

Managerial Role of the Public Prosecutor in Serbian Pre-Investigation Proceedings: Myth or Reality?¹

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Abstract

Managerial role of the public prosecutor in Serbian pre-investigation proceedings is one of the main characteristics of current Criminal Procedure Code. Passing the Criminal Procedure Code from 2011 the investigation has been transferred to the public prosecutor, who is in charge not only for the investigation, but has managerial role in the pre-investigation proceedings. He has become dominus litis of the whole preliminary proceedings. Therefore is important to perceive his powers and relationship with the police in the pre-investigation proceedings. The topic of this paper is to present legal solutions regarding the pre-investigation procedure, main figures of this stage, the police and the public prosecutor, their relationship and essence of the managerial role of the public prosecutor. Also, some practical aspects in execution of leadership role are explained and critically overviewed the problems that limit the realization of the managerial role of the public prosecutor.

Key words: *public prosecutor; managerial role; pre-investigation proceedings; inefficient powers.*

Introductory remarks

Managerial role of the public prosecutor in the preliminary criminal proceedings is one of the most important novelty of the Serbian Criminal Procedure Code from 2011 (hereinafter: CPC).² This role is a consequence of the prosecutorial concept of investigation which establishes public prosecutor as a main figure not only for the pre-

¹ This work is the result of the realization of scientific research project titled Crime in Serbia and Instruments of State Reaction. The project is funded by the Academy of Criminalistic and Police Studies in Belgrade (2015 – 2020), and the result of the realization of scientific research project titled Development of Institutional Capacity, Standards and Procedures for Countering Organized Crime and Terrorism in Terms of International Integrations. The project is funded by the Ministry of Science and Technological Development of the Republic of Serbia (no. 179045), and its being implemented by the Academy of Criminalistic and Police Studies in Belgrade (2011–2015); project manager is PhD Saša Mijalković.

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² “Official Gazette of the Republic of Serbia”, no. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013 and 55/2014).

investigation proceedings, but for the whole preliminary proceedings. Basically, conducting preliminary proceedings in general are entrusted with the public prosecutor and the police, with the intention to public prosecutor become a *dominus litis* of entire preliminary proceedings.³ The basic right and the basic duty of the public prosecutor are to prosecute the perpetrators of criminal offences which are prosecutable *ex officio*. In such cases the public prosecutor is authorised to: manage pre-investigation proceedings; decide on not undertaking or deferring criminal prosecution; conduct investigations; conclude plea agreements and agreements on giving testimony; file and represent an indictment before a competent court; abandon charges; file appeals against court decisions which are not final and submit extraordinary legal remedies against final court decisions and conduct other actions when specified by CPC (Art. 43 of the CPC).

Until the introduction of CPC from 2011, Serbian preliminary criminal proceeding was in hands of an investigative judge, who was in charge of the investigation as the first stage of the preliminary criminal proceedings (judicial concept of investigation). Pre-trial proceedings (nowadays: pre-investigation proceedings), as separate stage from criminal proceedings, was conducted by the police with managerial role of the public prosecutor (Art. 46, Para. 2, Item 1 of the CPC/2001).⁴ For the purpose of the exercise of these competences, all authorities participating in the pre-trial proceedings were required to notify the competent public prosecutor about all actions undertaken. The Ministry responsible for Internal affairs – the police (hereinafter: internal affairs authority) and all other public authorities responsible for detecting criminal offences were required to act in accordance with every request of the competent public prosecutor. If an internal affairs authority or other public authority didn't act in accordance with the request of the public prosecutor, the public prosecutor could notify the senior officer in command of the said authority, and if needed could also notify the competent government minister, the government, or the competent parliamentary body (Art. 46, Para. 3-4 of the CPC/2001). Still, the police used to take many actions without prior notifying the public prosecutor. Moreover, the police took all necessary actions and measures and after the completion of the pre-trial proceedings, the police filed criminal complaint to the competent public prosecutor. That's why the public prosecutor didn't have an active or managerial role during the pre-trial proceedings that was prescribed by the law.

