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## SIX YEARS OF PROSECUTORIAL INVESTIGATION IN MONTENEGRO

COOPERATION BETWEEN THE POLICE  
AND THE PROSECUTION SERVICE



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## EXECUTIVE SUMMARY

### – SIX YEARS OF PROSECUTORIAL INVESTIGATION

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The Criminal Procedure Code which came into force on 26 August 2009 introduced the concept of prosecutorial investigation. The implementation of the concept in the proceedings for the criminal offences of organized crime, corruption, terrorism and war crimes commenced one year later, on 26 August 2010; full-scale implementation commenced on 1 September 2011<sup>1</sup>.

Compared to the IA 2014 survey on the same topic, which showed significant dissatisfaction with prosecutorial investigation among both the police officers and the judges, as well as predominantly negative attitudes, most of the respondents in the repeated survey stated that prosecutorial investigation was more efficient than court investigation, and that cooperation between the Police and the Prosecution Service was "largely good and characterized by mutual trust". They also stated that problems, if any, were less frequent. Still, the habit of shifting the responsibility for the lack of results in some areas onto the other side still remained. In particular, the issue of responsibility for the unresolved cases remained outstanding. The total share of cleared up crime dropped by as much as 14%, namely from 67.8% in 2010 to 53.8% in 2015. In other words, one half of the perpetrators remained unknown.

Since the discussion on the problems related to the cooperation between the Police and the Prosecution Service has been going on for several years, evident progress in terms of that cooperation has been made at the level of higher-ranked prosecution offices. The fact that they handle smaller caseload works to their advantage, enabling them to focus more. However, it should be noted that these cases are also more complex. Still, there is room for the senior prosecutors to share the experience and practices developed in their day-to-day work with the police with their junior colleagues.

At the level of Basic Prosecution Offices, relatively intensive communication is taking place between prosecutors and police officers; however, there is insufficient direct communication, which frequently results in divergent perceptions of the events assessed. Such divergences come to the fore in a number of situations, ranging from legal classification of the event to the decision whether the police should file the criminal report or not – the prosecutors in some prosecution offices have the final say on this.

The official reports suggest that either crime in Montenegro was halved over the past ten years or the police were less proactive in detecting it. For instance, the number of recorded criminal offences in 2005 was 9,579, and was halved to 5,247 in 2015. It is particularly concerning that the official reports did not specify which criminal offences were effectively suppressed during this period.

In parallel with this, the number of persons charged by the competent prosecution offices in Montenegro also recorded a significant drop from 8,677 in 2008 to 3,765 in 2015, i.e. by almost five thousand compared to the period prior to the introduction of prosecutorial investigation. It is commendable that the courts confirmed 92.5% of the indictments from the jurisdictions of the Basic and High Prosecution Offices, along with all of the indictments from the jurisdiction of the Special Prosecution Office. Still, it is warranted to ask whether, in reality, prosecutors tend to be much more reluctant to file indictments or bills of indictment compared to the time when court-led investigation was in place.

<sup>1</sup> / Vacatio legis of one or two years was provided for, with a view to assist efficient implementation of the Code and allow all the subjects of criminal proceedings to gear up for the new provisions, and to create the awareness that facilitates their endorsement.

One of the major problems is that prosecutors lead the work of the police, while not being sufficiently knowledgeable of their capacities and limitations, or crime investigation techniques. In a number of cases, prosecutors expressed their interest to get more actively involved in the preliminary investigations; more often, though, they accepted the passive role of waiting in their offices for the police to fully clear up the case and bring the evidence to be presented in court. Several prosecutors pointed out the need for enhanced capacities related to ordering forensic examination or the specifications to be incorporated in such orders.

Dissatisfaction among the police, arising from the perception that powers had been taken away from them, was less present than before. However, they still did not think that most prosecutors assumed, along with the powers and privileges, also the appropriate level of responsibility and drive to fulfil the tasks. Their dissatisfaction was also due to the large number of cases that often had to wait for a while for the prosecutors to issue their "assessment and opinion". That category included in total 667 cases and 115 briefing notes in 2015. According to most police officers, prosecutors did not sufficiently visit the crime scenes, which sometimes contributed to poor efficiency.

One of the characteristics of prosecutorial investigation that the prosecutors took most pride in was its duration. Even in the most complex cases of serious criminal offences of corruption and organized crime, handled by the Special State Prosecution Office, the investigation took on average 2 months and 22 days. It would be interesting to add to this also the average duration of preliminary investigations (the time from the moment when the prosecutor learned about an event to the issuance of the order to conduct investigation), especially bearing in mind that preliminary investigations for many of the cases covered by the media have taken several years.

According to the only statistics available, the results achieved through the application of secret surveillance measures (concluding with 9 June 2015) were extremely poor. To be specific, out of the 846 persons subject to wiretapping, criminal proceedings were instituted against 190, and final convictions followed against 19, i.e. 2.24%.

Both the Prosecution Service and the Police face the issue of uneven workload distribution, with some prosecutors and inspectors handling excessive workloads and others' substandard performance being tolerated. This calls for better case allocation procedures, as well as performance evaluation and measurement, in order to properly distinguish those who do more work. The Security Centres need to allocate rooms to prosecutors in order to make them available, at least during a half of their working hours, to the police officers whose actions they instruct.

The Criminal Procedure Code (CPC) provides for an exception which allows the police, subject to prosecutor's approval and provided the presence of the defense attorney, to interrogate a suspect – this provision should be applied as required, which is currently not the case.

Inputs coming from members of the public, such as witness statements, searches, identity parades etc., are of particular importance in a number of measures and actions in criminal proceedings; citizens take part in those directly, either summoned by the police or prosecutor or upon their own initiative. However, according to the respondents, the civil awareness did not rise up to the responsibility and most citizens did not feel the duty to contribute to justice, which made it more difficult to prove the guilt and hampered the overall track record of the Police and the Prosecution.

## INTRODUCTION

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### WHAT DID WE INTEND TO LOOK INTO?

The respective remits of the two authorities, namely the Police Directorate (hereinafter the Police), as the "crime detection authority" and the State Prosecution Service (hereinafter the Prosecution Service) whose prosecutors are competent for "prosecuting the perpetrators", determine the room for cooperation, where the police officer and the prosecutor are interdependent. From the commission of a criminal offence to the moment when an indictment or bill of indictment is filed, the two authorities engage in intensive communication and make numerous decisions on the actions and measures to be undertaken; these, in turn, are vital in ensuring that justice is served.

Since the shift to prosecutorial investigation was the most turbulent change experienced by the two authorities in the course of several decades of reforms, the shift to the new method of operation was accompanied by problems related to mastering the new respective roles<sup>2</sup>. Aiming to attempt to contribute to the solution of these problems, we sought to review the practice: the causes of the problems emerging in the course of cooperation, and the implications, i.e. manifestations of the lack of cooperation which was frequently the topic of public discussions.

In addition, we were interested in identifying the advantages and disadvantages of court-led vs. prosecutorial investigation and whether there was an adequate division of powers (aligned with the capacities and the principle of fairness) among the actors in the procedure (police/prosecution/court/attorneys).

We also compiled the feedback provided by the prosecutors and police officers concerning the application of the Criminal Procedure Code (hereinafter the CPC), practical examples of implementation of some specific mechanisms and instruments contained therein, obstacles encountered and the ways to overcome them.

The examples confirmed that the position of some of the members of the Government's latest Working Group tasked with drafting the Law Amending the CPC, namely that "there could be no problem of lack of cooperation, since the law is clear and sufficient, and cooperation is mandatory"<sup>3</sup>, had not been warranted. Unfortunately, this approach did not contribute to solving the problems.

### WHAT DO WE MEAN BY GOOD COOPERATION?

We sought to communicate to all the interviewees included in the survey that under "good cooperation" between the Police and the Prosecution Service we did not mean absence of conflict or diverging opinions, but active joint work which rendered results. In terms of the CPC and this survey, the prosecutors and police officers who "had nice communication" but were not solving the cases – were not cooperating.

**2** / The reform of criminal procedure legislation in Montenegro, which unfolded continually since 2003 and adoption of the first CPC (Official Gazette of RMNE no. 71, 2003), at the time when Montenegro was still part of the state union with Serbia, to adoption of the new CPC in 2009 (Official Gazette of MNE no. 57, 2009).

**3** / Report from the consultative hearing on the Proposed Law Amending the CPC, held on 4 June 2015, available at: <http://www.skupstina.me/zakoni/web/dokumenta/sjednice-radnih-tijela/1047/2653-23-2-15-6-7.PDF>

4 / Namely the following: 1) Committee for the Political System, Judiciary and Administration meeting which considered the annual Performance Report of the State Prosecution Service and the Report on the Work of the Judicial Council and the Situation in the Judiciary (held on 19 and 20 July, 2016); 2) Anti-Corruption Committee meeting that addressed the special reports of the Supreme State Prosecution Office and the Special State Prosecution Office on the performance during the first half of 2016, with particular emphasis on organized crime and implementation of new legal concepts (held on 21 July, 2016).

5 / The round table took place on 27 July 2016.



Precisely because cooperation is not an end in itself, but aims at a track-record of solved cases, wherever possible, we tried to complement the respondents' views with the official statistics from the Performance Reports of the State Prosecution Service and the Ministry of Interior /Police Directorate, concluding with the ones for 2015.

## METHODOLOGY

For the purposes of the survey, in May and June 2016, the IA representatives interviewed 36 individuals from 5 towns from all the three regions of the country (central, southern and northern), predominantly state prosecutors and relevant police officers, heads of prosecution offices and security centres, and a smaller number of judges and representatives of the local media and local NGOs. All the interviewees were guaranteed anonymity; this report will, therefore, not refer to any details which might reveal the interviewee's identity. In addition to securing regional representation, the towns were selected also with the intention to cover various organizational units and levels of the prosecution and the police.

Thanks to the confidence granted by the interviewees, 28 interviews were recorded and transcribed. Notes were taken during the remaining interviews, which subsequently served the author, but were not quoted. This report presents a summary of the principal comments and findings grouped under chapters that correspond to different stages of criminal proceedings, as well as examples of application of the mechanisms provided for by the CPC.

Please note that the quotes included here do not reflect the views of the Institute Alternative, but serve to illustrate possible dilemmas and problems in the work of the competent authorities. The quotes were only slightly edited and are included here in the original colloquial form.

The survey did not aim to collect methodologically representative and quantitative data that reflected the views of all prosecutors or inspectors, but to gather as many specific examples as possible of the lack of understanding between the two authorities, with a view to provide recommendations on how to overcome such problems and ensure more effective collaboration. In addition, for the purposes of the survey, the IA representative attended, as an observer, the meetings of the Parliamentary working bodies that considered the reports of relevance for this activity<sup>4</sup>.

The comments, suggestions and statements shared by the participants during the round table to discuss the draft of this report, which was closed for public and involved 22 state prosecutors and police officers, were carefully considered and incorporated in the report<sup>5</sup>.

The survey was conducted within the project "Prosecutorial Investigation in the Western Balkans-How to Become More Effective?", implemented by the IA together with the Prosecutors' Association of Serbia, and supported by the Embassy of the Kingdom of the Netherlands.

# VIEWS ON THE CONCEPT OF PROSECUTORIAL INVESTIGATION AND COOPERATION

## GENERAL OVERVIEW

Compared with the IA 2014 survey on the same topic, which showed significant dissatisfaction with prosecutorial investigation<sup>6</sup> among both the police officers and judges, as well as predominantly negative attitudes<sup>7</sup>, during this survey most respondents stated that prosecutorial investigation was much more efficient than court investigation, that cooperation between the police and the prosecution was "largely good and characterized by mutual trust" and that problems, if any, occurred less frequently.

