the official annotation, but who will confirm when the time comes that it really happened that way?"

Suggesting that the deputy prosecutors are young and inexperienced, another police officer cited the example of a seminar on the implementation of the Criminal Procedure Code during which the current prosecutors were lecturers. "They did not know the answers to many questions posed."

Additionally, he stated the following: "If the office of the prosecutor was within the Security Center, the possibility of malfeasance or abuse of power would be decreased. Furthermore, he emphasized that: "This practice doesn't exist anywhere else in the world – we take a statement from a person in the capacity of a citizen, while the prosecutors take it in the capacity of an accused person."

He underlined some of the fundamental issues that do not have to wait for the prosecutor to be resolved:

As the first example the respondent cited the case of assault and robbery. A man who had committed 25 acts of assault and robbery was charged by the Prosecution for 12 only. "Between 18 and 22 o'clock he would rob a newsstand with a knife and he would take 20-50 Euros." This person has showed to the Police which newsstands he had robbed and in which manner. "We

had so many problems to charge him for these 12 robberies.”The problem arose because the Prosecution claimed that there was no enough evidence to charge him for the remaining 13, although the manner in which the acts were committed was the same. The Prosecution requested identification, but the aggrieved parties could not recognize him because he was wearing a mask. Also, the money was spent. “We didn’t have enough evidence for these 12 cases either, but that was the prosecutorial estimation.”

As a second example, the police officer cited the case of a man who planted an explosive device. After the Police managed to find him, “forensic examination indicated traces of the same explosive on the hands of the suspect as on the car. The problem with the Prosecution arose regarding the claim for damages of the aggrieved party, who immediately sold the car that was damaged. “A person has the same characteristics of explosive on his hands and we can’t file a criminal charge.”

We list below several more attitudes of the police officers:

- “In regard to the Prosecution, the communication is reduced to the level of phone calls and the instructions are sometimes incomprehensible, unreasonable, confusing... In certain situations, there is just no respect (...) during phone calls or in direct communication, there is a certain disdain... In certain cases, they don’t even know what they are asking us to do and when we pose a question, they ask: Can you give us five minutes to consult among each other? We understand them perfectly, but they don’t seem to understand us...”

“Instructions of the prosecutors are incomprehensible, sometimes unreasonable, confusing.”

- We have a robber who is breaking into a newsstand, and I need to call the prosecutor and tell him: “Excuse me, Prosecutor, shall I arrest this person?”. It almost comes to this. It is rather unclear to the Police and the inspectors when they really need to call the prosecutor to ask him about the further steps. However, we have our competences, which are quite limited. The prosecutor is always above you, so the colleagues are always in fear not to make any mistakes.
- Case X in the Higher State Prosecution: We had a man with half of kilogram of trotyl and plastic explosive. The Prosecutor wasn’t interested in working on this case. He had the explosive, his DNA was found proving that the explosive was his and that’s it. The man wanted to blow half of the city in the air, he wanted to kill one person. Simply, the Prosecutor has the evidence for unauthorized possession and the man was charged

“The prosecutors are not interested in the details or the background of the case.”

only for that. Everything else about the case wasn’t important for the Prosecutor. The fact that he wanted to blow half of the city in the air was not important, neither the person who ordered it, nothing.”

Almost all respondents from the Police think that the State Prosecutor should be more involved in the cases from the beginning. They also believe that the State Prosecutor should have the premises in the Security Center and that s/he should be present from the moment of deprivation of liberty until the moment the person is brought to the Security Center.

Also, they emphasize that the prosecutors very rarely carry out crime scene investigation, usually only if it comes to serious criminal offenses or offenses which bring a lot of media attention. Most respondents from the Police and the Prosecution said that the prosecutors from the Basic Prosecution carry out crime scene investigation only when it comes to cases that have brought media attention. Otherwise, they delegate this task to the Police.

The respondent from the Police shared the example which, in his opinion, reflects the current situation.

