Prosecutor of State Authority or Party in Criminal Procedure

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Abstract

This educational work is the essay of authors from various fields of theory and practice in Bosnia and Herzegovina, trying to provide users with a theoretical practical institute regarding the role of the Prosecutor as a state body and a party in criminal proceedings that could help legal practitioners and practitioners in their everyday work. The work that you will have in front of you is part of a series of works that have already been elaborated thanks to generous theoreticians and practitioners who support "Journal" of Eastern-European Criminal Law Timisoara. Within this scientific project, the themes covering the key topics of criminal substantive and procedural law, with emphasis on procedural law, were taken into account. The proposal for this topic was given by the Journal Committee for the Education of Judges and Prosecutors of the Republic of Romania, as now most important, given the implementation problems that have emerged with recent legal reforms in these fields.

Users of this work and other works of the same and similar topics are invited to contribute to the improvement of this Module through constructive critical feedback, since it is the author's intention to continuously update and improve this educational material.

Key words: *prosecutor, state body, party in criminal procedure.*

1. Introduction

The introductory part of the article will include facts related to the Law and Criminal Procedure, (general provisions, investigation), prosecutor, authorized official, suspect, defense counsel, court, basis of investigation, opening of investigation, planning of investigation, management and supervision of the investigation, then the Criminal Procedure Code, in terms of the course of the investigation, the actions of proofing, the investigation procedure, the gathering of evidence, the reporting of the criminal offense, the order to carry out the investigation, the order to suspend, the completion of the investigation, the judicial provision of evidence, the search, the witness, the expert witness, the suspect, the prosecutor , a preliminary procedure judge, that is, a bit of the above-mentioned parts relating to the prosecutor in the role of a state authority and a party in the proceedings in the sense of his duties and rights.[1]

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[1] Law on Criminal Procedure of Bosnia and Herzegovina - ZKPBiH, ("Official Gazette of Bosnia and Herzegovina", br. 3/03, 32/03, 36/03, 26/o4, 63/04, 13/05, 48/05, 46/06, 76/06, 29/07, 32/07, 53/07, 76/07, 15/08, 58/08, 12/09, 93/09, 72/13.....

With the entry into force of the new Criminal Procedure Code in BiH[2], the biggest changes in relation to the previous criminal procedure are precisely in the changed role of the subjects of the criminal procedure in the investigative procedure. Namely, by the entry into force of the new Code of Criminal Procedure in BiH, in accordance with the strongly accusatory criminal procedure, the jurisdiction to carry out the investigative procedure was fully disclosed to the prosecutor, who can again delegate certain powers in the investigative procedure to authorized officials who must act under his supervision or control.

Also, the new criminal proceedings sublimated the previous pre-trial procedure and the previous criminal proceedings into a single and unified investigation, conducted by, administered or supervised by the prosecutor, as the original holder of investigative powers. This sublimation has an exceptional significance because it enables the prosecutor to direct the investigative procedure from the very discovery of the criminal offense in a direction that will enable him to effectively bring the case before the court, or to raise and represent the indictment at the main trial. In this regard, this sublimation of the earlier pre-criminal and preliminary criminal proceedings allows the plaintiff to ensure, from the very beginning of the investigation, the legality of obtaining evidence or the formal correctness of the evidence obtained.

In addition, this sublimation enables the plaintiff to form multidisciplinary investigative teams composed of various law enforcement and law enforcement agencies (police, miscellaneous inspections, cuts, tax administrations etc.) and enables him to have a complete picture of the investigation and its results through proper division of labor and coordination in both segments and the results of the investigation as a whole.

In addition to the changed role of the prosecutor, which, by the entry into force of the new Criminal Procedure Code, became a kind of "investigation manager", the powers of authorized officials in the investigation procedure were changed, and the evidence obtained by authorized officials in the investigative procedure gave valid verifiable character provided that the evidence was obtained in a lawful manner, which significantly strengthened the position of authorized officials in the investigative procedure.

The position of the suspect and his defense attorney in the investigative procedure has also been amended, and since the new Criminal Procedure Code, the suspect has been guaranteed his rights in the sense of procedural guarantees that were earlier only from the previous criminal proceedings since the very beginning of the investigation, while such guarantees were not in the earlier pre-trial procedure. Now the suspect has been informed about his rights from the first appearance before the prosecutor or authorized officials, and during the examination, he has been provided with all rights, from the right to a defense counsel, to the right to defend his / her silence.