Here are some examples of the responses provided by the representatives of the police and two representatives of the prosecution:

- *As for the cooperation, I have been here for 11 years and I recall the time when the investigative judge was in charge and the time when we were in charge of the pre-trial procedure. This is working well, although initially there were some problems. We helped them a lot, but it was a sort of a more liberal cooperation, where we were on friendly terms with the prosecutors.*
- *The cooperation with the police is very good; we have constant communication concerning each event.*
- *Prosecutorial investigation has shown some positive sides; the prosecutor runs the investigation and orders what needs to be obtained and which evidence to take. Earlier, we had the investigative judges and we could not influence the decision to close an investigation or to keep it running. You know that the investigations went on for years. As for us and our Prosecution Office, not one investigation took longer than 60 days, and that is the most positive thing in the whole story.*

A few respondents voiced extreme views, either saying that everything worked in an excellent manner and without any problems (this view was more present among the prosecutors) or that nothing was working and the prosecutorial investigation was the cause of all the problems (more present among the police officers).

However, even the small number of respondents who were still convinced in the superior quality of court-led investigation were not willing to specify which of its features and former mechanisms supported their opinion. Two respondents were the exception, stating that "the investigative judges had more knowledge and authority to make decisions than the prosecutors" and that consideration should be given to "having the investigative judge oversee the entire criminal proceedings and steer the work, since more control is needed".<sup>8</sup>

Most of the respondents from the ranks of the police explained that each round of legal amendments reduced the powers and autonomy of the police, but that the officers had grown accustomed to cooperating with the prosecutor.



**6** / The most important features of the new criminal proceedings include the shift to prosecutorial investigation, elimination of lay judges, efforts to improve the position of the injured party, introduction of plea bargain agreements, expansion of the group of criminal offences for which it is possible to apply secret surveillance, introduction of the procedure for seizing assets, and introduction of financial investigation for the purpose of extended confiscation of the assets if their legitimate origin was not proved in the criminal proceedings, with the burden of proof placed on the defendant.

**7** / Available at: <http://institut-alternativa.org/saradnja-policije-i-tuzilastva-price-tuzilaca-policijskih-inspektora-i-sudija/?lang=en>

**8** / Prof. Drago Radulovic, PhD states that, the theorists, advocates of court investigation state the following main arguments in support of that concept: court investigation is the best safeguard of the defendant's freedoms and rights; the court as the independent and autonomous authority is more objective than the prosecutor as the autonomous but not independent authority; state prosecutors are not fit to collect information on the defendant, which is one of the objectives of investigation; there is no binding international document requiring the introduction of prosecutorial investigation. In opposition to this, the advocates of prosecutorial investigation point out the following advantages: the efficiency of prosecutorial investigation against the desk work of the investigating judge; reduced likelihood of unnecessary evidence repetition; contribution to fuller implementation of the basic principles of criminal procedure, in particular that of directness; negative impact of court investigation on the witnesses, who are subject to multiple questionings; alignment with the contemporary comparative criminal procedure legislation and international criminal law etc.

9 / At the control hearing before the Parliamentary Committee for the Judiciary, the Chief Special Prosecutor presented to the public the fact that, although requested on multiple occasions, the police had failed to comply with the orders of the Special Prosecution Office in the case PGS Agency. Addressing the issue of police integrity, the IA indicated in 2015 that this case concerning "purchase of free software", which the Mol internal control submitted to the Special Prosecutor in 2012, was falling into oblivion. The case relied on the suspicion that the PGS company had installed, over the three-year period, police system software which they had downloaded from the Internet free of charge, invoicing the police management regularly for their intellectual services. In April 2014, the Prosecution Office delivered the case file to the police, accompanied with an order to conduct on site comparison between the documents and the software applications installed and establish whether the contracted services had been provided.

10 / The source for this is the address made by the Special Prosecutor at the IA round table for the prosecutors and police officers to discuss the draft of this report. The police explained at the time that delivery of documents had been slowed down by other authorities, tasked with technical modifications.

11 / Mol Report on the Work of the Mol and Situation in Administrative Areas for 2015, p. 40.

As regards cooperation, all of the prosecutors denied any instances when the police openly refused to act, but that minor shortcoming with regard to timeliness were overcome by means of urgent requests. However, the general public is aware of a situation that confirms resistance to complying with the prosecution order, namely the PGS case handled by the Special Prosecution Office. In that case, in March 2016, after five urgent requests, the police had not complied with the binding orders of the prosecution<sup>9</sup>. Subsequently, the police acted and the preliminary investigation is ongoing.<sup>10</sup>

An example of a prosecutor's comment concerning the problems in cooperation:

- *The shortcomings in the cooperation are of operational nature and are not caused by the lack of willingness to comply with the prosecutor's request, but the lack of capacities, flawed organization of work, insufficient understanding of the prosecutor's role etc.*

With regard to the local level, the interviewees from one of the Security Centres covered by this survey showed to the IA representatives their monthly reports with orderly statistics on the compliance with the requests made by the prosecutors, judges and other parties letters rogatory and showing no pending requests. For instance, in 2015 the police acted upon 5,586 (in 2014 it was 6,592) requests of the Prosecution Service and other authorities, implementing 5,399 of them.<sup>11</sup>

## LEADERS IN NAME ONLY OR IN REALITY?

The public discourse has adopted the phrase saying that "the police service the prosecution"; however, who services who and who complies with whose requests depends on the definition of the "leader". In reality, in the opinion of many of our interviewees the police show more initiative, have more proposals and design the "strategy"; therefore, it is the police that present requests and act upon their proposals.

- *You know what it is like when a prosecutor leads? I have rarely experienced situations where a prosecutor would ask me for something specific to help with detection. It is always the police officer who asks for such things and we lose a lot of time explaining the reasons why we are asking for something, even though it is proportionate and justified. And prosecutors order us to "act in line with the law and inform us when it is done."*
- *The prosecutors somehow continued doing what they did before – you submit something to them and they have it in hard copy, you know...It all gets reduced to that.*
- *When we file a criminal report against an unknown perpetrator, after a while they serve us with a writ, which is a letter instructing us to continue with the actions and it reads: "You filed the criminal report and you have to undertake all the measures and actions to clear up the criminal offence."*

Still, the police officers from all the towns included in the survey highlighted that there were prosecutors (at least one) dealing with the unresolved cases who would call the police and suggest that they interview someone or obtain additional information, or

bring to their attention something that had been overlooked or missed etc; however, they pointed out that such situations were exceptions.

- *There used to exist that formality where they would send a letter to us and we would respond for form's sake... But there have been instances when the prosecutors were very resourceful, especially these younger guys. One of those guys would read all the details and then say: "Let's do this, let's consider this expert report, let's add this, these communications..."*
- *We were once doing a crime scene investigation; somebody had died in a fire and we had to walk 3 km up the hill to get there, it was not reachable by car. The prosecutor was with me the whole time and went up and down the hill twice. He made the notes, he had a few suggestions for me and it was him telling me what to do.*
- *Once the prosecutor summoned the witnesses on his own. I was surprised, but that was indeed his job.*

## POLICE COOPERATION WITH THE HIGH AND SPECIAL PROSECUTION OFFICES

All the respondents from the ranks of the police highlighted their cooperation with the two High Prosecution Offices as much better than that with the Basic Prosecution Offices. Some statements are included below:

- *I can say that the cooperation with the High Prosecution Office is excellent. Whatever the case, whatever the activity, they accommodated and helped us.*

Although the survey included a small number of police officers who had in the past followed exclusively the orders of the special prosecutors<sup>12</sup>, they shared no objections to the cooperation with the Special Prosecution Office; they thought that special prosecutors were very interested in pursuing the cases.

However, unlike the problems that occur at the level of Basic Prosecution Offices, which tend to be of more "operational" nature and concern day-to-day decisions in the course of work, the conflict between the Special Prosecution Office and top police management manifested at both the conceptual and the "political" level. This is confirmed by the following statement made by the Chief Special Prosecutor:

- *Police management cannot comprehend their role and properly accept prosecutorial investigation<sup>13</sup>.*

This had been preceded by months of poor relations between the Police and the Special Prosecution Office, failure to agree on the appointment of the Head of the Special Police Unit and recruitment of staff for that unit, culminating in the Police Directorate press release which included the following section:

- *The arbitrary and premature decisions of the Special Prosecution Office to deprive Medojevic and Terzic of liberty and hold them in custody without a single evidence that they are members of an organized criminal group clearly intended to use the case of the letters gone missing, together with some police officers who are*



**12** / Prior to and during the months-long establishment of the Special Police Unit.

**13** / At the hearing before the Anti-corruption Committee, held on 21 July 2016.

**14** / The entire text of the police statement titled "There are no organized criminal group members within the police; police officers put in custody without a single piece of evidence presented" available at: <http://www.mup.gov.me/upravapolicije/vijesti/158234/U-policiji-nema-pripadnika-organizovane-kriminalne-grupe-policijski-sluzbenici-zadržani-bez-ijednog-prezentovanog-dokaza.html>

**15** / Top leaders express dissatisfaction in the National Security Council report about autonomous work of the Supreme and Special Prosecutor", Dan Daily Paper, 28 May, 2016, available at: <http://www.dan.co.me/?nivo=3&rubrika=vijest%20dana&datum=2016-05-28&clanak=548227>

**16** / Control hearing of the Chair of the National Security Council Milo Djukanovic, Coordinator of the Bureau for Operational Coordination of Security Services Dusko Markovic, Supreme State Prosecutor Ivica Stankovic and Chief Special Prosecutor Milivoje Katnic concerning the comments and positions of the National Security Council included in the Report from the meeting held on 13 April 2016.

**17** / More details available under the section titled Police powers and actions during preliminary investigation.

*currently unassigned to new posts, to try and discredit the Police Directorate and its management.*<sup>14</sup>

In parallel, according to media reports, former Police Director and current Secretary to the National Security Council, Veselin Veljovic, in the classified report on the work of the Council delivered to the Parliament, stated that the "Council unanimously decided to ask the Government to initiate amendments to several CPC provisions to reduce the powers of the Supreme and Special Prosecutor". The report allegedly also said that the prosecution was the hindrance to the reforms, that prosecutors conducted themselves as the fourth branch of power, and that these reasons prompted legal amendments.<sup>15</sup>

Snezana Jonica, Deputy Chair of the Security and Defense Committee from the ranks of the opposition, by virtue of that also a member of the Council, said that the statements from the report were not derived from the discussions taking place during the Council meetings, but were instead the views held by the Secretary. Since the report in question was not available, it was impossible to establish whether the comments had been driven by the efficiency issues or something else. In both cases, the report publicly stated that some people from the ranks of the police were dissatisfied with the Special Prosecution Office's proactive approach to its statutory duties. The above should have been the topic of the control hearing before the Parliamentary Security and Defense Committee on 29 July 2016;<sup>16</sup> however, the meeting did not take place concluding with 2 October 2016.

## THE MODEL OF PROSECUTORIAL INVESTIGATION: WHO IS RESPONSIBLE FOR WHAT?

It is still unclear who is to blame for the cases that remained unsolved; there is a tendency to shift responsibility onto the other side. This is illustrated by the responses to the following question: "When there is a homicide case and the body is already found and thus a criminal offence detected, what is the core competence of the police (Article 44, paragraph 3 of the CPC) and who is responsible for the next step, namely identification of the perpetrator?" Most prosecutors replied that that was the responsibility of the police. For many of the police officers, the responsibility was with those running the investigation and it was up to them to comply with all the actions requested by the prosecutor. Many of the prosecutors also replied that there was "joint" responsibility.