- Following 2 or 3 months after breaking and entering into religious objects in three municipalities in Montenegro, the Police placed under arrest one person who admitted committing thefts in all three municipalities, as well as described the details of these criminal acts. After they collected the statements and notifications, they delivered them to the prosecutor, who said: "There are no elements to bring criminal charges." In one municipality, the person was charged with the criminal offense of serious theft. In that municipality the prosecutor delegated to the Police to perform an interrogation of the accused person. In the second municipality the criminal charge was filed, as well. The respondent added: "Until today, criminal charges haven't been filed by our Center only, despite the fact that he confessed the perpetration of these criminal acts in our premises."
- About prosecutors: They are the leaders when it suits them. They were given a lot by this Code. I think that they care only about statistics – a 100% performance rate.

"You have the situation where three prosecutors in three towns act completely differently for the same criminal offense."

The police officer has also said that there are examples when the Prosecutor tries to 'dissuade' the aggrieved party from the identification process, by asking additional questions. Then the person "became scared and started distancing". Additionally, he emphasized that he was present when the perpetrator confessed committing a crime in front of the prosecutor, without knowing that she was in the office. After that, the prosecutor said: "This can't be done in this way. We need the woman to identify him". The problem is that somebody will ask for the identification in the court. He emphasized that this kind of behavior of the prosecutor is not in favor of citizens.

3. Agreement on joint work of the State Prosecution and the Ministry of Interior – Police Administration during the preliminary investigation and criminal proceedings

After more than a month after signing the Agreement⁴, almost none of the respondents were familiar with its content. They do not think that the Agreement is necessary and, therefore, they did not feel the need to familiarize themselves with its content. The following statements from the interviews with respondents from the Police and the Prosecution confirm the aforementioned statement:

- "Couple of articles were copied from the Criminal Procedure Code... It doesn't stipulate anything special. There is no new effect in practice, such as more frequent communication."
- "My boss handed it over to me, but we didn't have time to read it..."
- "I am not familiar with the Agreement."
- "I haven't read it. I haven't received it at all."
- "I wouldn't comment. I've heard about it, but I haven't read it."
- "I am familiar with it only from the media. I don't know why the agreements of this kind are signed. We have already had those competences stipulated by the Criminal Procedure Code."

4 The Agreement on the joint work of the State Prosecution and the Ministry of Interior - Police Administration during the preliminary investigation, evidentiary actions, and investigation, as well as during criminal proceedings was signed on 9 April 2014. The goal of the Agreement is achieving more effective detection and prosecution of criminal offenders, as well as the exercise the rights of aggravated parties and the protection of the victims of criminal offenses. Additionally, the basic rules about informing the public about the cases have been stipulated by the Agreement. The Agreement is available here (in Montenegrin only): <http://www.mup.gov.me/vijesti/137506/Potpisan-Sporazum-o-zajednickom-radu-Vrhovnog-drzavnog-tuzilastva-i-Ministarstva-unutrasnjih-poslova-Uprave-policije.html>

- "I am familiar with the Agreement only from the media."
- "I am not familiar with it."

The Agreement stipulates the following:

- a) the competences and actions taken by the Police during the preliminary investigation and the notification of the State Prosecutor on the received criminal complaint or the beginning of exercising police competences and actions during the preliminary investigation
- b) the coordination of the Police actions by the State Prosecution during preliminary investigation
- c) the execution of actions of presentation of evidence
- d) the work in official and significant cases and the coordination of work in these cases
- e) placing under arrest and detention

4. Placing under arrest and detention by the Police

Almost all respondents from the Police and the Prosecution agreed that the detention period should be prolonged from 12 hours, as stipulated under the Criminal Procedure Code, to 24 hours. The most frequent answers from the respondents were:

- "The period is too short and we have to speed up the process. There is always something that we don't have the time to finish."
- "I consider this period to be too short; it should be prolonged to 24 hours, because it's impossible to do all the work properly."
- "The period should be prolonged. The period of 12 hours is too short."
- "The period should be at least 24 hours."
- "Taking into consideration our territory, we are not able to provide the security for individuals in that period."
- "In the period of 12 hours, we need to check the statements of the suspect, to contact persons which the suspect claimed to be with in order to confirm the veracity of these statements."