With introduction of the prosecutorial concept of investigation, public prosecutor has to be seriously engaged during the pre-investigation proceedings and fully take over his/her managerial role. That means he/she can take any necessary action in order to detect a criminal offence and their perpetrator, to collect the evidence needed for criminal prosecution and procedure and to detain for the 48 hours the suspect, or to defer criminal prosecution for less serious offences and dismiss a criminal complaint for reasons prescribed by the law. However, the fight against a crime requires adequate cooperation with all other authorities in criminal justice system, especially the police.

³ Bošković, A.: The Relationship Between Public Prosecutor and the Police During Preliminary Proceedings According to the Serbian Code of Criminal Procedure, in: *Archibald Reiss Days (Thematic conference proceedings of international significance)*, Vol. III (eds. Milašinović, S., Simović, D., Simeunović-Patić, B.), Academy of Criminalistic and Police Studies and German Foundation for International Legal Cooperation (IRZ), Belgrade and Bonn, 2014, p. 242.

⁴ "Official Gazette of the Federal Republic of Yugoslavia", no. 70/2001 and 68/2002 and "Official Gazette of the Republic of Serbia", no. 58/2004, 85/2005, 115/2005, 85/2005 – other law, 49/2007, 20/2009 – other law, 72/2009 and 76/2010).

The public prosecutor has to be informed about all police activities and consulted about all future actions. Because he/she is the main figure who is responsible not only for the pre-investigation and investigation, yet for the indictment and further criminal procedure. For that reason it is very important to establish real mechanisms for the public prosecutor to exercise his/her leadership role.

This is not an easy task, because it depends not only on criminal procedural provisions, but to constitutional position of the public prosecutor and legal position of the police. In the Republic of Serbia, public prosecutor is an autonomous state body which prosecutes perpetrators of criminal offences and other punishable actions and take measures in order to protect constitutionality and legality. Public Prosecutor's Office performs its function on the grounds of the Constitution, law, ratified international treaty and regulation passed on the grounds of the law (Art. 156 of the Constitution of the RS).⁵ Almost the same provision contains the Law on the Public Prosecution.⁶ Another important issue that reflects the public prosecutor's position in criminal proceedings is election procedure. Public prosecutors are elected by the National Assembly, on the Government proposal, for the period of six years and may be re-elected. Deputy public prosecutor who stands in for the public prosecutor in performing the function of the Public Prosecutor's Office and is obliged to act according to his/her instructions, is elected on the proposal of the State Prosecutors Council⁷ and the National Assembly elects a deputy public prosecutor to that function for the first time, i.e. for three years. The State Prosecutors Council elects deputy public prosecutors to permanently perform that function (Art. 159, Para. 2-6 of the Constitution of the RS).

On the other hand, the police are not constitutional category. Internal affairs, the organization and jurisdiction of the Ministry of Interior, policing, organization and competences of the police, as well as other issues of importance for the work of the police are regulated by the Law on Police.⁸ According to that Law, the police is the central organizational unit of the Ministry of Interior, which in the performance of interior, i.e. police duties, protects and improves the safety of citizens and property, abiding by the constitutionally guaranteed human and minority rights and freedoms and other protected values in a democratic society, with a possibility of using the means of coercion set out in the Constitution and law (Art. 3 of the Law on Police). The Minister of Interior prescribes the manner of performing internal affairs duties and the Government

⁵ "Official Gazette of the Republic of Serbia", no. 98/2006.

⁶ "Official Gazette of the Republic of Serbia", no. 116/2008, 104/2009, 101/2010, 78/2011 – other law, 101/2011, 38/2012 – decision of the Constitutional Court, 121/2012, 101/2013, 111/2014 – decision of the Constitutional Court, 117/2014, 106/2015 and 63/2016 – decision of the Constitutional Court.