In this way, the suspect has been guaranteed all his rights from the very beginning of the investigative procedure. True, since the prosecutor is in the role of the state authority in the molluscy to practically conduct an investigation into secrecy, and at the very end to hear the suspect who can only then find out that an investigation has been conducted against him, in that sense, the strategic position at that stage of the proceedings has weakened the position of the suspect in relation to the previous criminal procedure law, but this is a logical consequence of the previously mentioned

[2] *Ibid.*

sublimation of the previous pre-criminal and previous criminal proceedings into a single and unique investigation, since even in the previous pre-trial procedure the suspect had not had to know that the same one was running against him.

Regarding the role of the defense counsel in the investigative procedure, the same has also undergone certain changes that essentially represent the consequence of the already mentioned sublimation of the previous pre-trial and previous criminal proceedings into a single and unique investigation, and on the one hand allows the defense counsel to take all the facts from the moment of the knowledge for the investigation actions aimed at identifying all the facts and obtaining evidence in favor of the suspect, that from the first appearance of the suspect before the prosecutor or to authorized officials, he develops a defense strategy and gives active defense to the suspect with certain limitations that relate mainly to the secrecy of the investigation and the evidence that goes at the detriment of the suspect.

The role of the court in the investigation also has undergone a major change in relation to the former Criminal Procedure Code[3], in which the investigating judge was the investigator, so that judicial intervention in the investigative procedure is now limited to those situations, that is, those investigative actions and measures to a certain extent they undermine the human rights and freedoms of citizens.

2. The role of the prosecutor in the investigation

The role of prosecutors in the new system of criminal proceedings is one of the most important novelties of the new Criminal Procedure Code in BiH. This new role of the prosecutor in the criminal proceedings stems predominantly from the adversarial system of criminal procedure that gives a strong impetus to the new Criminal Procedure Code and greatly approaches the role of the prosecutor in the role of the prosecutor in the system of criminal procedure that exists in the Anglo-Saxon countries.

What gives an "adversarial seal" to the whole new system of criminal proceedings is the setting of criminal proceedings as a kind of "criminal lawsuit" with a strong accusatory character of each phase of the criminal proceedings, in which the prosecutor is a body and one of the parties in the proceedings, with the authority to prosecute perpetrators of criminal acts, whereby the legislator leaves jurisdiction and gives responsibility for the entire process of detection and illumination, proving criminal offenses in such a way that the investigative procedure fully enters into the authority and duties of the plaintiff, limiting the judicial intervention in the investigation procedure only to cases in which the investigation, that is, certain acts and measures that are being carried out in the investigative procedure are produced or can produce such consequences that some of the basic human rights and freedoms of citizens may be violated or limited.

In accordance with this basic intention of the new criminal procedure law, the legislator provides all the evidence obtained by the prosecutor or authorized officials working under his order or authority during the investigative procedure, giving valid evidence in terms of dominance-dominus litis, provided that that such evidence was

[3] The Criminal Procedure Code of 1976, which came into force on July 1, 1977, and the amendment was amended in 1985, which remained in force until the independence of BiH, which in 2003 brings its completely new-reformed Criminal Procedure Code.

obtained in a lawful manner, that is, in accordance with the provisions of the Criminal Procedure Code.

The role, that is, the rights, duties and powers of the prosecutor in the investigative procedure are determined primarily by Articles 35 of the ZKP BiH and the ZKPDB, and 43 of the Criminal Procedure Code of the Republika Srpska, or Article 45 of the ZKP BiH, which clearly states that the main role of the prosecutor in the criminal proceedings is the detection of criminal offenses and the detection and prosecution of perpetrators of criminal offenses.

When considering this basic role of the prosecutor in the criminal procedure, it can be seen that it is realized in several different stages of the criminal offense, which arise from Article 35 of the ZKP BiH and the ZKP SR, and 43 of the Criminal Procedure Code of the Republika Srpska, or Article 45 of the ZKP BH, which provisions precisely indicate the manner, powers and scope of the rights and duties of the prosecutor in the entire criminal case, from the knowledge that there are grounds for suspecting that a criminal offense has been committed and until the procedure for legal remedies.

It is precisely from the above articles that the basic phase and field of activity of the prosecutor in the criminal procedure, which also represents the initial activity of the prosecutor, and hence the "condicio sine qua non" of all other stages of the criminal procedure, is the investigative procedure. The role of the prosecutor in the investigative procedure is especially determined by Article 216 of the ZKP BiH, RS, BD and Article 231 of the FBiH FBiH, which clearly shows that the prosecutor is the subject who decides the existence of the basis for suspicion as the basis on which the investigative procedure is conducted, 217 of the Constitutional Court of Bosnia and Herzegovina, RS and BD and Article 232 of the FBiH FBiH, it is determined that during the investigation, the prosecutor can take all the investigative actions.