5. Interrogation of the suspect

The majority of respondents from the Police, as well as some of them from the Prosecution, suggested that the competence to interrogate the suspect should be given back to the Police, while the respondent from an NGO said that it is needed to amend the Criminal Procedure Code in order to give back to the Police the competence to interrogate the suspect without the suspect's consent and upon the approval of the prosecutor.

Here are some of the answers given by the respondents from the Police about the need for giving more competences to the Police in regard to interrogation:

- "For sure. We are just a service."
- "I think that the Police should be given back the competences that it used to have, i.e. to treat the confession given at the Police station as a proof."
- "It is crucial to give broader competences to the Police in the part regulating interrogation of the suspects in the presence of the attorney... Also to provide the Prosecutor with an office at the Security Center in order to be constantly updated on the development of the situation."
- "It often happens that the suspects brought to the station confess committing a criminal

offence, with detailed information on what they did, how they did it, etc. But when they come to the prosecutor, they say “I didn’t do it.” I think that the prosecutors care more about the procedure, it’s only statistics for them, while we are here because of the citizens.”

The respondents from the Prosecution share similar views:

- “The Criminal Procedure Code should be amended to give to the Police the competence to interrogate the suspect.”
- “The validity of evidence is problematic, because it happens that suspects say one version of the story to the Police and another to us, and then the first statement becomes invalid.”
- “Suspect should be granted every right that is stipulated under the Criminal Procedure Code, especially if we talk about a minor offense...”
- “It is absurd that we amend the Code for the third time, while the Police still collects only statements from citizens without any legal value.”

6. Indictment, bill of indictment, the validity of evidence

When referring to the number of indictments, the opinion expressed by the respondents from the Judiciary shows that it is very low and that “only few cases come from the Prosecution, there are not many indictments.”

“There is an extremely small number of indictments, up to 10%. Mostly, there are bills of indictment, since now the scope is broadened to the criminal offences for which a sentence of up to five years is envisaged, unlike before when it was up to three years.”

In regard to the validity and quality of evidence presented by the Prosecutors at the main hearing, as well to the cooperation with the Prosecution, the opinions differ, depending on the municipality where the interviews were conducted. The dissatisfaction with the cooperation with the prosecutors is evident in two courts, while in the third Basic Court in one of the municipalities where we conducted the research, the cooperation, as well as the quality of evidence presented at the main hearing, are considered to be satisfactory. For instance, one of the judges stated:

“I wouldn’t like to criticize the Prosecution, but I would like to point out to the quality of the decisions that are submitted to us by the Prosecution. But it has to be done, someone has ordered them to do it in that way. We had a case where the prosecutor had rejected the criminal complaint against NN – a woman, in 2010. The aggrieved party as the plaintiff, has started the court procedure. The final judgment was that the defendant was acquitted for that criminal offence– endangering safety. At the beginning of 2014, the prosecutor has filed an indictment proposal against the same person for the same criminal offence – endangering safety. What happened, actually, was that the Higher State Prosecution performed a control; they have seen the rejected criminal charge and decided to start the process again, as claimed by her lawyer during the hearing. They rejected the criminal charge from 2-3 years ago for the same offence against the same person, they only added the husband this time. In the meantime, statute of limitations ran out, so I had to rule in that light. Personally, I consider this to be scandalous.”

With regard to the timeliness of the process, one judge said:

“In general, they are working on everything needed and we don’t face any slowdowns. At the moment, I am working on a case which was performed month and a half or two months ago. Complete investigation for this case was already performed. Therefore, I don’t even have to introduce new evidence during the main hearing... It is possible that the prosecutorial investigation

has been implemented so well or that we had good results because of their work, because everything needed is here – new cases, everything. I am very satisfied with this solution.”