⁷ The State Prosecutors Council is an autonomous body which provides for and guarantees the autonomy of public prosecutors and deputy public prosecutors, in accordance with the law. The State Prosecutors Council have 11 members and is constituted of the Republic Public Prosecutor, the Minister responsible for justice and the President of the authorised committee of the National Assembly as members *ex officio* and eight electoral members elected by the National Assembly. Electoral members include six public prosecutors or deputy public prosecutors holding permanent posts, of which one is from the territory of autonomous provinces, and two respected and prominent lawyers who have at least 15 years of professional experience, of which one is a solicitor, and the other a professor at the law faculty. Tenure of office of the State Prosecutors Council's members lasts five years, except for the members appointed *ex officio*.

⁸ "Official Gazette of the Republic of Serbia", no. 6/2016.

prescribes the principles for internal organization of the Ministry, as well as the types of organizational units, the seats and territories for which the organizational units are established. This includes the number of job positions, job classification, type, *i.e.* status and description of job positions, jobs for which special requirements are envisaged, the manner of management, planning and implementation of tasks. The Law on Police stipulates that the police are operationally independent from other state authorities in the performance of police duties and other statutory activities falling under police jurisdiction, but operational independence is not relate to police duties stipulated by the law regulating criminal and misdemeanour proceedings (Art. 12, Para. 1-2 of the Law on Police). It is also stated that during the pre-investigation procedure and investigation, the police shall exercise police powers stipulated by the Criminal Procedure Code and act upon the order and requests of the public prosecutor and the court (Art. 18, Para. 1 the Law on Police).

Bearing in mind these facts, it is questionable to what extent can public prosecutor really performs his/her managerial role. In that context, in the following article will first be presented the basic characteristics of the pre-investigation proceedings and then will be indicated on the managerial role of the public prosecutor and its practical implications.

1. Term determination and basic characteristics of pre-investigation proceedings

According to the Serbian CPC, pre-investigation proceedings are not part of criminal proceedings, because the law stipulates that proceedings are pre-investigation proceedings and criminal proceedings (Art. 2, Para. 1, and. 14 of the CPC) and criminal proceedings can be instituted by the issuance of an order on undertaking an investigation, by the confirmation of an indictment not preceded by an investigation and in other legal cases (Art. 7 of the CPC). Thus, pre-investigation proceedings are the first procedural stage which precedes a formal investigation (as a part of the criminal proceedings) and another name for former pre-trial proceedings.⁹ Pre-investigation proceedings can be defined as informal proceedings that begin when there are grounds for suspicion that the criminal offence which is prosecutable *ex officio* has been committed and ends with the issuance of an order to conduct an investigation by the competent public prosecutor. An order to conduct an investigation is issued before or immediately after the first evidentiary action undertaken by the public prosecutor or the police in the pre-investigation proceedings, but not later than 30 days after the public prosecutor was notified about the first evidentiary action undertaken by the police (Art. 296, Para. 2 of the CPC).

Based on presented facts, we can conclude that pre-investigation proceedings end with the start of an investigation, *i.e.* by undertaking, at least one evidentiary action, or by expressing the tendency to do so. Therefore, key criterion for distinction of these two

⁹ Some authors indicate that pre-investigation proceedings are kind of procedural “substitute” for the former pre-trial proceedings. Škulić, M.: Novi Zakonik o krivičnom postupku – očekivanja od primene (New Criminal Procedure Code – Expectations from Application), in: *Nova rešenja u kaznenom zakonodavstvu Srbije i njihova praktična primena (New Solutions in the Serbian Penal Legislation and Their Practical Application)*, Srpsko udruženje za krivičnopravnu teoriju i praksu, Zlatibor, 2013, p. 42.

stages of proceedings is character of undertaken actions by competent authorities.¹⁰ Pre-investigative proceedings, dominantly, are reserved for police operative actions which have no probative significance. It is important to emphasize that pre-investigation proceedings can be conducted against unknown or known perpetrator (the suspect), as well as an investigation. Managerial role in this stage of proceeding belongs to the public prosecutor, but most actions are undertaken by the police.