The above example is a simple one, since the discovery of the body revealed the criminal offence. Most day-to-day events and cases reported by the victims fall into that group. Major difficulties emerge in detecting the "concealed" criminal offences, such as all types of fraud and misuse, smuggling, corruption etc. Undoubtedly, these are the responsibility of the police and there is ample room for improvement<sup>17</sup>.

However, many prosecutors mentioned joint responsibility in the area where their joint efforts proved to be less effective. The report on the work of the State Prosecution Service stated the following:



- In addition to the reports from the previous period, at the end of 2015 there were 9,623 criminal reports against unknown perpetrators; 310 of those were with the High Prosecution Offices. Against the total crime rate in the reporting year, this still indicates a high share of unknown perpetrators of criminal offences.<sup>18</sup>

The statistics of the Police Directorate showed a falling trend in clearing up the criminal offences prosecuted ex officio; in 2015, one-half of the criminal offences remained unsolved<sup>19</sup>:

	2010. <sup>20</sup>	2011.	2012.	2013.	2014.	2015.
Clear up rate %	67,8%	64,7%	64,8%	64,4%	56,4%	53,8%

## IS THERE A LINK BETWEEN LEADERSHIP AND THE CLEAR-UP RATE?

Although the prosecutors saw themselves as the leaders, they mainly saw the police as fully responsible for identification of perpetrators and collection of all necessary evidence to be subsequently presented in court. By doing so, they assumed the passive role of the ones who kept waiting. In other words, the prosecutors still felt closer to the role which they traditionally had in the courtroom, and they had not fully embraced their "investigative" role; therefore, their leadership referred mainly to approving police proposals by phone or otherwise. Still, even for the cases where the perpetrator was known, several police officers commented as follows:

- They have to be faster and more dynamic, and make decisions, suggest who to interview, where to go and what to do. My experience over these six years shows that the police undertake all that is within their competences under Article 257, all the actions, and even initiate some actions that should be initiated by the prosecutor. The prosecutor gets briefed on the offence and then hangs up.
- They should be much more involved up to the point when a criminal report is filed. When we file the criminal report, we are basically done with our work. Of course, the prosecutor can ask us to gather some new information and work further on the case. But at the time when the criminal report is filed, in 90% of the cases, 90% of police work has been completed.

When asked about the large share of dismissals due to the expired statute of limitations, one of the prosecutors specified who he thought was responsible for clearing up the cases, i.e. identification of perpetrators:

- This probably includes the reports against unknown perpetrators, who are to be identified by the police. If they are not identified within 3 years, those are erased.

Although they are also in charge of preliminary investigation, in reality the prosecutors assume responsibility only once the criminal report is filed; they then decide whether the allegations contained in the criminal report and the appendices to the criminal report indicate grounded suspicion that the suspect committed the criminal offence that he/she is charged with and issue the order to conduct investigation. If the prosecutor does not have sufficient information to make the decision, he/she can collect the required information him/herself or via other authorities<sup>21</sup>.



**18** / Criminal reports against unknown perpetrators, State Prosecution Service Performance Report for 2015, p. 156.

**19** / Mol Report on the Work of the Ministry and Situation in Administrative Areas in 2015, p. 38.

**20** / The year when prosecutorial investigation was launched.

**21** / Article 271 of the CPC, Dismissal and amendments to criminal reports.

## "24 HOURS" OF THE CRIMINAL PROCEEDINGS AND POLICE-PROSECUTION COOPERATION

### POLICE POWERS AND ACTIONS IN THE COURSE OF PRELIMINARY INVESTIGATION

It is interesting that the interviewed prosecutors were not too critical towards the police when stating their level of satisfaction with the crime detection rate or the quality of the police intelligence work. Several prosecutors said that was "doing their part"<sup>22</sup>.

The police representatives openly stated that there was room for improvement, starting from the fact that the by-law regulating the intelligence work, the Instruction, dates back to 1991. Furthermore, one of the police officers explained that, since the CPC article regulating the police powers and actions in the course of preliminary investigation read "the police shall inform the competent State Prosecutor (of the existence of grounds for suspicion that a criminal offence was committed) and take necessary measures as a self-initiative or upon a petition by a State Prosecutor"; therefore, in a small number of cases the police officers experienced the following:

- ... *They deliberately wait for the prosecutor to tell them what to do, and the prosecutor waits to be told. Since their wages are low, they leave it to the well-paid prosecutor. And the prosecutor is not able to steer, but tries to act as the boss to the police and guide them incorrectly. Usually, the prosecutors from the Basic Prosecution Office are less knowledgeable, as they used to be assistants up until recently and used to handle paperwork rather than practical work. A police officer must know how to initiate a vehicle search, or how to seize documents, since that is how crime is detected; he can't wait around for the prosecutor to tell him to do that.*

For instance, in 2015 the police inspected 1,490 vehicles and 1,099 administrative documents, compared to 2,447 vehicles and 2,300 documents in 2010. However, there is no available information on the results of these checks and the extent to which they served the purpose<sup>23</sup>.

One of the prosecutors stated:

- *The alleged lack of autonomy and loss of powers of the police is repeatedly highlighted. I am sorry that the police officers hold such views. I do not see any reason why they should think "we cannot do anything without the prosecutor", which is quite widespread in practice. Parties come to the Prosecution Office to get updates on the cases, as do the victims, and they tell us that the police told them they could not do anything without the prosecutor.*

The results of the actions undertaken by the police in the course of preliminary investigation in cooperation with the prosecution impact the crime rate. Although it is difficult to assess whether it can be attributed to less crime taking place in the society or to the police being less proactive, but the numbers of criminal reports and

<sup>22</sup> / By that they meant that was their job, their responsibility (author's note).

<sup>23</sup> / Source: Mol/Police Directorate Report for 2015.

recorded criminal offences have been dropping from one year to the next. Thus, while the total number of recorded criminal offences in 2005 was 9,579, in 2015 it was lower by one half and totalled 5,247<sup>24</sup>. It is particularly concerning that the official reports do not specify the criminal offences which were effectively suppressed in the meantime.

Number of recorded criminal offences in Montenegro (2005-2015):

2005.	2006.	2007.	2008.	2009.	2010. <sup>25</sup>	2011.	2012.	2013.	2014.	2015.
9579	9564	9258	8277	8101	6994	6147	5827	5899	5701	5247

It should, however, be taken into account that, compared to 2005, prosecutors now have much more influence on the results achieved by the police, since they decide if and when an event will get classified as a criminal offence.

Mol/Police Directorate Report for 2015:

The declining trend in the number of recorded criminal offences prosecuted ex officio continued. The crime rate in Montenegro (number of criminal offences per 1,000 inhabitants), with regard to the criminal offences prosecuted ex officio recorded by the Police Directorate was 8.5 (9.1 in 2014). The Security Centres that saw an increase in the volume of crime were the ones in Bar (16.2%) and Berane (7.2%). Out of the total number of 5,247 criminal offences, 2,636 involved unknown perpetrators (2,665) and 1,419 (1,502) were cleared up.<sup>26</sup>

However, the following key sentence is found in the footnote to this paragraph: "The volume/rate of crime (8.5) would have been significantly higher (16.5) if it included the criminal offences prosecuted following a private charge and those not classified by the prosecutor (5,012), which are recorded in the Supplementary Register kept by the police."<sup>27</sup> It is very concerning that the total number of private charges and offences not classified by the prosecutors was almost equal to the annual number of criminal offences (5,012 - 5,247), since it raises the question whether the prosecutors leave it to the citizens to pursue the procedure before the courts.

## LEGAL CLASSIFICATION

Although legal classification is without doubt the competence of state prosecutors, police officers were interested in this issue and occasional differences in opinion emerged. The interdependency of prosecutors and police officers in their work is well-illustrated by the following comments provided by the respondents:

- *The prosecutor does not classify the event, but the police officer's input. Trust and cooperation are crucial.*
- *Classification is part of our professional communication. I say one thing, and the prosecutor says another...But ultimately it is the prosecutor's decision.*



**24** / For a detailed overview of crime rate trend, please go to Appendix 1.

**25** / The year when the new concept of prosecutorial investigation was launched.

**26** / The volume of crime in Montenegro is higher than the number of criminal offences prosecuted ex officio, since police records do not include the criminal offences reported directly to the prosecutor by members of the public, legal persons and others.

**27** / Mol Report on the Work of the Ministry and Situation in Administrative Areas for 2015, p. 13.



- *Yes, problems emerge in relation to that. There is one town where they do not communicate by phone, the way we do, but prepare a writ which they then fax, and the prosecutor sends them back another writ on the classification.*
- *In some specific situations there are a couple of cases where we may not have sufficient real evidence, but evidence has been presented along with serious suspicions that a person committed a criminal offence. In such situations, prosecution is not ready to initiate investigation; this is rather the stage of preliminary investigation. If the police are willing to file a criminal report, the prosecutor just tells them that there are still no grounds for suspicion. Already at that stage, the prosecutor orders a report against an unknown person, which is contrary to our environment and our work! I would not allow myself to jeopardize the work and the clear-up rate when the situation is clear and evident, when we have several pieces of evidence indicating grounds for suspicion. They are not after the grounds for suspicion, but all possible real evidence. The investigation stage is missing, it is skipped. The preliminary investigation includes collection of information and evidence, but the investigation is missing.*

When asked about the large number of cases of vehicle set alight waiting to be classified, even when there is video footage available, the responses included the following:

- *If you set fire to a rich man's car, then it is a criminal offence, otherwise it is not. If the damage is more than 3,000 euro, then it is a criminal offence and the prosecutor acts ex officio; if the damage is lower, then there is a private charge brought by the member of the public before the court. But how can we identify the perpetrators if they are masked, and there is no other evidence? The prosecutor will not classify the offence until the Forensic Centre completes its analysis, so we wait.*
- *The part of the investigation is missing that the judges used to conduct, namely the issuance of the decision to conduct investigation. For instance: when we had the investigative judges, we would file the criminal report, and then some additional expert analyses needed to be done, and only then the indictment or bill of indictment would be raised. Now it is straight on to preliminary investigation, and the prosecutor will not raise the indictment unless one-hundred percent sure of its success. There is that longer interval between the event and the classification of the criminal offence.*
- *We have that in practice, and these are usually the criminal offences related to fires, explosions, accidents, taking place in Podgorica and the coastal towns... It is precisely in such cases that perpetrators sometimes confessed and then the prosecutor, due to the value or this or that, classified it as a criminal offence to be prosecuted following a private charge and did not want to examine that person, literally, since it was not his business. This is how they bring the police to a checkmate, so we cannot prosecute the perpetrator or the offence or anything, while the injured party complains about the police not doing anything. When the perpetrators realize that we are not doing anything, they carry on with such offences.*