3. When the criminal proceedings begin

Unlike the previous Code of Criminal Procedure, in which this issue was resolved in a precise manner, and the criminal proceedings started with the adoption of a decision on the implementation of the investigation, the new Criminal Procedure Code in Bosnia and Herzegovina did not solve this issue precisely, so the answer must be to seek indirectly.

Namely, regarding this issue there are two key different points of view.

1. Criminal proceedings begin with the issuance of an order to carry out an investigation, or taking measures from the collapse of authorized officials in accordance with Article 218 of the ZKP of BiH, or analogous to the articles of the ZKP BD; RS and FBIH., With I am connected after the notification, the prosecutor agrees.

2. The criminal proceedings shall begin with the confirmation of the indictment. The basis of the dilemma when the criminal proceedings begin is the provision of Article 18 of the Law on the criminal procedure of the BIH, or analogous members of the ZKP BD; RS and FBiH, which are identical and they read:

"*When it is stipulated that the initiation of a criminal proceeding results in a restriction of certain rights, these consequences, unless otherwise provided by this law, arise from the confirmation of the indictment. In the case of criminal offenses with a prescribed imprisonment sentence of up to five years or a fine as the main punishment, these consequences shall arise from the date on which the conviction was rendered, irrespective of whether it has become final. "*

The first point is that the criminal proceedings begin with the confirmation of the indictment, the argumentation is precisely in this legal provision according to which the moment of occurrence of these consequences is considered the beginning of criminal proceedings.

Representatives of this view emphasize that according to the new system, the precondition for investigation is the existence of the basis for suspicion that a criminal offense has been committed. So there are no reasonable doubts and there is no specific person for whom this basis exists and there is no court body that by its decision confirms such suspicion of the prosecutor. It follows that the order to carry out the investigation referred to in Article 216 does not have the character of the prosecution against the suspect or in a wider sense: a formal criminal proceeding has not been initiated.

Therefore, there is not actually legal consequences of the criminal proceedings, which is, after all, explicitly stated in 18, according to which the legal consequences of initiating criminal proceedings the indictment is confirmed.[4]

However, the second point is that criminal proceedings exist even when there are no above-mentioned consequences, then it is considered that criminal proceedings exist even when they do not produce such consequences, considering that the moment of initiation of criminal proceedings can not be linked to the moment of occurrence of these consequences, instead of criminal proceedings, they treat all activities of prosecutors and authorized officials since the establishment of grounds for suspicion that a criminal offense has been committed.

In addition to these two key ones, one of the opinions is that the criminal proceedings begin as of the moment when the Accused opposes the guilt. The lack of this opinion consists in the fact that, in this case, any procedure in which the accused pleads guilty, either under a plea agreement, deprived the character of the criminal proceedings without agreement, which is not acceptable.

When thoroughly perceive both the point of view one can draw several conclusions:

1. The aforementioned legal provision does not regulate the moment of the start of the criminal proceedings, but the moment from which the restrictions of certain rights occur, and accordingly, from the abovementioned legal provision, the conclusion on the moment of commencement of the criminal proceedings can not be drawn.
2. If the binding of the commencement of the criminal proceedings with the abovementioned legal provision would be strictly accepted, in that sense, it would be concluded that for criminal offenses for which the law impose a sentence of imprisonment for up to five years, a fine is the main punishment, criminal proceedings it covers only the treatment of legal remedies, while the first-instance court proceedings leading to a conviction would be regarded as some other than criminal proceedings.
3. In this respect, the investigative procedure would, if it produced restrictions on the suspects' rights, also be treated by some other, not criminal proceedings, although it was regulated by the "Criminal Procedure Code".

[4] Prof. Dr. Miodrag Simović, *Practical Commentary on the Code of Criminal Procedure of the Republika* Srpska, 2005 edition edition, p. 375 and 376.

Therefore, by continuously linking the interpretation of the initiation of the criminal proceedings to Article 18 of the ZKP of BiH, there are at least analogue members of the ZKP BD; RS and the FBI, there would be a clumsy absurdity.

4. The etymological significance of the criminal proceedings

The Code of Criminal Procedure is a systemic law that regulates the activities of the subjects of the criminal procedure, and hence the activities that the prosecutor and the authorized official persons file in the investigative procedure.