Almost all respondents agree on the fact that the Criminal Procedure Code should be amended in the way that it stipulates the possibility to control the bill of indictment:

“It used to happen before that the bill of indictment is filed only based on a criminal complaint. Now you have to look for tons of evidence which should have been collected during the investigation. The problem that we face is the fact that 90% of the indictment acts are bills of indictment, and in that case, there is not any legal possibility to return that bill of indictment to the Prosecutor. Basically, you get the case with the name and surname on it. There are many people

“Sometimes, neither witnesses, nor suspects or aggrieved parties are heard.”

who have the cottages and spend here couple of months during the summer, and afterward in September, you get the bill of indictment against that person for something, e.g. electricity theft. The possibility to find that person only by the name and surname is really low. That’s how our cases

get blocked... The indictment is being verified by the Council and if there is lack of information, the indictment is being remanded... The goal shouldn’t be to statistically shorten the period of investigation, but to do the job well. Only to indict someone is not the solution. I have suggested several times to find a possibility for the court to verify these bills of indictment. Sometimes, those bills are obviously groundless, but you still have to perform the whole legal procedure.”

“As for the investigation itself, sometimes happens that for those criminal offences where summary proceedings are applied (up to five years), we receive only criminal charge submitted by the Prosecutor with the bill of indictment, along with occasional record, and that’s it. Some-

“Sometimes the bills of indictment are obviously groundless, but the court still has to follow complete legal procedure.”

times, neither witnesses, nor suspects or aggrieved parties are heard. In addition, sometimes the bill of indictment contains only the name and the surname, the city and eventually the identification number. The Code grants the right to the Prosecutor to deliver only name and surname, and other data, if they are available. If not, the Prosecutor is not obliged to list them. Sometimes, half of a year or a

year passes until we determine who is the person, where are they from, we assume the place of birth by the identification number, we write to the Police... The Prosecutors often use this lack of obligation to perform any investigative action and they just hand over the case file to us, so the trial turns into an investigation... It doesn’t happen very often, but sometimes we don’t have basic information about the suspect, the aggravated parties are not heard, only addresses are listed. One example is an affray in town two years ago, where all the suspects and aggravated parties were from Serbia. The only information I was given was their name, surname and the city. The Prosecutor ordered to perform a hearing. By the time I find the witness a large amount of time passes, s/he is in the end acquitted. The Code stipulates ensuring evidence by the Court, which means that the aggravated parties who stay shortly in Montenegro should be heard.”

Respondents from the Judiciary in one municipality stated that the number of indictments and bills of indictment was decreased by more than one half compared to the number they had before the Code entered into force. The respondents from the Prosecution have also agreed with that fact:

- “The situation is worrisome, especially when referring to the current year. My colleague and I still haven’t had 60 cases, so 30 each. Last year the quota was reached because of the rehabilitation cases... We used to have as twice indictments as we do now. We should have had at least 80 cases until June, while we have only 30. Many Prosecutors decide to use the institute of deferred prosecution.”

7. Ordering detention

One respondent from the Judiciary pointed out to the problem of ordering detention in summary proceedings.

- “The detention can be ordered during the regular proceeding if there is a reasonable doubt that the criminal offence may be repeated. This possibility doesn’t exist in the summary proceedings where criminal offences like serious bodily injury and violent behavior are usually committed by reoffenders. We don’t have the competence to order them detention. There are many media headlines saying ‘The person released from the custody by the court, despite the high number of offences. The amendments of the Criminal Code and the Criminal Procedure Code are not harmonized. There should be a provision that allows ordering detention under the reasonable doubt of reoffending in the summary proceedings. This creates a lot of problems to the Judiciary while the public is appalled.”

8. Application of the institute of deferred prosecution

In accordance with the Article 272 Paragraph 1 of the Criminal Procedure Code, the State Prosecutor may decide to postpone criminal prosecution for criminal offences punishable by a fine or imprisonment for a term up to five years, when s/he establishes that it is not functional to conduct criminal proceedings having in mind the nature of a criminal offence and the circumstances of its commission, the offender’s past and personal attributes, if the suspect accepts to fulfill one or several obligations stipulated by the Code. The purpose of this institute is to unburden the courts and to reduce costs of criminal proceedings, as well as to avoid conducting criminal proceedings against persons to whom imposing of a criminal sanction is not necessary.