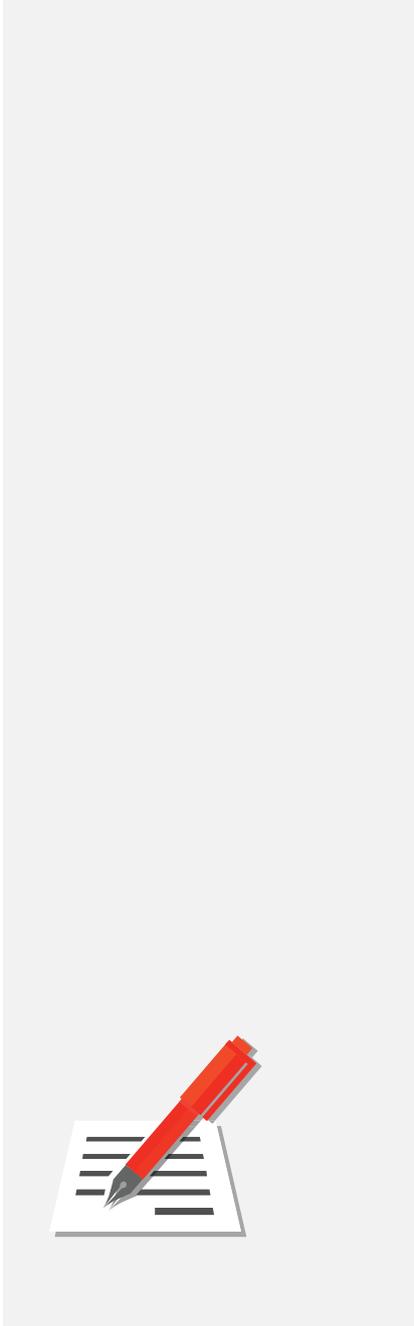
Several police officers confirmed that prosecutors are reluctant to file a criminal report before all evidence is collected, the offence classified and often the perpetrator identified. Several prosecutors communicated strict views about this, stating that it was completely unacceptable for the police to file a criminal report before the prosecutor in charge of the preliminary investigation gives approval:

- *Nothing can arrive to the Prosecution Office without the prosecutor's approval, not even a criminal report.*

A police representative said:

- *The law does not prevent the police, or any state authority or member of the public, from filing a criminal report. However, if a criminal report is filed without the approval of the prosecution, it results in an argument about why it was filed etc. Sometimes, even without a criminal report, when some documents are delivered to them, they "get angry" since those are entered in their registers, KRT and KTN, and they are assigned those cases and required to implement the procedure.*
- *Once we have clearly exhausted all the options, then there is nothing left to do but file a criminal report. It is the prosecutor who should order what they believe needs to be done additionally. The prosecutors should ask for something to be done in the course of the investigation, it is their responsibility, and they might undertake some actions had we not done everything already.*

This is related to one of the features of prosecutorial investigation that the prosecutors take most pride in, namely its duration<sup>28</sup>. "Prosecutorial investigation, even in the most complex cases of serious corruption and organized crime, which fall under the jurisdiction of the Special State Prosecution Office, took on average 2 months and 22 days."<sup>29</sup> It would be interesting, still, to add to this the average duration of preliminary investigations (the interval between the moment the prosecutor learns of an event and the issuance of the order to conduct investigation), especially bearing in mind that preliminary investigations in many of the cases covered by the media have been going on for several years even.



### CASES FORWARDED "FOR ASSESSMENT AND OPINION"

The number of cases forwarded by the police to the prosecution "for assessment and opinion" is not insignificant. However, the report on the work of the State Prosecution Service did not include information about the quality or outcomes of such cases; it is therefore not clear how many of them resulted in criminal reports and how many were dismissed.

2015.	667 cases and 115 briefing notes
2014.	614 cases and 104 briefing notes
2013.	626 cases and 127 briefing notes
2012.	654 cases and 42 briefing notes

**28** / "In 2015, state prosecutors ordered investigations against 538 persons (654 in 2014); 210 of those persons fell under the jurisdiction of the High Prosecution Offices, and 328 under the jurisdiction of Basic Prosecution Offices. These figures show a very high rate of charges brought by the Basic Prosecution Offices based on the results of prior preliminary investigation, without need for investigation. Along with the pending investigations against 256 persons, state prosecutors conducted investigations against 794 persons. The ones that remained pending at the end of 2015 involved 184 persons. Upon completion of investigation, the procedures against 62 persons were suspended. Out of this number, 47 persons fell under the jurisdiction of the Basic and 15 under the jurisdiction of the High Prosecution Offices."

**29** / State Prosecution Service Performance Report, p. 230.

Several police officers also stated that they had to repeatedly send urgent requests in order to get the prosecutor's opinion on the case. The comments below were provided by police officers and referred to the routine practice of forwarding the cases "for assessment and opinion" prior to filing a criminal report:

- *The police worked on the Budva Automobile Association case for years and now suddenly the Special Prosecutor is put in charge and takes all the credits. The police officer who used to work on the case gets no credit at all and loses motivation for further work. The "assessment and opinion" procedure dilutes the case and there you go, it comes to nothing. They will say "nobody's stopping you" (from filing a criminal report - author's note). Except, a police officer must file a criminal report once he establishes there are sufficient elements to do that, regardless of the prosecutor's assessment.*
- *When it comes to criminal reports, some disagreements emerge. Should it be filed or not? In a number of cases we thought a criminal report was due and the prosecutor needed to do some work... Because, if we wait for too long and if the case waits and there is some evidence already, some grounds for suspicion, then sometimes if we wait we will not get any further. The prosecutor can achieve more. The prosecutor could interrogate other persons, propose other measures, leading to an indictment.*
- *When we think we have sufficient evidence to file a criminal report, we do so, but in most cases criminal reports are filed following the prosecutor's orders.*
- *If I am sure of the existence of elements of a criminal offence, I am also required to get in touch with the victim and inform them about that and refer them to the prosecutor.*

One of the respondents stated that prosecutors' delaying the filing of the criminal report was related to the statutory obligation to decide on the report at the latest within three months from the day of receipt of the case (Article 256a paragraph 1), or exceptionally within six months, or within one month in case of summary proceedings. One of the police officers stated:

- *Although the cases forwarded "for assessment and opinion" are recorded in the Prosecution Service Supplementary Register and they have to decide, it is still not the same, as it is less binding on them.*

The prosecutors believed that police complaints were unwarranted:

- *I won't refer to them as complaints, since it is not the role of the police to supervise the work of the prosecution. It seems to me, for instance, that the police cannot accept that the prosecutor is responsible for the procedure and if anything happens everybody would be pointing the finger at the prosecution, not the police.*
- *The police are autonomous, we are not their bosses. Instead of expressing resentment, their superiors should be held to account if their officers submit unsubstantiated demands.*

## DISMISSAL OF POLICE REPORTS AND PRIVATE CHARGE

Although the prosecutors managed the police officers during the stage which preceded the filing of criminal reports and although, in the words of the police officers themselves, criminal reports were filed contrary to the prosecutor's stance only exceptionally and entailed risking a conflict, the number of dismissed criminal reports filed by the police was still significant - 581 in 2015,<sup>30</sup> out of which<sup>31</sup>:

- 178 due to the expired statutes of limitations for prosecution;
- 113 due to absence of criminal offence;
- 97 due to lack of grounded suspicion that a criminal offence was committed;
- 5 due to the criminal offence being privately prosecuted;
- 188 due to other circumstances that ruled out criminal prosecution.

The dismissed reports involved 351 persons, whom the police suspected of having committed 605 criminal offences. The MoI report does not include information about any complaints filed by the police against dismissals or any possible subsequent decisions of the higher-ranked prosecution offices in such instances.

The Prosecution Service does not report on the private charges, which are an important indicator of the work of the prosecution – although some dismissals were based on objective reasons (e.g. the matter is not prosecuted ex officio), a number of cases were dismissed due to supposed lack of evidence or the prosecutor's subjective assessment that no criminal offence had been committed, but subsequently these cases resulted in convictions.

## REDUCED PROSECUTION SERVICE CASELOAD RESULTING FROM DISMISSALS ON THE GROUNDS OF EXPIRED STATUTES OF LIMITATIONS

The police were informed that 581 of the criminal reports filed by them were dismissed in 2015. However, the total number of dismissed criminal reports for that year, according to the State Prosecution Service report, was 1,408 (they involved 3,038 persons). It is particularly concerning that, out of that number, 1,365 criminal reports were dismissed due to expired statutes of limitations for criminal prosecution<sup>32</sup>.

In 2014, 1,457 criminal reports against 3,133 persons were dismissed; 1,414 due to expired statutes of limitations for criminal prosecution.<sup>33</sup>

Neither report identifies who is accountable for the expiration of the statutes of limitations for prosecution of more than 3,000 persons per year. One of the prosecutors explained that the police were solely responsible for the cases against unknown perpetrators:



**30** / The ones that the Prosecution Service informed the police about.

**31** / MoI Report on the Work of the MoI and Situation in Administrative Areas, p. 39.

**32** / „Most criminal reports were dismissed against the perpetrators of acquisitive crime, criminal offences against official duty, criminal offences against traffic safety, criminal offences against the freedoms and rights of human beings and citizens, criminal offences against the environment, and criminal offences against legal procedures.“

**33** / „Most criminal reports were rejected against the perpetrators of acquisitive crime, criminal offences against official duty, criminal offences against traffic safety, criminal offences against the freedoms and rights of human beings and citizens, criminal offences against state authorities, criminal offences against sexual freedom, and criminal offences against legal procedures.“

- *This probably includes the reports against unknown perpetrators, who are to be identified by the police. If they are not identified within 3 years, those are erased.*

Although these probably mainly included the statutes of limitations for the reports against unknown perpetrators, the reports do not specify the category of reports or the categories of the criminal offences for which the statutes of limitations expire to such extent.

Commenting on the high share of dismissals, one of the prosecutors said:

- *That is a really high share. You know, it is precisely to prevent such situations where criminal reports are dismissed that we choose to work slowly and in a targeted manner. If something is not urgent, we tend to assess thoroughly whether to go ahead with the report, since no prosecutor is impressed by dismissals.*

## INDICTMENTS AND BILLS OF INDICTMENT

The work of the prosecution offices, in particular that of the Basic Prosecutor Offices, is illustrated by the statement from the Report on the work of courts in 2015 that "Basic Courts have recorded a 5.88% increase in the inflow of civil cases, compared to the previous year, as well as a drop in the inflow of criminal cases by 17.10%."<sup>34</sup> We wish to highlight that this was the year when the implementation of the new concepts was still not in full swing.

In relation to this, the judges we interviewed pointed out that the inflow of cases had dropped sharply compared to the previous period; they also thought there were good diversion opportunities. One of the judges said that he saw the two following reasons for the significant drop in the number of criminal cases:

- *... The prosecutors may be concerned about their status and therefore less willing to indict; but they also work more thoroughly and produce indictments of better quality, in particular bills of indictment, after we were allowed to send those back for amendment as well. In the past they did not complete anything, and they did not interview the victims.*

Whether due to the prosecutors' concern or not, 92.52% of the indictments from the jurisdictions of Basic or High Prosecution Offices were confirmed by courts, along with all the indictments from the jurisdiction of the Special State Prosecution Office.<sup>35</sup> However, even with such high success rate, the number of the accused dropped sharply (details available in Appendix 2):

Number of the accused:

2015.	2014.	2013.	2012.	2011.	2010. <sup>36</sup>	2009.	2008.	2007.	2005.
3765	4304	4598	5554	2249	2923	7255	8677	7688	8478



**34** / Annual Report of the Performance of the Judicial Council and the Situation in the Judiciary in 2015, p. 50.

**35** / 96.04% of indictments were confirmed in 2014; 96.00% in 2013; 95.06% in 2012.

**36** / The year when the implementation of the new concept of prosecutorial investigation began.

The drop cannot be attributed to the implementation of the new instruments for case resolution, since their implementation is still not widespread. For instance, in 2015, state prosecutors managed to dispose 487 criminal cases by means of implementing the concept of deferred prosecution; this accounted for 16.03% of the total number of dismissals. They settled with the suspects, provided compliance with the statutory obligations. In the same year, the state prosecutors from the Basic and High Prosecution Offices concluded 53 plea bargain agreements (15 in 2014).