Conducting a criminal investigation, the etymologically has the meaning of a criminal procedure, because it can only be carried out under the Criminal Law rather than in another, (for example, the Administrative Procedure).

The fact that the legislator has lowered the standard of proof required to initiate the investigation procedure from a grounded suspicion on the basis of suspicion does not mean that the investigative procedure took away the character of criminal proceedings, but only that by criminal proceedings it included the early stage of knowledge of the criminal offense and its perpetrator, prosecutor and authorized officials to apply the standards applicable to criminal proceedings from that stage.

Finally, the evidence obtained in the investigative procedure by the prosecutor and the authorized official persons provided valid evidence in the first instance court proceedings, provided that they were obtained in accordance with the Criminal Procedure Code, which does not do with the evidence obtained in some other (*e.g.* an administrative procedure) for which the other lower standards apply than for criminal proceedings.

It should be said that by lowering the standards for conducting an investigative procedure from a reasonable suspicion on the basis of suspicion, that is, with the introduction of standards of criminal procedure in this early stage of finding out about the criminal offense and the perpetrator, the position of the suspect is substantially strengthened because, precisely with the introduction of these standards of criminal procedure, the rights of the suspect increased.

However, in addition to this, as a possible solution to this dilemma, one opinion should also be taken into account, which essentially means that the criminal proceedings begin with the moment of establishing the parties' contradictions before the court.

Thus, our earlier legal theory treated the beginning of the criminal proceedings as a three-pronged procedural relationship that was established between the court, the prosecutor and then the accused, and that the criminal proceedings could not have started if there were no three main procedural subjects, but also a certain court decision.

In that regard, it was considered that the regular criminal proceedings, the first stage of the investigation, began with the issuance of a decision on the conduct of an investigation by an investigative judge or an interlocutory council. Furthermore, when it came to the direct indictment, it was considered that the criminal proceedings began with the granting of the consent of the investigating judge to the indictment for the criminal offense for which a punishment of over five years or more severe punishment was envisaged, ie the imposition of a direct indictment on the legal force for the criminal offense for which a sentence of imprisonment of three to five years is envisaged. Then, for the criminal offense for which a private lawsuit was raised in a regular criminal

procedure, (when it relates to so-called related criminal offenses), it was considered that the criminal proceedings began with its entry into force, and so on.

Therefore, the criminal procedure was considered to be a three-pronged procedural relationship between the main procedural entities and that it always begins with some decision-making by the court, (for example, by issuing a decision to conduct an investigation). If such a prior understanding of such a legal theory follows, then according to the new procedural laws, criminal proceedings can begin with any decision of the court establishing the basis for suspicion or suspected suspicion, and apply, order or approve certain investigative measures and actions (*e.g.* Detention, special investigation, search etc.)

After this, of course, the issue of the ongoing investigation conducted by the prosecutor and who takes actions according to the prescribed rules of procedure, of course, opens up (or when these actions are undertaken by persons under the law pursuant to the law in accordance with Article 36 of the FBiH Criminal Procedure Code to act upon his request in criminal proceedings). This must have its own name, and in the Criminal Procedure Code there is no obstacle to initiating criminal proceedings under procedural rules, because the legislator in connection with the principle of accusation (Article 16 of the FBiH ZKP) binds the initiation of criminal proceedings for prosecuting the prosecutor. Therefore, the syntagm of initiating criminal proceedings is not something new, since it has already been entered into the text of the law.

5. What does the legislator mean by the term investigation?

The definition of the investigation is given in Article 20, paragraph j) of the ZKP of BiH, the ZKP BD, and Article 21, paragraph j) of the FBiH Criminal Code, or Article 20, paragraph i) of the ZKP RS, which are essentially identical: "The investigation includes activities undertaken by the plaintiff or authorized Officials in accordance with this law, including the collection and keeping of statements and evidence."

However, in Article 43, paragraph 2, item a) of the KZRS and Articles 35, paragraph 2, subparagraph a) of the ZKP BIH and ZKPBD, Article 45, paragraph 2, item a) of the FBiH ZKP stipulates that the prosecutor has the right and duty " after knowing that the criminal act has been committed, take the necessary measures for the purpose of detecting and conducting an investigation, finding suspected leadership and supervision of the investigation, as well as for the purpose of managing the activities authorized officials in connection with finding a suspect and collecting statements and evidence ".