Almost all respondents from the Prosecution stated that they apply this institute in the cases of criminal offences committed against public traffic safety, like endangering public traffic safety, minor bodily injury, criminal offences against property, etc. However, one of the prosecutors said that this institute is often used in the cases of family violence, despite the fact that the Istanbul Convention, ratified by Montenegro in March 2013, prohibits any alternative dispute settlement, including mediation, in this kind of criminal offence.

9. State Prosecutors acting on their own initiative (proactively)

According to respondents from the Prosecution, State Prosecutors very rarely act on their own initiative and *ex officio* and this puts them in a very passive position compared to the Police. On the question of proactive work of Prosecutors, respondents from the Prosecution and the Police, stated the following:

- “We have never done it before, neither do we receive those newspapers. NGOs often write to us. NGO MANS has written about the companies which were shut down, but we don’t have any documents in regard to those companies. We have enough complaints filed.” He pointed out to the charge filed against the civil servant by a citizen “for the consumption of fuel during the weekend”. He criticized behavior of lawyers during the trials because they were often postponed. He, as a prosecutor, takes care of the cost-effectiveness of the process, while the lawyers are trying to get as much money as they can.

“No, there are no cases where prosecutors take interest in a case based on e.g. media allegations. They do not raise any issues on their own nor do they request from the Police to further investigate or collect information.”

- “There are such cases, but not many...”
- “We had a case with the Customs Administration. I have initiated a case against one customs official on my own initiative. The Customs Administration was not familiar with it, sometimes they don’t know what their workers do. Only I do that. In that situation, you draw the wrath of many, especially of your colleagues.”
- “They never do that. If they see it in the media, they are obliged to initiate it... Never.”
- “No, rarely, almost never.”

10. Autonomy in the work of State Prosecutors

In one of the municipalities where the interviews were conducted, at the request of the Head of the Basic State Prosecution, a group interview was conducted (the group consisted of Head of the Basic State Prosecution and 3 State Prosecutors), with the explanation that the State Prosecutors do not have the right to share the information about their work so they could not be individually interviewed.

While implementing the project “Monitoring the application of Criminal Legislation in the field of family violence”, the respondent from the NGO said that she managed to conduct interviews only with the representatives from the Police, while within a couple of months she has not managed to establish the communication and organize the interviews with none of the State Prosecutors.

Almost all respondents from the Police in that municipality pointed out that the State Prosecutors often demand to conduct consultations with the Head of the Prosecution Office during their joint work.

The interviewer noticed that all respondents from the Judiciary, as well as almost each respondent from the Police were open during the interview, while the State Prosecutors felt uncomfortable, confused and restrained in order not to say something that could eventually produce negative effect.

The statements of respondents from the Police confirm that the feeling of the interviewer was justified.

- “They are insecure; they have to consult their Head for everything, their Head says this and that... That would be as someone from Bijelo Polje called me to ask me what they should do.
- “In some situations they don’t know what they are looking for or why are they looking it for. When we pose a question, they ask us “Can you give us five minutes to consult among each others?”

11. Access to data, communication with other state bodies

Some respondents from the Prosecution and the Police pointed out that the quality of the procedure would be positively influenced if they would have the access to the criminal records of the Ministry of Justice, or at least if the procedure for accessing the records would be simplified. That should be the case with the access to data from other state bodies as well, such as Customs Administration and Department of Public Revenues. The example for this is the following statement:

- There was a plan to establish the databases. However, investigation teams and some other special investigation teams, the prosecutor, Police officers, Customs officers, Revenue Inspectors – that would be the team with the unique database about the individuals, are they paying taxes or not, do they import the goods, are their account blocked etc...