The judge for preliminary proceedings has certain role in this stage of the proceedings, such as protection of human rights and liberties and legally control over police and public prosecutor work.

Having in mind said above, the pre-investigation proceedings essentially represents the type of "investigation", because the purpose of this stage is to investigate a criminal offence through two stages, informal – pre-investigation proceedings and formal – investigation.¹¹ Hence, there is no real need for existence of these two stages of the proceedings, because the only difference between them is formal decision, called the order to conduct an investigation, everything else is just the same.¹²

2. Managerial role of the public prosecutor in Serbian pre-investigation proceedings

As we have already seen, the public prosecutor is in charge of pre-investigation procedure and for the purpose of exercising this authority the public prosecutor undertakes necessary actions aimed at prosecuting the perpetrators of criminal offences. The public prosecutor may assign to the police undertaking of certain actions aimed at detecting criminal offences and locating suspects. The police are required to execute the order of the public prosecutor and to inform him regularly about actions undertaken (Art. 285, Para. 1-3 of CPC).¹³ If the police do not comply with the order, the public prosecutor can notify the head of the police authority and may, if needed, also notify the competent minister, the Government or the competent working body of the

¹⁰ Kesić, T., Čvorović, D.: Policija kao subjekat tužilačkog koncepta istrage prema Radnoj verziji Zakonika o krivičnom postupku od 2011. godine (The Police as Subject of Prosecutorial Concept of Investigation According to the Working Version of Criminal Procedure Code from 2010), in: *Nova rešenja u krivičnom procesnom zakonodavstvu – teoretski i praktični aspekt (New Solutions in Criminal Procedural Legislation – Theoretical and Practical Aspects)*, Srpsko udruženje za krivičnopravnu teoriju i praksu, Zlatibor, 2011, p. 387.

¹¹ Škulić, M., *op.cit.*, pp. 42-43.

¹² "Bosnia and Herzegovina was the first to move from court-led investigation to prosecution-led investigation and it has practically moved to the adversarial criminal procedure system not only with respect to investigation, but also in terms of trial. Investigation covers not only such actions which, in the court-led investigation were undertaken as investigative actions, but also those that were undertaken previously in the pre-trial (pre-investigation) procedure. In that respect, in order to undertake an investigation it is sufficient that there exists reasonable suspicion that a criminal offence has been committed". Radulović, D.: *The Concept of Investigation in Criminal Proceedings in the Light of the New*

Criminal Procedure Legislation, in: *New Trends in Serbian Criminal Procedure Law and Regional Perspectives (normative and practical aspects)*, (eds. Petrović, A. and Jovanović, I.), OSCE, Mission to Serbia, Belgrade, 2012, p. 14.

¹³ All authorities participating in the pre-investigation proceedings are required to notify the competent public prosecutor of all actions taken with the aim of detecting a criminal offence and locating a suspect. The police and other public authorities responsible for discovering criminal offences are required to comply with every request of the competent public prosecutor (Art. 44, para. 1 of CPC).

National Assembly. If within 24 hours of time when the notification was received the police or other public authority fails to comply with the request, the public prosecutor may request the institution of disciplinary proceedings against the person who he believes is responsible for not complying with his request (Art. 44, Para. 2-3 of the CPC). Also, during the pre-investigation proceedings the public prosecutor is authorised to assume from the police the performance of an action which the police had undertaken on its own pursuant to the law (Art. 285, Para. 5 of the CPC).