While in the article in paragraph 2, item b) of the same legal members, it provides that "the prosecutor has the right to conduct an investigation in accordance with this law". Such legal norms may result in certain inconsistencies and ambiguities, and then the question arises what does the legislator mean in general under investigation?

The first kind of ambiguity that may arise from such a provision exists in the very content of Article 35, paragraph 2, subparagraph a) of the ZKP BIH and ZKPBD, respectively Article 43, paragraph 2, item a) of the CCI, and Article 45, paragraph 2, item a) of the CCBH; where it is said that the prosecutor has the right and the duty immediately to know that the committed criminal act has taken the necessary measures in order to detect and carry out the investigation. Accordingly, the legislator makes a distinction between "discovering a criminal offense" and "investigating the investigation" by such a provision, although it is unclear what kind of character other

than the investigative could have measures that are being carried out in order to "discover the criminal offense"?

Namely, measures taken in order to "detect a criminal offense" pursuant to the Criminal Procedure Code can not be undertaken in any other procedure, except in accordance with the Criminal Procedure Code, and in Articles 20, paragraph j) of the ZKP BIH, ZKP BD, and Article 21 j) FBiH ZKP and Article 20, paragraph i) of the ZKP of the RS, which are essentially identical and as already stated: "The investigation includes activities undertaken by a prosecutor or an authorized official in accordance with this law, including the collection and safeguarding of statements and evidence ".

Accordingly, it is completely clear that these are activities of prosecutors and authorized officials aimed at detecting a criminal offense, which are undertaken in accordance with the Criminal Procedure Code.

Furthermore, from the moment of knowing that there are grounds for suspecting that a criminal offense has been committed, the prosecutor is obliged to open an investigation in which all actions and measures of detection of the criminal offense and his perpetrator are undertaken, and hence the law on criminal procedure in that part does not separate the disclosure procedure the criminal offense and the conduct of the investigation.

Furthermore, the disclosure of a criminal offense involves the collection and provision of evidence, which can be obtained solely in accordance with the provisions of the Criminal Procedure Code.

Accordingly, the detection of a criminal offense is not covered by any lengthy special procedure but is an integral part of the investigative procedure that it manages and which is supervised by the prosecutor.

6. Detection and clarification of criminal offenses

In view of the aforementioned authority of the prosecutor in relation to the detection of criminal offenses, the question arises as to what the terms disclosure and clarification of crimes relate to the authority of the prosecutor, and bearing in mind that the basis of any activity of the prosecutor is the basis for suspicion that a criminal offense has been committed. Therefore, when this is taken into account, the existence of the basis for suspicion implies that a criminal offense has already been discovered in a certain way, and then the question arises as to what the prosecutor discovers if there is already a basis for suspicion that a criminal offense has been committed.

Furthermore, the question arises, which then shows the difference between investigating criminal offenses by the prosecutor and revealing criminal offenses by authorized officials from law enforcement agencies, primarily all police.

It is necessary to distinguish the police treatment of the detection of criminal offenses in accordance with the law prescribing the basic work of the police, from the prosecutor's role in the detection of criminal offenses. The Prosecutor shall take the necessary measures to detect the criminal offense solely on the basis of the existence of grounds for suspicion that the offense has been committed. The collection and the discovery of evidence and evidence that constitute the basis of suspicion that the offense has been committed is solely the competence of the police authorities within its jurisdiction.

This means that the detection and clarification of the criminal offense committed by the prosecutor represents an eventually directed detection of a criminal offense, or an

additional disclosure of a criminal offense on the basis of an already acquired knowledge that there is an event that raises the suspicion that a criminal offense has been committed, unlike the police detection of a criminal offense is to discover the basis for the suspicion that the offense was committed as an essential consequence of regular activities that were not directed at an event that undermines the suspicion of a criminal offense.

From the foregoing, it follows directly that the plaintiff has no function in relation to the conduct of the police and other law enforcement agencies on detecting criminal offenses and preventing and combating crime until the moment of establishing the basis for suspicion that a criminal offense has been committed. This is supported by the fact that the basic regulations governing the treatment of police services, such as laws on internal affairs, the Law on the State Investigation and Protection Agency, the State Border Service Act etc., as one of the basic functions of these services and the obligation to detect, clarify and prevent criminal offenses.

7. Investigate and open an investigation

Considering the existing provisions of the Criminal Procedure Code, the role of prosecutor in the investigative procedure was conceived as the role of a kind of "investigative manager" who, in cooperation with authorized officials, on the knowledge that there is a suspicion that the crime is a criminal offense, undertakes measures that consist in the planning of the investigation, the management of the investigation and the supervision of the investigation, over the work of authorized officials in the investigative procedure, and possibly directly undertakes certain investigative actions, and the purpose of discovering all relevant facts and circumstances of the criminal offense and its perpetrators.