The judges also pointed out the benefits of the evident drop in the number of acquittals:

- *I used to have 30–40%, and now their share is below 10%.*

To be more specific, 89.42% of State Prosecution Service charges in 2015 resulted in convictions, 7.69% in acquittals and 2.87%<sup>37</sup> in rejections.

Another judge reminded of "the problem with the witnesses not being available for the trial, especially tourists and emigrants" and that "prosecutors need to make more use of the concept which enables the investigative judge to examine".

As stated earlier, the police officers objected that prosecutors were overly reluctant to file the indictment or bill of indictment and that they did not undertake many activities once the criminal report had been filed:

- *The indictments copy-paste the criminal reports.*

On the other hand, the prosecutors asked for the law to grant them the possibility to appeal if the court sent the bill of indictment back. Several prosecutors interviewed within the survey said: "The courts send the case files back even on the grounds that someone who is of no relevance for the case was not interviewed."

Several respondents from different categories said that the prosecutors did not collect or present evidence in favour of the defense, even though that was their duty. In several interviews, a prosecutor from Niksic was commended as an exception in that regard.

Finally, both the prosecutors and the police offices objected to the overly lenient penalty policy of the courts:

- *If a fire cracker explodes, there is fuss in the media and reports about chaos and police not doing anything. The media should visit the webpage of the court and read the indictments and then report on the judgments, rather than just blame the police. We prosecute criminals, and then they end up with suspended sentences and mitigating circumstances.*

**37** / 88.50% of convictions in 2014; 7.98% of acquittals and 3.50% of rejections. 87.88% of convictions in 2013.

## DAY-TO-DAY ROUTINE – THE MEASURES AND ACTIONS

### CASE REGISTRATION AND ALLOCATION

Progress was noted with regard to the clarity of the prosecutors' instructions: compared to 2014, when there was a number of police objections about the prosecutors "changing their mind, requesting something and then later recanting", the police officers interviewed within the survey did not mention this problem.

The prosecutors commented on the frequency of communication, saying that the police informed them of each event, "even a flat tyre or a broken windshield, something that is clearly not prosecuted ex officio"; however, all the prosecutors said it was "better that way, so as to make sure nothing is overlooked".

- *Whenever there is an event, regardless of whether it gets to be classified as a criminal offence, the citizens call the Security Centre, and then the inspectors who are on duty register those reports or visit the crime scene and prepare crime scene investigation logs. The inspectors are then required to inform the competent prosecutor immediately. Surely, we have daily logs as a form of overall control of the system. Each report is entered in the log, followed by the actions taken by the police officers; the prosecutors who were informed and their suggestions are entered, and the measures and actions undertaken.*

The prosecutors, however, pointed out that their respective duty hours did not match, which might hamper their performance:

- *The prosecutors are on duty 24/7. At the police specific sectors are on duty, which means that five or six inspectors are on duty each night. They all brief the prosecutor during the night. The next morning the inspector goes home and is off duty for the next 24 hours. The prosecutors need to show up at work at 8 a.m. They deal with the people who are brought in, they interrogate, they represent indictments in court, handle detention cases. Parties come in, agreements are made, deferred prosecution. They are in charge of all that. And the inspector to whom the prosecutor gave orders during the night does not get back to them. He has gone home and another inspector has taken over, who is not up to date with things, so the prosecutor updates him. This is an organizational issue that has to be resolved.*

Although prosecutors have duty hours in all prosecution offices, different practices are in place with regard to case allocation and management<sup>38</sup>.

- *Weaker prosecutors get the clean-cut cases. If you are a prosecutor, you may be struggling with the cases, but you are not willing to retire when they are so well-paid. And some of them know their business. Head of office will give the juvenile delinquency case or a traffic accident, which guarantee the 100% performance rate, to whoever is first in line, while the ones who are professional in their work get the caseload that is impossible to manage and their performance rate is at 60%, so*



**38** / According to the Rulebook on Case Allocation, which took effect on 1 January 2016, a prosecutor who is on duty is allocated all the incoming cases, while the rest of the cases are allocated according to the alphabetical order. The Rulebook does not stipulate whether the allocation needs to go through the Registration Office or via the head of office.

*the former gets rewarded. This happens frequently. I feel sorry for the prosecutor who is working hard and is worried about keeping the job. Statistics are one thing, and reality is another.*

- At the beginning of the month we receive the roster of prosecutors who are on duty each day, usually for a week. We inform them about all the events, they have their official phone line just like the police, and there is constant communication going on. Random case allocation is good for courts, but for prosecutors... Based on my experience, I can tell what will follow when we call the prosecutor, what the pace is going to be; some of them are more aggressive, some like to be up-to-speed and receive each piece of paper immediately, and some of them say: "Ok, when you gather everything and wrap up, send it over." An inspector may also decide to wait for the prosecutor with whom they work well to take over and call them directly. But that means time is wasted.*
- The problem is the insufficient number of prosecutors, but also the way the prosecution offices organize their work; in our prosecution office, prosecutors sometimes hand over the cases. If one prosecutor is on duty this week, and some measures and actions need to continue into the next week, then another prosecutor will take over, who does not know all the details of what has already been done, and then possibly even a third prosecutor may get involved later on, when the indictment is represented. I know that some changes have been made with regard to the duty hours to enable the prosecutor who was on duty to follow the case through. But I also know that recently there have been situations where another prosecutor would take over the case. As for the High State Prosecution Office, there are no problems there, since they see the case through to the end.*

A head of a prosecution office stated the following with regard to case allocation:

- The complexity of the case would need to be taken into account, but there is random allocation of cases. Everyone is on the roster and all the incoming cases are allocated to the prosecutor who was on duty at the time. The individual caseloads then can vary. At the Registration Office, we have records on the time of receipt, in line with the law, so the head of office does not have much of a role to play. I personally believe that this is an arrangement which guarantees objectivity, but professionalism, performance, skilfulness and competence of a prosecutor... Heads of offices should be able to decide, if a prosecutor has a particular affinity for an area, to allocate those cases to him/her. We do not have Judicial Information System for random allocation of cases. For the time being, there are no specializations, so if you receive a case while on duty you pursue it further.*

## **OFFICES WITHIN POLICE PREMISES TO BE USED BY THE PROSECUTORS WHO ARE ON DUTY**

Most police officers and several prosecutors thought that Security Centres needed to provide offices to be used by the prosecutors, in order to help direct contact and insight into the cases, especially in the towns where "large numbers of events happened on a daily basis".

- *It would not be a bad thing if we had an office there, since sometimes things need to be done as soon as possible and we need to be there on site. I had a case with 35 defendants, the trial ended recently. I could not work here unless my colleague left the office and did no work at all that day. So I went to the police and they gave me an office, since we needed to watch the video of the event and identify the persons concerning whom we had grounded suspicion. The police officers were really helpful, we identified the actions of the perpetrator, classified the offence and identified the persons to be covered by the criminal report.*
- *Under this law, a prosecutor would need to be with the police all the time, as the prosecutor is in charge of the pre-trial procedure. If they are on duty, they should be there on site and talk to us and the person brought in, and then they would have a better overall picture. They would care more, they would be more knowledgeable... I may inform them on the phone, but there are cases that involve a big pile of documents that I need to read, review, take. You cannot brief any prosecutor about all that verbally. They may find relevant something I initially overlooked. The prosecutors should be more involved, more proactive, and they should give some suggestions.*
- *It is going to be more difficult for the prosecutor, whoever he/she may be, to comprehend the situation when it is communicated to them over the phone. If they themselves saw and heard these things, they would make the conclusions similarly to the way the police do. Right now, their grasp on the situation is worse.*
- *In Bosnia and Herzegovina they have offices for the prosecutors and we hear that that has been working well and helping more efficient dealing with crime. Team work is the only way.*

The office for the prosecutors that has been provided within the police premises in one tow is still not being used. The head of the competent Prosecution Office thought it should be used as needed, but that it was not realistic to have the prosecutors at the disposal of the police:

- *The office is the place for the prosecutor to be. They are overworked. Prosecutors are not relieved of attending trials or conducting other responsibilities during the week when they are on duty. They have to get the indictments confirmed and lodge appeals, and court judgments come in as well.*

## CRIME SCENE INVESTIGATION

The police keep the statistics on crime investigation techniques, which recorded 9,727 crime scene investigations in 2015 (9,745 in 2014). The State Prosecution Service Performance Report did not include the number of crime scene investigations directly coordinated by the prosecutors. With regard to that, the prosecutors thought that it was sufficient if they conducted crime scene investigations in complex criminal offences and that the police were adequately trained to carry that out on their own. Police officers thought that prosecutors would be able to understand the situation better if they were involved in more crime scene investigations:



- *I think it would be better if the prosecutors were involved in more crime scene investigations. It is much better if the whole team is there at the crime scene, but we need to take into account the prosecutors' regular activities. Certainly, for some serious criminal offences, it is much better and efficient if the prosecutor attends and manages crime scene investigation.*
- *There is a problem with their not visiting the crime scene in some situations, when some serious criminal offences take place. For instance, the criminal offence of homicide falls under the jurisdiction of the High Prosecution Office and the prosecutor always visits the crime scene. In the majority of cases of attempted homicide, we get the prosecutor's authorization to conduct crime scene investigation ourselves. And when it comes to the offences which fall under the jurisdiction of the Basic Prosecution Office, it is always done by us, except for the traffic accidents with fatalities. It is much easier to steer the work of the police from the crime scene, when you have everything before you, rather than delegate either indirectly via the commanding officer or directly.*
- *Although they are required to visit the crime scene, they somehow decide to do so if the case involves social harm, if there are consequences or fatalities. The police process the crime scene.*
- *Crime scene investigation and preliminary investigation are the competences of the prosecution service which get conducted by the police, up to 95%. Why does the law not refer to this by its right name?*

## DEPRIVATION OF LIBERTY, POLICE CUSTODY, IMPOSING DETENTION

- *Keeping someone in custody has become a problem in the recent few years. If the Prosecution Service have somebody on duty and if I deprive someone of liberty at 22:00, so I believe that the prosecutor should come in and take care of their part of the work. They tell me to bring them in in the morning. I do not have a problem with that but I do not have the decision on the deprivation of liberty, so I cannot place that person in the cell. That is the problem: I need to assign two officers to guard somebody who has not been deprived of liberty. I am short of staff because the prosecutor, whose salary is 2–3,000 euro, is not willing to come in.*
- *A power that we miss, although it clashes with human rights, is being allowed to keep someone in custody for longer. Currently we can keep someone for 24 hours. It used to be up to three days, then reduced to two and then to one. Prosecutors can order keeping someone in custody for 72 hours. It would be better if the police had more time to collect valid evidence and file the report.*

Several police officers suggested having the custody suite at the prosecution office:

- *We are not allowed to hold someone, but those persons stay at the police. The prosecutor orders custody, issues the decision, hands it over to the police officer, the officer brings the person and that person stays in our custody suite. We are responsible for them and we are barred from any contact with them if the prosecutor is not present. So then somebody has to guard that person all the time.*

## INTERVIEWS

Most police officers said that the biggest problem in their work was the fact that interviewing a member of the public at the police premises had no legal power; even some prosecutors thought that when somebody is interviewed by the police in the presence of their attorney it should have the power of evidence "given the time lapse and the influence exerted by third parties.