The police may conduct operative and some evidentiary actions, arrest the perpetrator and file the criminal complaint during the pre-investigation procedure. Whatever the activity, the police are required to inform the public prosecutor about undertaken operative and evidentiary actions on regular basis as soon as possible, i.e. immediately and without delay, note that in case of operative actions that deadline may be to a maximum of 24 hours from the moment of their undertaking. Since the police may arrest a person if exists a reason for ordering custody, it is required to take such a person without delay, maximum of 8 hours, to the competent public prosecutor. The similar relationship between the police and the public prosecutor exists when it comes to criminal complaint. Namely, if the police filed the criminal complaint and the public prosecutor cannot assess if its assertions are probable, or if the data in the complaint do not provide sufficient grounds to decide whether to conduct an investigation, or if he finds out in some other way that a criminal offence has been committed, the public prosecutor may: collect the necessary data himself, request citizens to provide information, or to submit a request to public and other authorities and legal persons to provide necessary information. A responsible person may be fined up to 150,000 dinars for failing to comply with this request of the public prosecutor, and if after being fined he still refuses to provide the necessary information, another fine in the same amount may be imposed on him once again. The decision on imposing the fine is issued by the public prosecutor. An appeal against the ruling imposing the fine is decided by the judge for the preliminary proceedings.

If the public prosecutor is not able to undertake the mentioned actions, he will request the police to collect the necessary information and to undertake other measures and actions with the aim of uncovering the criminal offence and the perpetrator. The police are required to act in accordance with the request of the public prosecutor and to notify him about the measures and actions it had undertaken not later than 30 days from the date of receiving the request. In the case of a failure to act in accordance with the request, the public prosecutor can exercise his powers towards the police.

On the other hand, the public prosecutor is able to undertake any action aimed at detection of the criminal offence and finding the perpetrator. This power fully enables managerial role of the public prosecutor. Managing of the pre-investigation proceedings implies a set of activities which are undertaken by the public prosecutor directing various activities of state authorities engaged in detection of a criminal offence and a perpetrator.¹⁴ It is necessary to point out that the managerial role primarily involves active rather than reactive approach of public prosecutor who is expected to

¹⁴ Ilić, P.G., Majić, M., Beljanski, S. i Trešnjev, A.: *Komentar Zakonika o krivičnom postupku. Prema Zakoniku iz 2011. godine sa izmenama i dopunama od 22. maja 2013. godine (Commentary of the Criminal Procedure Code. According to Code from 2011 with the amendments from 22. May 2013)*, treće izmenjeno i dopunjeno izdanje, Službeni glasnik RS, Beograd, 2013, p. 657.

strategically plan this and the next phase of the proceedings.¹⁵ Prof. Bošković points out that the intention of the legislator is to really have in practice, the leadership role of the public prosecutor in the preliminary inquiry, primarily in his relation to the police considering that the public prosecutor was formally head of former pre-trial proceeding, but such role of his was rarely carried out in full capacity in practice. In fact, the public prosecutor should be the authority which makes decisions that are of strategic importance for the outcome of the preliminary inquiry, not only that but also to directly manage, *i.e.* make operational decisions about actions to be taken in this stage in cooperation with the police.¹⁶

3. Critical overview of managerial role of the public prosecutor in Serbian pre-investigation proceedings

After brief presentation of the legal solutions about managerial role of the public prosecutor in the pre-investigation proceedings, we would like to express our critical overview on this topic. It is necessary because there is a big difference between legal and practical aspects of implementation of the managerial role of the public prosecutor. In the following presentation we will present some of the most important obstacles in achieving real managerial role of the public prosecutor.

Although it is stated that public prosecutor is able to undertake any action aimed at detection of the criminal offence and finding the perpetrator¹⁷ (*e.g.* public prosecutor may enter a dwelling and other premises and without the presence of witnesses and the court order, undertake a search of the dwelling, or other premises, or persons found there in accordance with the law), the practice shows lack of such powers. The main reason for that is absence of human and technical resources on the public prosecutor's side. During the years, public prosecutors were only a party in the proceedings, who were responsible for indictment, while the police traditionally were in charge for detecting a criminal offence and collecting the evidence. Thus, the public prosecutor is not operational enough and depends on the police activities, which diminishes his/her leadership role in pre-investigation proceedings.