12. Public relations

All respondents from the Police stated that, when they receive questions from the media, they forward the memo to the PR Service of the Police Administration. Afterwards, the Police Administration requests the information from them, which is being prepared and sent by the Security Center or the Security Department. They predominantly believe that the current solution is good. All respondents from the Prosecution said that the Supreme State Prosecutor is solely competent to present the information to the media.

One respondent from the Prosecution said that the media should address them directly. According to him, “while they forward the information to the Supreme State Prosecution and while the Supreme State Prosecution processes the request, it is questionable what kind of image of the Prosecution the media will obtain. The rest of the respondents from the Prosecution find it irrelevant who will present the information to the media. According to one of the respondents, the essence is what is most important – to share the information with the audience properly. “Whether it is being done by us or by the Supreme State Prosecution, it is completely irrelevant.”

On the other hand, one of the respondents from the Prosecution stated:

- “I am one of those older prosecutors, I have been working here for 30 years, I was taught to work in a hierarchy and to respect it. If it was one of the younger prosecutors, his/her approach would probably be softer. I strongly respect the form, the hierarchy and that is it. Personally, I like this hierarchy, not because we should be closed, but because the Supreme State Prosecutor should be the one who represents the Prosecution as a whole. I think that the Supreme State Prosecutor should be aware of everything that is happening and has to give permission for everything I want to say in public. He manages the policy of the Prosecution.

On the question of his/her cooperation in connection with the issuance of press releases between the prosecution and the Police regarding specific cases, all respondents from the Prosecution and the Police said that this cooperation is being agreed upon between the Supreme State Prosecutor and the Director of the Police Administration.

The respondents often think that it is needed to organize additional education for representatives of the media because they also make mistakes. Here is the statement of one representative of the Judiciary.

- I think that the media make a lot of mistakes. It's not only about the Prosecution, the Judiciary, or the Police; it's about self promotion. We from the Judiciary were in the middle of the attention two years ago and we act the same as then, but somehow we are not in their focus anymore. I can't say whether the communication between the media and the Judiciary is good, because I don't know anything about it. Whenever a journalist came to talk to me, I gave him all the information I was in possession of at that moment, there is nothing to hide. However, if the aggrieved party has to identify someone, why the media rushes to publish all photos of the suspect? In that way, they are destroying the evidence and I can't use it on the main hearing. The consequence is that it could happen that the suspect is released of all charges because the media published the photo. **Specifically, yesterday I had a case, something about the elections, someone took the camera from the aggrieved party and all photos were published on TV. What's the point of the identification then? How could I consider that evidence as legal, if the whole country has seen the face on media websites prior to identification?”**

The respondent from an NGO emphasized that for a considerable amount of time now, the

Prosecution failed to deliver the information as a response to the requests on free access to information submitted by this NGO.

13. Trainings

Almost all respondents stated that they would advocate for more trainings, especially those organized jointly for all three institutions (the Court, the Prosecution and the Police), as well as for joint trainings for the Prosecution and the Police. This is shown through following statements:

- "There is always lack of joint trainings, as well as some good projects and seminars. They refresh your memory, you learn some new techniques. Well, cooperation is also to be learnt... When you enable working meeting with discussions on some issues, you produce better level of communication – that's also something to be learnt. There are people who don't want to open or to talk. My impression is that the Police and the Prosecution are dependent of each other. If the Prosecutors wants to do something properly, quickly, and in line with the law, and don't have the instant support from the Police, then there is a problem. This goes for the other way around, as well."
- "I attended a conference two months ago with the police officer, a prosecutor and a judge. The topic was cyber crime. It meant a lot to me. Colleagues from the region have shared their experiences and we heard it, exchanged our views... As I was a beginner in that field, it meant a lot, although the conference lasted for two days only."

"It is necessary to provide an updated registry of regulations for every prosecutor and judge. I am not sure why they don't have it by now, whether it is due to funding or some other reason."