- *The biggest disaster since Bogisic introduced the first Criminal Code of Montenegro to date is the fact that the police conduct informal interviews with individuals as members of the public. Even if they start talking and everything is going well, and the attorney is there, the prosecutor cannot interrogate them immediately and seize the moment. Or they say it is the weekend, how about doing it on Monday, or they are too busy to interrogate them because they are working on another case, or I called them while they were interrogating a suspect. We now insist that another prosecutor be assigned to do it, since the matter is urgent. The effect of having given a statement to the police is lost, the criminal thinks he has confessed, it is all over. After a while, it no longer makes sense.*
- *Prosecutors conduct the interview in a completely different way; they just ask: "Did you do it? So you didn't." They include that in the notes and it is done. There are different tactics that can be employed. They are not skilled at all.*
- *There have been situations, usually at the Basic Prosecution Office, when the prosecutor is unavailable to interrogate the person that the police need to be interrogated and another prosecutor would step in. Negotiations usually follow with the prosecutor about the details and facts that are very important to us. In some cases the perpetrator would confess, without any coercion or deception or anything like that, but a clean confession; if the prosecutor does not agree to urgently interrogate that person, we are left with a criminal offence that is not prosecuted and then the citizens and the public think the police are not achieving any results.*
- *The high prosecutors are truly experienced in interrogation of suspects and there are no objections in that regard; we know that because we keep track of the case, although our work ends once a criminal report is filed. Still, through our day-to-day contacts we keep track.*
- *The interrogation is crucial sometimes and the victims' statement may serve as the chief piece of evidence. I ask the prosecution office to conduct the interrogation immediately, since you know money and connections will come into play.*
- *All the information we collect has no relevance as evidence in court. We conduct interviews differently from the prosecutors. We follow the crime investigation rules and we obtain confessions. However, due to some reasons, prosecutors sometimes cannot interrogate that persons immediately. If they cannot make it, then after 6 hours, which is the time allowed to us to collect information, we need to let the person go. In the meantime, this person consults with the attorney and the next day or several days later, when they get to be interrogated by the*

*prosecutor, they recant and we end up with nothing. There are very few evidentiary actions conducted by the police: crime scene investigation, search of dwellings, secret surveillance measures. There are no other mechanisms to obtain evidence. There is a big problem with the statements not being taken immediately after the person confesses to a crime. In some situations actions are slow, especially with regard to some actions which we see as priorities: slow issuance of the order to obtain expert report, or slow issuance of the order to review the phone records etc. Sometimes we also have to repeatedly appeal for urgency, either verbally or in writing, in order to obtain the order. And if we do not do it straight away, then we need to handle other things, and the case is diluted.*

- *Mandatory audio and video recordings should be introduced, along with the presence of the attorney, and we should be allowed to interrogate. This is the practice across the globe. The Irish told us: "Hats off to you for the work you do, considering that police notes are not acceptable evidence in court." That's what they told us.*

One of the judges included in the survey had a categorically negative stance on the need for the police to conduct interrogations:

- *There is no need for the police to interrogate, the prosecutors do it more expertly.*

A prosecutor told us frankly that she never read police notes on the statement given by the member of the public: "We no longer read those - what would be the point if none of it is valid. We can get briefed, but the suspect may deny everything and we are back where we started."

Although practically all the police officers explained the problems that they faced in their work due to the fact that they were not allowed to take statements, they could not tell us what was preventing the implementation of the exception provided for by the CPC<sup>39</sup>; they confirmed, though, that it was not being implemented. Only one respondent stated his views:

- *The problem, as presented by a special prosecutor at a seminar, is as follows: he ordered the police to interrogate somebody in the attorney's presence, since he could not come to Bar to do it. So the authorization was there and they made the notes, that persons confessed, the indictment was prepared. In the trial, the court found that the notes were taken by a non-judicial authority. Although this is included in the CPC, since then we have never interrogated another suspect again. I prepared the notes in that first case, and then perhaps once again, and that was all. But this has to change, since that first moment is so important. We have had many situations, and you probably heard from the rest of the colleagues about it, when the person confessed to us and then told the prosecutor: "I did not do it, they made me confess". Our statements are excluded from the case file. Because they serve as briefings. We have to introduce an arrangement to have our notes recognized by the court.*

**39** / Article 261 paragraph 5: Exceptionally, upon the approval by the State Prosecutor, and with consent of the suspect and in the presence of the defense attorney, the police and officers of state administration body responsible for customs affairs may examine a suspect. If the suspect fails to retain a defense attorney, the State Prosecutor shall, ex officio, appoint the defense attorney from the Bar Chamber's list, and shall examine him/her without any delay.

## SEARCHES AND IDENTITY PARADES

With regard to searches and identity parades, technical problems arise when trying to ensure involvement of citizens either as witnesses or participants in the identity parade. However, the police officers admitted to some instances when the notes on the search were disputable and excluded from the case file.



- *There are some police officers who are sometimes afraid to conduct an inspection or a search, since they are worried they may lose their jobs. Because of that, they conduct them less frequently, which is not good. None of them would be doing it off-the-record, on a whim. The police officer may make a mistake due to ignorance.*
- *There was a situation when we wanted to search somebody's flat; we had intelligence indicating that this person had a weapon or a whole arsenal of weapons at their flat. So we went to the prosecutor and informed him verbally, and the prosecutor wanted to know the name of our source. We, however, have some internal rules for protecting the source. They then insisted and we refused, so in the end we needed to approach the prosecutor in writing. In most cases, if we approach them in writing, their response is affirmative and this is then further pursued by the court. The court did not challenge or ask for the name of the source. There was even one situation when the order was denied, when we appealed to the Higher Court, which then repealed the decision of the Basic Court. It is sometimes difficult to secure members of the public to attend a search, for instance in small communities we cannot force anyone to be there during the search, especially not early in the morning, and we want to catch them off guard. People are not willing to cross their neighbours.*
- *The prosecutors sometimes complicate things unnecessarily and do not value the intelligence. What kind of evidence do you need to get the search order? And we were right on target each time, weapons were found.*
- *The identity parade is the prosecutor's action; we accommodate them. They often ask for five similar-looking people to be found in a short time. We struggled with it, looked for people, nobody was willing to do it. Especially if there is something specific about the appearance, for example someone who is very tall, or very short, or wears glasses, or is a Roma. One prosecutor asked for all the participants to have identical Colmar jackets, so we went to the shops and asked them for the jackets. Sometimes it goes too far. We had a verbal agreement with security guard companies – we asked the managers to send their guards, and they agreed to do it, so they cooperated with us. And that is good, because we could not have police officers participate stand in that line.*

## SECRET SURVEILLANCE MEASURES

The application of secret surveillance measures is an area illustrative of the cooperation of the Police, Prosecution Service and investigative judges, since it requires the approval of at least two, and in most cases all three authorities (depending on the measure). In January 2006, the IA asked the Police, Prosecution Service and the Courts to provide the statistics on the application of all forms of secret surveillance measures under the CPC. However, all three replied that they did not have such information and that they would need to draw them up, which was not their obligation under the Law on Free Access to Information; therefore, they did not deliver any information. Bearing in mind that the application of these measures temporarily suspends citizen's rights enshrined in the Constitution, it is incomprehensible that the competent authorities do not consider it necessary to keep accurate statistics on the scope and results in such instances.

However, the data<sup>40</sup> on the application of secret surveillance measures that the Ministry of Justice provided to the Committee for the Political System, Judiciary and Administration in June 2015 show a high rate of approval. Still, the results obtained through the application of these measures were very poor<sup>41</sup>. Namely, out of the 846 persons whose conversations were wiretapped, criminal proceedings were initiated against 190, while final convictions followed for 19 (or 2.24%).

**40** / Report on the application of secret surveillance measures between the coming into force of the CPC (Official Gazette of MNE 57/09) and 9 June 2015.

**41** / On the basis of the results of these secret surveillance measures and other evidence and data collected during preliminary investigation:

- Criminal proceedings were initiated by means of a prosecutor's order or charge against 190 persons;
- Prosecution against 13 persons was ceded to another state;
- Plea bargain agreements were concluded with 7 persons;
- Prosecution against 10 persons was transferred to the Division for suppression of organized crime, corruption, terrorism and war crimes;
- Final judgments were issued against 19 persons;
- Secret surveillance measures are ongoing against 230 persons;
- Following the application of secret surveillance measures, criminal proceedings were not initiated against 500 persons.

Overview of the proposed and approved measures, 2010–2015			
Measure:	Police:	Prosecution Service:	Court:
1. Surveillance of transportation and delivery of the object of criminal offence, under Article 157 para 2 item 2 of the CPC	The police proposed to the state prosecutor application against 3 persons	-The state prosecutor issued written order to impose the measure against 3 persons	
2. Recording a conversation with prior consent and information of one of the participants in the conversation, Article 157 para 2 item 3 of the CPC	The police proposed to the state prosecutor application against 5 persons	The state prosecutor issued written order to impose the measure against 5 persons	
3. Secret surveillance and technical recording of phone conversations or other communication by means of distance communications, or of conversations taking place in private or public facilities or outdoors, Article 157 para 1 item 1 of the CPC			The investigative judge issued written orders to impose the measure against 846 persons  The investigative judge issued written orders to extend the measure against 122 persons
4. Covert taking of photographs and visual recording in private premises, Article 157 para 1 item 2 of the CPC		The state prosecutor proposed to the investigative judge application against 75 persons	The investigative judge issued written orders to impose the measure against 75 persons
5. Secret physical surveillance and recording of persons and objects– Article 157 para 1 item 3 of the CPC		The state prosecutor proposed to the investigative judge application against 35 persons	The investigative judge issued written orders to impose the measure against 21 persons

42 / Response of the Supreme State Prosecution Office: <http://institut-alternativa.org/ko-ce-odgovarati-zbog-zloupotreba/43/?lang=en>

43 / Initiative available at: <http://institut-alternativa.org/zajednicko-saopstenje-sta-je-tuzilastvo-uradilo-sa-izvjestajima-dri/?lang=en>

44 / Detailed responses available at: <http://media.institut-alternativa.org/2015/07/Odgovor-Tu%C5%BEila%C5%A1tva-%C5%A0ta-je-tu%C5%BEila%C5%A1tvo-uradilo-sa-izvje%C5%A1tajima-DR1.pdf>



## FORENSIC EXAMINATION

The respondents highlighted that the public neglected the expert witnesses' impact on the outcome. Their assessments varied. Some thought that expert witnesses were excellent, while others thought they were "the worst link, not subject to any control, economic experts giving different reports on the same matter". From one town to the next, different categories of experts were praised: traffic, medical, or other. Still, the following was highlighted:

- *The expert witness has a major impact on the case; attention should be paid to the transparency of their work and reducing the monopoly some experts have.*
- *Medical records are always a problem when you need to urgently classify the injuries, especially if a foreigner is involved.*

One of the judges said:

- *Just think of it –there are 1,400 expert witnesses in Montenegro, meaning 1,400 top experts. How is that possible? The criteria are low. Not every economist with five years of work experience is fit to be an expert witness. Many of them never appear before court, it is always the same people, and that is also a problem.*

Besides the level of professionalism of their reports, another important issue is timeliness, since waiting for the expert witness report often slows down the work of the prosecutors. The response provided by the Supreme State Prosecution Office<sup>42</sup> to the query sent by the IA and four NGOs<sup>43</sup> about the activities undertaken by the Prosecution Service concerning the negative reports delivered by the State Audit Institution, revealed the extent to which prosecutors relied on expert witness reports, the difficulties they encountered in accessing the experts, and the fact they their reports sometimes took longer than seven months<sup>44</sup>.