Also, the public prosecutor should have more criminalistic knowledge to adequately perform his/her duties as prescribed by the law. This is especially important today in the light of increased need for specialization to prosecute different types of criminal offences and to cooperate with specialized police units.¹⁸ It is hard to imagine

¹⁵ *Ibid.* Traditional division of work among the state authorities in the criminal proceeding, according to which the public prosecutor is engaged in prosecution and the police in detection of a criminal offence, with the new concept should lose its significance. Ilić, P.G., Banović, B.: *Policija i nova rešenja u Zakoniku o krivičnom postupku* (Police and the New Solutions in the Criminal Procedure Code), in: *Nova rešenja u kaznenom zakonodavstvu Srbije i njihova praktična primena (New Solutions in the Serbian Penal Legislation and Their Practical Application)*, Srpsko udruženje za krivičnopravnu teoriju i praksu, Zlatibor, 2013, p. 107.

¹⁶ Bošković, A., *op.cit.*, p. 247.

¹⁷ During the pre-investigation proceedings the public prosecutor is authorised to assume from the police the performance of an action which the police had undertaken on its own pursuant to the law (Art. 285, para. 4 of the CPC).

¹⁸ Specialization of the public prosecution is common standard today. Such specialization exists in the Serbian law in the field of organized crime, war crimes, high-tech crimes, domestic violence and etc. This is also the case in other countries. Italy, for example, has National Anti-mafia Prosecutor who runs a

real managerial role of the public prosecutor who misses criminalistic and special knowledge for prosecution of certain types of crimes.

Further, public prosecutors are covered with the work due to increased competencies, but haven't got enough employees. According to one prosecutor, he has about 15 minutes for one case, which is not enough for adequate cooperation with the police or other authorities. It also means that he/she will leave all activities to the police and that cooperation will be exhausted in sharing of information. Even if the public prosecutor would like to really engage in certain case, he won't have the time, therefore, he/she will have a passive instead of active managerial role. Also, absence of an active role often is a consequence of the fact that the public prosecutor who is on duty does not receive that case for further prosecution, so the prosecutor won't be fully interested in its solution.

As we have seen, the police are obliged to act on any request of the public prosecutor. If the police do not act upon the request the public prosecutor and do not undertake ordered action, the public prosecutor shall immediately inform the officer in charge of the authority, and if necessary, may inform the Minister of Interior, the Government or the authority in charge of the National Assembly. If within 24 hours from the moment of received information from the public prosecutor the police do not act on his/her request, the prosecutor may request the initiation of disciplinary proceeding against a police officer who is considered to be responsible for the failure of his request. Hence, the public prosecutor can only initiate disciplinary proceeding but he/she does not initiate it directly.

According to the Law on Police, police officers and other employees of the Ministry of Interior shall be responsible for violation of official duty if they fail to perform their duties and tasks in a conscientious and professional manner and within the prescribed time periods, if they do not abide by the Constitution, laws, other regulations and rules of behaviour while on duty, as well as for off-duty violations that may endanger the interests and damage the reputation of the Ministry of Interior. Police officers and other employees of the Ministry shall be responsible for violations of official duty (Art. 203, Para. 1-2 of the Law on Police). The disciplinary procedure, *i.e.* first-instance procedure shall be initiated by a manager or a person authorized by him who shall authorize a police officer – senior disciplinary officer to conduct the disciplinary procedure and decide on the disciplinary responsibility of police officers and other employees. The senior disciplinary officer must have a university degree in law, a master's degree or a bachelor's degree, or it may be another employee with university-level education and the minimum of ten years of experience in the profession (Art. 210, Para. 1-3 of the Law on Police). The person who is subjected to the disciplinary procedure and the person who initiated the procedure shall be entitled to complain to the Disciplinary Commission within eight days from the date of receiving the decision. The Disciplinary Commission shall be a peer review body deciding on complaints against the first-instance decisions of senior disciplinary officers. The Disciplinary Commission shall