Some respondents from the Police and the Prosecution advocated for trainings in special fields:

- „We had many seminars and trainings in the field of forensic technique as well as specific trainings related to the crime scene investigation in cases of fire and explosions. In regard to homicides, there aren't any specificities, those are regular criminal offences..." The respondent emphasized that they had attended the trainings in the field of economic crime, organized crime as well as cyber crime while it is still needed to organize trainings on the topic of narcotics, money laundering, etc.
- „We had several training. I would say that we need more trainings on the topics such as economic and financial crimes."
- „There are some criminal offences that don't happen so often here, but when they happen, they could bring some doubts and confusion, but still require knowledge about it. Not the actual knowledge from the law field, but something about intellectual property and cyber crime."

14. Spatial capacity and technical equipment

The interview with respondents from the State Prosecution was conducted in the premises within an apartment building, where the investigation premises are also located. Herewith we list two examples to illustrate the working conditions:

- "I am still wondering and I can't accept the fact that the Prosecution has complied to conduct investigations in the manner stipulated by the new Criminal Code Procedure in existing conditions. It is impossible to work in these conditions. People work from home because four of them sit in one office. Lawyers and aggrieved parties are coming in all the time, it's always crowded. It's impossible to work like that. It is beneath anyone's dignity to work like that, but they still do. Four of them are fine here, they have security."

- On the other hand, people barge in in our offices all the time, they barge into my office.”
- “Imagine that you are a suspect for a criminal offence. You say “Ok, you police officers have suspected me under the warrant of the prosecutors. I will give my statement in the Prosecution, take me there”. We arrive in front of an apartment building and enter the ground floor of that building. How would you feel at that moment, what kind of institution are you entering? Are you entering the state institution or somebody’s apartment? Regardless of the fact that the premises are furnished and fully equipped, you must have a certain dose of fear of the building you are entering in order to tell the truth. I’m not saying that people should be scared and confess to the crimes they didn’t commit, but they need to be fully aware of the place they are entering.”

Conclusions and recommendations

The concept of prosecutorial investigation is being implemented for over three years now, which is quite short period of time for the big systems such as the Police, the Prosecution and the Judiciary to adapt to the changes which are brought by this new concept. Those systems, as well as their employees, show more or less inertia in regard to the changes. The concept of the prosecutorial investigation has reduced the obligations of the judges within the process of investigation and transferred them to the prosecutors. Therefore, the State Prosecution had to undergo the biggest changes and start working on tasks which were not in their competence until that moment. On the other hand, the Police had to get used to the fact that they have lost part of autonomy in their work at the expense of the Prosecution, since the prosecutors, as stipulated by the new Criminal Code Procedure, represent the agents who lead and focus the investigation. The new role of the Police requires intense communication with the prosecutors, as central figures of the investigation, and that communication is in the process of being built. Of course the communication is a two-way street, so the same commitment is expected from the prosecutors, as well.

All these changes required adjusting to the altered conditions in terms of human resources (number of employees and trainings), spatial and technical capacities, as well as institutional arrangement. Obviously, the most serious changes are expected to occur in the Prosecution, which is adjusting too slowly compared to the expectations in terms of human resources, spatial and technical capacities, and institutional arrangement. Apart from that, the Prosecution has been lead for a long time by the person appointed as an acting Supreme State Prosecutor which is not a good precondition for an effective organization. Consequently, it did not meet the requirements imposed by the Criminal Procedure Code and the factual reality. Additionally, the Police has certain problems related to human resources as well as spatial and technical capacities. This leads to a conclusion that the Prosecution and the Police should be obliged to adjust their responsibilities with the capacities they have.

Finally, this research has demonstrated a series of indications on the problems in practice:

- In the work of the Prosecution, there is a tendency of speeding up the investigative process at the expense of obtaining evidence;
- The prosecutors are insufficiently present at the scene during the preliminary investigation and in the work with the suspects;
- The communication between the prosecutors and police officers is difficult, due to the prosecutors’ imprecise orders, and is often reduced to phone calls only
- Prosecutors demonstrate uneven practice in handling similar cases, as well as a lack of interest for clarifying all circumstances of the cases;

- Detention for up to 12 hours and interrogation in the capacity of a citizen have significantly reduced the ability of the Police to achieve better results, especially considering the fact that the statements given before the Police bear no legal validity;
- When there is a danger of reoffending, a court cannot order detention in the summary proceedings;
- There is an evident lack of proactiveness and independence in the work of the prosecutors, as well as an overall closeness of the Prosecution.