Police officers objected to frequent slow actions by the prosecutors concerning the orders to conduct forensic examination. They said the prosecutors mainly reiterated their request without adding anything to it, but that they needed to wait for that as well. Several prosecutors frankly stated they did not have sufficient expertise to order forensic examination, that there was room to incorporate the necessary specifications in such orders and that they needed assistance with that.

With regard to the examination conducted by the Forensic Centre, the prosecutors explained that the Centre was overwhelmed with requests and that DNA reports took the longest amount of time. There were even some suggestions to set up mini-labs for urgent examinations in all of the regions, which would significantly improve the efficiency of criminal proceedings.

In 2015, the Forensic Centre received from the organizational units within the Police Directorate, prosecution offices, courts and other state authorities 5,976 (5,648 in 2014) requests (orders to conduct examinations). That was an increase by 5.8% compared to 2014. Reports were provided for 5,225 requests (5,521 in 2014).

## MEMORANDUM ON COOPERATION BETWEEN THE PROSECUTION SERVICE AND THE POLICE

Although many of the respondents from different authorities were succinct in answering to the questions about the Memorandum<sup>45</sup>, claiming that "everything is already contained in the CPC and there is no need for a Memorandum, which has never started to have effect anyway", the interviews showed that the Memorandum had been implemented in a number of instances. Although these practices followed disagreements concerning further actions, they were still positive, as they provided the institutional mechanism for dealing with disagreements and conflicting positions.

- *There have been some situations when we thought we had sufficient evidence to file a criminal report and the Prosecution Service thought it was a borderline case. That is when we make use of all the mechanisms. We inform our Sector (Crime Police), we draw up a briefing note, and the Sector usually organizes meetings with the High Prosecution Office or forward the entire briefing note to the Supreme Prosecutor, asking for a position. The case is presented at the joint meeting; over the recent 2–3 years we have seen cases when the High Prosecution Office acted upon some postponements in some of the proceedings...But that happened in a small number of situations.*
- *When informing the prosecutor, we draw up the official note, which gets registered here. I heard from the colleagues, not here but elsewhere in Montenegro, about some problems in situations when such official notes stated that the prosecutor had been briefed and had given some instructions, but then, there was a problem and the prosecutor denied having issued such instructions. That does not happen here. When I complete the criminal report, I deliberately include the note as an appendix, so nobody can say I made anything up. When they read the case file they see the note as well.*
- *At the Security Centre we make use of all the available concepts to obtain response. Sometimes the boys would work for 10–15 days, collect evidence, forward it to the prosecutor and then there is no response. As for the Memorandum signed between the MoI and the Supreme Prosecution Office, we used to approach some prosecution offices that were late in responding. And in some instances the prosecutors instigated the proceedings based on our inputs and forgot to notify the police to file the criminal report.*
- *In some instances, in line with the Memorandum, we asked for information about initiation of criminal proceedings, the persons covered and the criminal offence specified.*
- *An attempted homicide case, for example. When I mentioned the Memorandum to the prosecutor, she was not aware of its existence, let alone how to comply with it, in particular in a situation where there are conflicting views. The prosecutor is in*



**45** / The Memorandum on Cooperation of the MoI/Police and Supreme Prosecution Office was signed in April 2014 with the aim to upgrade the functional cooperation and efficiency of the pre-trial and criminal proceedings. It elaborated on the roles of the state prosecutors leading the pre-trial procedure in line with the CPC and the police, following the prosecutor's orders. The Memorandum specified the mutual obligations of the prosecution and the police at the operational level, concerning their respective actions and mutual reporting on the measures and actions undertaken, to the extent that is compatible with the CPC.

*charge; we can file a criminal report, but in order not to jeopardize the relationship... We need them more than they need us. The old CPC was special; they turned our report into a bill of indictment and learned how they can only have clean-cut cases, and this is what they want from us.*

- I complained and invoked the Memorandum. Article 5, on opinion in legal matters, is particularly interesting in my view. We have standard communication with them, admirable when it comes to the High Prosecution Office. But many of us also have degrees in law and are able to identify the criminal offence; we also know what needs to be done, which actions are urgent and cannot wait, and we have more experience.*
- There have been some misunderstandings and I initiated some activities. In three cases I initiated meetings with the police representatives, since I thought the police officers had not acted appropriately. The police also suggested they had problems with some prosecutors. I could not accept that, since they never mentioned anyone by name and I did not want any general comments. You have to specify the event and the prosecutor who was not cooperative.*

The representative of the Mol, which is in charge of monitoring the implementation of the Memorandum, said the following:

- When you listen to the way the prosecutors talk about the police, you realize that it is something more than resentment. The prosecutors say that the police are not entitled to comment on their work, or have their own views on the cases, that that amounts to gossiping, that they are not allowed to classify the offence or appeal for urgent decision on the criminal report. Our police officers literally are not allowed to do anything, since that is the law. Prosecutorial investigation has encountered some stumbling blocks over the past ten years. The Code is good, but the practice is questionable. This was the purpose of the Memorandum – to overcome the operational problems. The police officers have spent ten or fifteen years on the job and they can have their own opinion on a prosecutor who only started working at the Basic Prosecution Office, and their voice should be heard. Why are they mistrusted? While working on the Memorandum, we advocated for a binding provision that would require the prosecutor to issue an order in writing and specify all that the police are required to do in a case. The prosecutors did not accept that. Communication by phone is a problem. The prosecutors are overworked, but the prosecutor who is on duty cannot present the case and the indictment before court and has no time to manage the work of the police, so what is the meaning of them being on duty? They should be relieved of that.*

## WHAT ARE THE MOTIVATION FACTORS – THE EVALUATION CRITERIA

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Although the Police and Prosecution Service share the same task, in practice they focus on different stages of the procedure, which is the root cause of all of their misunderstandings. In the view of the prosecutors, they are principally responsible for the later stages:

- *The quality, efficiency and economy of prosecutorial investigation are evaluated based on the length of the preliminary criminal proceedings run by the State Prosecution Service, the share of confirmed indictments based on the results of investigations and the outcome of the main hearing according to the type of judgment.*

However, the results of preliminary investigation also largely depend on the prosecutors:

- *If they were exposed to more pressure, they would be more interested; if they were assigned similarly to the way we get assigned to work on cases and if their superiors asked them about the progress in the case, they would be more interested in what we do, the ways to prove something, and they would work closer with the police in order to solve the criminal offence.*

The police said that nobody ever asked prosecutors about the clear-up rate, only the success rate of indictments, and that that was making them less interested in the cases with unknown perpetrators and less ready to approve measures and actions:

- *How can we solve a case with an unknown perpetrator if they are not willing to obtain even the phone records?*

On the other side, the prosecutors are exposed to a lot of pressure from the courts concerning the indictments and bills of indictment; the concern is that they might feel compelled to go to the other extreme and decide not to charge so as not to risk the indictment or bill of indictment being unsuccessful in court. In this regard, it is of particular importance that, instead of the emphasis on quantitative indicators, performance evaluation shifts towards being more qualitative, and that the composition of the caseload handled by the prosecutor is taken into account.

For police management, clearing up a case counts only if it results in detection of a criminal offence, although the procedure is often the same if there is no criminal offence:

- *As for the crime police, everything is evaluated based on the crime clear-up rate: the number of criminal reports and the number of criminal offences solved. And there are many cases to act upon, for instance we have recently had a number of reports concerning the cases of domestic violence. We recently also took over misdemeanour offences as well. Often somebody comes in to report a spouse or*

children. You go through the whole procedure, you need to prepare the notes for the criminal report, the note on notification, you need to obtain all the documents and witnesses. So you complete all that and inform the prosecutor, who then says it does not constitute a criminal offence, not even a misdemeanour offence. And we are required to act in such cases. (...) The monthly report includes all that we acted upon, all that we forwarded for "assessment and opinion", the number of cases pursued, the cases the prosecutor was informed about, the number of cases entered into the Supplementary Register. These are petty thefts or causing of damage, the events that are prosecuted following private charge etc. But this is practically not considered for your performance evaluation.

- We no longer have that stage of investigation where the prosecutor through some actions of their own collect evidence, assisted by us; instead, when we file the report, the prosecutor is sure that an indictment will follow based on the evidence, since their performance is evaluated based on the success rate of indictments before court. They formalize something as evidence without conducting much investigation on their own.

Does justice suffer if the prosecutors are only after the statistics and career in the profession?

- I was always willing to try, whenever there was a chance to prove something, even if other thing worked against us. I would decide to give it a try. I have to try because the victim of the crime deserves that. Sometimes we succeed, sometimes it does not work. I am not focused on achieving 100% success rate with indictments or convictions.

Paradoxically, prosecutors are higher than the police in the hierarchy relevant to detection of crime and identification of perpetrators, but are also highly dependent on the results of police work. They should therefore be thoroughly informed about the options available to the police. This is the sole prerequisite for efficient crime police management.

The other aggravating factor is that the results of professional police performance are not evaluated by the ones they work for, namely the prosecutors, but their superiors within the police. Therefore, in complex and sensitive cases, the police officers are more likely to follow the orders of their superiors rather than those of the prosecutors.

Since the police-prosecution cooperation is critical for achieving justice and solving cases, it would constitute good practice if the prosecutors had a more active role in crime police staffing; also, when promoting prosecutors, the Prosecutorial Council should take into account their cooperation with the police and the extent to which they helped the police solve cases.



## OTHER ISSUES

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### ACCESS TO DATA AND COMMUNICATION WITH OTHER STATE AUTHORITIES

Not all the prosecution offices and organizational units within the police had access to criminal records, which slowed down their work considerably. Most respondents pointed out that other authorities mainly delivered the required information in a timely manner, but that they did not sufficiently seek information from other authorities, and that it was needed "to raise the awareness of the priority nature of their obligations towards the Prosecution Service, since they sometimes tend to be inert, procrastinate, tell us they do not know where the information might be stored".



Most prosecution offices faced lack of office space:

- *Availability of premises to be used for investigative actions is an issue, since those actions are conducted in the basement, in the rooms with no natural ventilation. It is very uncomfortable if you need to sit there for 4–5 hours; the attorneys ask to leave and the prosecutor needs to stay till the end.*

Each office in the prosecution offices is shared by at least two prosecutors; whenever one of them is examining someone, the other one has to leave the office. They also share the assistants, who are available for a few hours a day.

### TRAINING EVENTS, SPECIALIZATION, CENTRALIZATION OF WORK

Some suggestions were heard also concerning the need for joint training for the Police and the Prosecution Service, but also the Prosecution Service and the Courts. Several interviewees mentioned the need for standardized case law for identical criminal offences and standardized penalties proposed by the prosecution etc.

Representatives of all the institutions covered by the survey, in particular the ones from the northern region, highlighted the problem of depopulation and lack of skilled staff, especially young professionals.

One of the prosecutors' objections concerning the police officers referred to them "not being specialized, but transferred from one department to another by their bosses" and "not being very proactive, needing more training; they do what they are told without questioning and half of it is not clear to them".