specific office (*Direzione nazionale antimafia*) established within the Office of the General Prosecutor at the Court of Cassation. Vigna, P.L.: *Fighting Organized Crime, with Particular Reference to Mafia Crimes in Italy*, Journal of International Criminal Justice, no. 4/2006, p. 524. Similar specialization exists in the Republic of Romania, where the Prosecutor's Office Attached to High Court of Cassation and Justice received a new department, called the Directorate for Investigating Organized Crime and Terrorism (DIICOT). More on activities of DIICOT: Stănilă, L.: *Organized Crime in Action: Trafficking on Human Cells, Tissues and Embryos in Romania*, Journal of Eastern-European Criminal Law, no. 1/2015, pp.62-65.

decide in a three-member panel, where the chairperson and one member come from the Ministry of Interior, and one member is a representative of the general public. The chairperson, members and secretaries of the Disciplinary Commission shall be appointed by the Minister of Interior by a separate act (Art. 210, Para. 5-8 of the Law on Police).

Based on these facts, we can conclude that the public prosecutor's right to initiate disciplinary proceeding fully depends on the police authority who is in charge to initiate that proceeding. If the authority does not initiate disciplinary proceedings, the public prosecutor would have possibility to notify about it direct superior of a police officer, Minister of Interior, the Government or the authority in charge of the National Assembly.¹⁹ Besides that, the public prosecutor cannot participate in the disciplinary proceedings or even be informed about its outcome. Further, declaratively commanded prosecutor's authority over the police are not accompanied by any hierarchical-organizational solutions in the prosecution-police system. These two are essentially separate state authorities with essentially separate command structure and completely separate organization.²⁰ During the drafting of the CPC there was proposal to put Criminalistic Police Unit under the Ministry of Justice, but this has never become a part of any law.

Above all, one of the problems in the relationship between the police and the public prosecutor and his/her managerial role in the pre-investigation proceedings is lack of the special protocol which would regulate mutual relations and responsibilities of these two authorities.

Conclusion

Regulation of the managerial role of the public prosecutor in the CPC of the Republic of Serbia clearly indicates the intention of the legislator that the public prosecutor should take leading role in collecting the evidence and all other activities that may be of significance for future criminal proceedings. The scope of rights and duties of a public prosecutor in pre-investigation proceedings clearly indicates his/her managerial role which should affect the greater efficiency of the whole preliminary proceedings. Despite such provisions, there are obvious problems in execution of the managerial or leadership role of the public prosecutor in practice.

We addressed some of the most important issues, such as: inefficient means for police control by the public prosecutor, *i.e.* limited possibilities in initiating disciplinary responsibility of the police officers, lack of adequate criminalistic knowledge and specialization of public prosecutors, a huge amount of cases followed with the insufficient number of employees and lack of technical resources. All mentioned leads to conclusion that the public prosecutor during pre-investigation proceedings is passive, without real mechanisms to execute his/her dominant role. On the other hand, the police activities stay "under the radar" and responsibility for inefficiency of pre-investigation proceedings cannot be established, but will often be switched from the police to the public prosecutor and *vice versa*.

¹⁹ Škulić, M.: *Komentar Zakonika o krivičnom postupku (Commentary of the Criminal Procedure Code)*, Službeni glasnik RS, Beograd, 2007, p. 203.

²⁰ Nenadić, B., Majić, M. i Ilić, G.: *Analiza ustavnog položaja javnog tužilaštva u Republici Srbiji sa preporukama za njegovo unapređenje (Constitutional Position of Prosecution Service – Analysis and Proposals for Amendments)*, Beogradski centar za ljudska prava, Beograd, 2016, p. 52.

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