Aforementioned circumstances result in an inefficient framework within which neither of the state bodies can work properly.

Hence, we recommend:

1. To the Ministry of Justice and to the Government of Montenegro, as well as to the Parliament, to consider the possibility of amending the Criminal Procedure Code and to stipulate the following:

- That the Police can interrogate the suspect without his/her consent in the presence of a defense attorney and upon prosecutor's approval;
- To extend the Police detention period to 24 hours;
- To introduce witness tampering and danger of reoffending as legal grounds for detention in summary proceedings;
- To stipulate the control procedure for dismissal of the criminal charges and the control of bills of indictment;
- To transcribe the most important regulations from the Agreement on the joint work of the State Prosecution and the Ministry of Interior – Police Administration during the preliminary investigation and criminal proceedings to the Criminal Procedure Code.

2. To the Supreme State Prosecution to:

- Provide a higher level of autonomy in the work of state prosecutors, in accordance with the Code;
- To encourage proactive work of the state prosecutors with a rewarding policy, i.e. to amend the Law on State Prosecution in order to stipulate that the professional evaluation of the prosecutors should contain the information on proactive initiatives of the prosecutors;
- To enable access to data on the proceedings commenced against all adults over 18 years old, and to start with the practice of publishing all confirmed indictments on the website of the State Prosecution.
- To provide better transparency of the work through regular press conferences, updating important decisions and information on the website, as well as improving availability to the media,
- To ensure delivering responses to the requests on the free access to information in a timely manner;

- To ensure that the institute of deferred prosecution is not applied in relation to the offense family violence.

3. To the Ministry of the Interior and to the Supreme State Prosecution:

- To provide continuous both separate and joint trainings for police officers and state prosecutors, especially on the topics of economic crime, financial crime, organized crime, cyber crime, intellectual property, money laundering, etc.
- To provide organizing meetings on a regular basis, during which the state prosecutors and the police officers could discuss the current open cases;
- To provide the spatial and technical capacity, which is needed for adequate implementation of the law;
- To provide easier access to the criminal records of the Ministry of Justice, as well as to the records of Customs Administration, Department of Public Revenues and other institutions and state authorities;
- To provide, without further delay, familiarization of state prosecutors and police officers with all legal acts, agreements and instructions related to their work.

About us

Institute Alternative (IA) is a non-governmental organization, established in September 2007 by a group of citizens with experience in civil society, public administration and business sector.

*Our **mission** is to contribute to strengthening of democracy and good governance through research and policy analysis as well as monitoring of public institutions performance.*

*Our **objectives** are to increase the quality of work, accountability and transparency, efficiency of public institutions and public officials; to encourage open, public, constructive and well-argument discussions on important policy issues; raising public awareness about important policy issues, strengthening the capacity of all sectors in the state and society for the development of public policies.*

*The **values** we follow in our work are dedication to our mission, independence, constant learning, networking, cooperation and teamwork.*

We function as a **think tank** or a research centre, focusing on the overarching areas of good governance, transparency and accountability. Our research and advocacy activities are structured within five main programme strands: i) public administration, ii) accountable public finance, iii) security and defense, iv) parliamentary programme and v) social policy.

On the basis of our five programmes, we monitor the process of accession negotiations with the EU, actively participating in working groups for certain chapters. Our flagship project is the Public Policy School, which is organized since 2012.

Managing of the organization is divided between the Assembly and the Managing Board. President of the Managing Board is Stevo Muk. Research Coordinator is Jovana Marović, PhD.

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List of our publications:

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- Budgeting the Cost of Reforms – Programme Budget for Police and Prosecution, 2014,
- Depoliticizing Montenegro's Senior Civil Service: Serving Party or People? 2014,
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