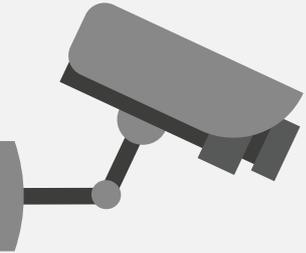
Contrary to this, the inspectors thought that centralized lines of work had led to major problems: "Five or six officers are assigned according to the job scheme to some sections, and in reality only one of them does the work. The ones dealing with drugs have only three people covering a large territory, and that is by far the most difficult task. They have one inspector with a university degree and another with a secondary school diploma, their boss is not there".

- *I think it is not good that financial and economic crime has been centralized. You cannot function if you do not have the (Security) Centre, primarily given all the intelligence needed... The colleagues who deal with general crime go out into the field much more than I do, I have meetings to attend. The problem is that I am the only one working here, so I have to work from the office, while they are quite mobile and they know people. You have to work with them. Now they've introduced this regional approach to fighting economic crime, with the southern, central and northern regions; the regions are not networked properly, so it is not easy for them to come here or for me to go there. I communicate with them on the phone, but sometimes we need someone here immediately.*

## TECHNICAL EQUIPMENT

A large number of police officers thought it necessary to install cameras along busy roads and at other high-risk urban spots:

- *It would be effective if we had cameras installed in the core urban zone and at the routes leading out of town; it would help us a lot. The cameras should belong to the government or local governments. That would enable us to have footage and secure some evidence following a criminal offence. The routes used to leave and arrive to the scene are very important; also the vehicles they used, helpers, instigators. I think it is in the public interest. I have completed training in a number of European countries, even in the U.S., and many of their roads are covered by video surveillance. Why do people say that interferes with the privacy of the passers-by? We are all citizens; as a police officer, I also move around the town. We all want the cases solved, but they are not willing to give us the tools.*
- *We have the strictest Personal Data Protection Law in Europe. Ok, if that is more important than crime... All we need are two cameras on the roads leading out of town so we can trace someone who is on the run. We placed fake cameras in some places, and that works as prevention.*
- *The cooperation with the Basic Prosecution Office could be better, in the sense of technical equipment and capacities. It would mean a lot to us if we had a link with the Prosecution Office instead of having to go through the archives: each document gets registered here, then goes to our archives, and then directly through their archives. Post is not sent every day, so there is a delay; on the other hand, that would indeed pose a disclosure risk. The correspondence goes through the archives even when an inspector asks to be delivered the case file and personally examine it. Still, as you know, some things have to be formally submitted in order to be able to track the number.*



## CITIZEN CONTRIBUTION TO JUSTICE

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Citizen contribution is extremely important in a number of measures and actions in the course of criminal proceedings, such as witness statements, search, identity parade etc. However, the respondents did not think that citizen awareness matched the responsibility and that most citizens felt it was their duty to help justice.

- *We are largely faced with a lack of cooperation; the awareness would need to change, and the police performance and commitment should foster credibility and trust. Citizens are often not willing to cooperate, even if someone saw something they deny having seen or heard anything. They don't want to be dragged into the investigation and required to appear later on... And where does that leave us, if there are no leads and nobody wants to get involved?*
- *The negative comments from the citizens and the media result from a lack of understanding of the position and powers of the police, but their assistance is very important in many things.*

## FINDINGS AND RECOMMENDATIONS

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Setting up a model of prosecutorial investigation that would provide the best results is not a simple task, since it requires close collaboration of the Police and the Prosecution Service which still grants to the prosecutors their critical assessment of the police requests to implement the measures from the CPC.

In many European countries, the police or a specific type of police are integrated with the prosecution service to ensure their control over the police. In such cases, the prosecution service's powers over the police take on different forms. In Belgium, some police sections are attached to the prosecutor's office and practically integrated with the prosecution service. Each prosecution office in Italy has a police department which is functionally subordinated to the head of the prosecution office. In Switzerland, the prosecutor is at the same time also the head of the police judiciaire. In Spain, there are "organic" links between the prosecution office and the judicial police, which is responsible to the prosecution office for investigation, detection and arrest of perpetrators of criminal offences.<sup>46</sup>

Since the discussion about the problems in the police-prosecution cooperation has been going on for several years, evident progress has been achieved at the level of the higher-ranked prosecution offices. That progress has been facilitated by the smaller caseload handled by the High Prosecution Offices, enabling them to focus better; however, one should not forget that these cases are also more complex. Still, there is room for the senior prosecutors to share with their junior colleagues their

<sup>46</sup> / "Unapređenje Zakonika o krivičnom postupku" (Improvements to the Criminal Procedure Code), Association of Prosecutors of Serbia, 2015.

experience and practices that they have developed in their daily cooperation with the police.

At the level of the Basic Prosecution Offices, the prosecutors and police officers engage in relatively intensive phone communication, but there is not enough direct communication, which often results in divergent assessments of events.

A major problem concerns the prosecutors leading the work of the police, while not being sufficiently knowledgeable of their capacities and limitations or of crime investigation techniques. In a number of instances, prosecutors expressed interest in getting more actively involved in the preliminary investigation; still, they more frequently accept the passive role and wait in their offices for the police to clear-up the case and bring evidence to be presented by the prosecution in court.

There is less dissatisfaction among the representatives of the police caused by the perception that their powers were taken away from them; however, they still do not believe that most prosecutors have assumed, besides the powers and privileges, also the necessary responsibility and initiative in performing the tasks

## RECOMMENDATIONS:

- *Develop a joint "internal" strategy of the police and the prosecution to reduce the share of unsolved criminal offences, with particular focus on the criminal reports where there is a risk of the statute of limitation expiring.*
- *The Police Directorate should conduct a review of the quality of police operational work; the gaps identified should serve to adopt a new regulation to establish the best practices in the operational work.*
- *The Police Directorate should also conduct a review of the implementation of Article 267 of the CPC; in addition to quantitative data, there should be a qualitative assessment of the share of measures, out of the total range applied, that rendered results and the way to improve the analytical work of the police, which precedes the implementation of the measures.*
- *Heads of the prosecution offices should devote particular attention to timely assessments of the cases submitted for prosecutors' assessment and opinion, and timely classification of offences.*
- *Security Centres should provide offices where prosecutors could work during one part of their working hours; they could also be available to the police officers while they are on duty.*
- *Heads of both authorities should encourage direct communication between their staff, along with frequent organization of meetings at all levels.*
- *State Prosecution Service should report on the statistics concerning the preliminary investigations coordinated by the prosecutors.*

- *Resolve any (possible) obstacles in practice that prevent police from conducting interrogation, under the CPC, with the prosecutor's approval and in attorney's presence, when the prosecutor is unable to conduct it him/herself.*
- *Continuous training for prosecutors to improve their interrogation skills and their knowledge of crime investigation techniques and the examinations conducted by the Forensic Centre.*
- *Amendments to the CPC should enable the prosecution office to appeal against the court's decision not to confirm a bill of indictment.*
- *Encourage proactive actions of state prosecutors, greater autonomy in their work, in line with the law, and public statements on the cases they are handling.*
- *The courts, Supreme State Prosecution Office and Police Directorate should improve public information about secret surveillance measures by means of regular reports on the approved measures and their results.*
- *The MoI and the Police Directorate should ensure enhanced technical and staffing capacities of the Forensic Centre.*
- *Ministry of Justice should design a campaign to motivate citizens and foster the awareness of the civil duty to contribute to justice.*
- *Present the work of the prosecution service and the police at the local and national level, several times a year, to improve accountability, build trust and encourage citizens to assist.*
- *Set up a database of the citizens who expressed their willingness to contribute to the justice system, in particular to take part in identity parades. The database should include details of appearance that would enable fast matches.*
- *The Ministry of Justice, Supreme State Prosecution Office, Police Directorate and Judicial Training Centre should provide separate or joint training events for the given authorities to facilitate their discussion of the problems encountered in their collaboration and resolve possible dilemmas.*
- *Ensure modernization of the premises and technical equipment of the prosecution service and the police, primarily with regard to access to the criminal records and inventory of regulations.*

## APPENDIX 1: DETAILED OVERVIEW OF THE TRENDS IN THE NUMBERS OF CRIMINAL OFFENCES

Montenegro Police Directorate	2005.	2006.	2007.	2008.	2009.	2010.	2011.	2012.	2013.	2014.	2015.
Number of registered criminal offences	9 579	9 564	9 258	8 277	8 101	6 994	6 147	5 827	5 899	5 701	5 247
Criminal offences with unknown perpetrators		2 411	2 347	2 228	2 316	1 928	2 782	3 066	2 826	2 665	2 636
Crime rate					13	11,3	10	9,4	9,5	9,1	8,5 – 9,1
Actions completed						6 080	5 165	4 748	4 893	4 538	
Actions completed in %						86,9%	84%	81,5%	82,9%	79,6%	
Cleared up %						67,8%	64,7%	64,8%	64,4%	56,4%	53,8%
Number of criminal offences not cleared up						914	982	1 079	1 006	1 163	2 636

## APPENDIX 2: OVERVIEW OF THE TRENDS IN THE PROSECUTION SERVICE CHARGES

In 2015, the state prosecution service of Montenegro indicted 3,765 perpetrators of criminal offences; out of this number, indictments against 526 persons were raised following investigation; direct indictments against 256 persons, and bills of indictment against 2,983 persons.

In 2014, the state prosecution service of Montenegro indicted 4,304 perpetrators of criminal offences; out of this number, indictments against 633 persons were raised following investigation, direct indictments against 284 persons, and bills of indictment against 3,387 persons.

In 2013, the state prosecution service of Montenegro indicted 4, 598 perpetrators of criminal offences; out of this number, indictments against 707 persons were raised following investigation, direct indictments against 291 persons, and bills of indictment against 3,600 persons.

In 2012, the state prosecution service of Montenegro indicted 5,554 perpetrators of criminal offences; out of this number, indictments against 1,257 persons were raised following investigation, direct indictments against 238 persons, and bills of indictment against 4,047 persons.

In 2011, state prosecutors filed motions for investigation and issued orders to conduct investigations against 2,249 persons: 1,723 persons from the jurisdiction of basic prosecution offices and 336 persons from the jurisdiction of high prosecution offices.

In 2010, state prosecutors filed motions for investigation against 2,923 persons: 2,465 from the jurisdiction of basic prosecution offices and 458 from the jurisdiction of high prosecution offices.

In 2009, the state prosecution offices in Montenegro indicted 7,255 perpetrators of criminal offences; indictments against 3,313 persons were raised following investigation, 326 persons were indicted directly, and bills of indictment were raised against 3,616.

In 2008, the state prosecution offices in Montenegro indicted 8,677 perpetrators of criminal offences; indictments against 3,867 persons were raised following investigation, 383 persons were indicted directly, and bills of indictment were raised against 4,173.

In 2007, the state prosecution offices in Montenegro indicted 7,688 perpetrators of criminal offences; indictments against 3,065 persons were raised following investigation, 402 persons were indicted directly, and bills of indictment were raised against 4,221.

In 2005, 8,478 persons were indicted (5936 in 2004), which was an increase by 42.82%. Out of this number, 7,973 persons were indicted within basic jurisdiction (5,569 in 2004), which was an increase by 43.16%, while 505 persons were indicted within higher jurisdiction (367 in 2004). The 37.60% increase is explained by the change in subject-matter jurisdiction and transfer of military cases.



## **ABOUT THE INSTITUTE ALTERNATIVE (IA)**

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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 programmes: 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 we have organized since 2012.

Ministry of Science has issued a formal decision, granting Institute Alternative the official certificate to conduct research activities in the filed of social sciences, on 17 October 2013, based on the Law on Conducting Scientific and Research Activities.

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