Implementation the investigation involves several stages:

1. Decisions on conducting the investigation, (Decree on conducting the investigation).
2. Planning the investigation,
3. Management and supervision of the investigation,

The initial stage of every investigation, represents a decision on conducting the investigation by the prosecutor brings in the form of commands.

The basic and only condition that the legislator foresees for making such an order

constitutes the "basis of suspicion" that a criminal offense has been committed, and accordingly the basis of doubt is the initial standard of conducting an investigation by the prosecutor, at the very core of the investigation procedure.

8. The legal character of an order to carry out an investigation

Passing orders of about conducting the investigation has extremely great importance.This command with one hand is a decision of the Prosecutor of the existence of reasonable doubt on the other hand represents a sort of planning of the investigation in its initial stages, and developing investigative strategies and tactics that will provide efkasno prosecution.

In response to the question of the legal character, order to conduct investigation, should go up by 216, paragraph 2 of the ZKP of BiH, RS and BD respectively by 231, paragraph 2 of the ZKP of FBiH, which provides:

"An order is issued on the conduct of the investigation, which contains: information on the perpetrator of the criminal offense, if known, a description of the offense arising from the legal characteristics of the criminal offense, the legal name of the criminal offense, the circumstances that confirm the basis for the suspicion of the investigation and the existing evidence. In the order, the prosecutor will state what circumstances to investigate and what investigative actions should be taken. "

The first question raised in connection with the investigation of the investigation is the question of its legal character, that is whether it is a mandatory formal procedural document that produces certain legal consequences for the suspect or is an internal act of a prosecutor directed to the planning and management of the investigation.

In answering this question, it is primarily necessary to start from Article 18 of the ZKP RS and analogous to the articles of the ZKP of BiH; BD and FBIH which foresee:

"When it is stipulated that the initiation of criminal proceedings results in a restriction

certain rights, these consequences, unless otherwise stipulated by this law, arise with the confirmation of the indictment, and for the criminal offenses for which the main punishment is a fine or imprisonment of up to five years – from the day when the conviction was rendered, regardless of whether has become lawful ".

Pursuant to the aforementioned legal provision, it is clear that only the passing of an order to carry out an investigation does not produce any consequences for the suspect in terms of limiting certain of his rights.

Of course, in the course of the investigation there may be restrictions on certain rights of the suspect, (measures to secure presence, special investigative actions), but then the basis of such restrictions is not an order to carry out an investigation but a court decision based on a higher standard of proof, (basic suspicion) of the standard of proof necessary for issuing an order to carry out an investigation.

Furthermore, in answering the question about the legal character of the order to carry out the investigation, the content of the already quoted article 216, paragraph 2 of the ZKPBIH; RS and BD, respectively, Article 231 of the ZKP FBiH, should also begin, which determines the content of an order to carry out an investigation from which it is clearly visible that the order for the conduct of an investigation is directed to the successful and efficient conduct of the investigation, whereby this order actually contains two parts.

The first part of the contents of an order to carry out the investigation relates to the basis and subject of the investigation, expressed as:

"Information on the perpetrator of a criminal offense if known, a description of the offense arising from the legal characteristics of the criminal offense, the legal name of the criminal offense, the circumstances that confirm the grounds for the investigation and the present evidence ..." while the other part of the content focuses on the planning and management of the investigation expressed as:

„In the order the prosecutor will state what circumstances to investigate and what investigative actions should be taken."

Accordingly, the content of the order for the conduct of the investigation indicates that by that order the prosecutor, as a state body, decided on the basis of the investigation at the same time, decided on the subject of the investigation, and decided on the method of conducting the investigation, (investigative strategy and tactics).

However, considering the order to carry out the investigation as a whole, and especially considering that there is no obligation to deliver it, it does not foresee

procedural sanctions in the event of non-issuing such an order, and the fact that in relation to the suspect he does not produce any legal effect in terms of limiting his rights, as well as the fact that in Article 218, paragraph 4 of the ZKP BIH, the ZKPRS and the ZKPBD, Article 233 of the ZKPFBH, the prosecutor was given a free disposition regarding the issuance of an order to carry out the investigation, it follows that the order on the communication of the investigation, the internal act of the plaintiff, the procedure by which the prosecutor decides on the existence of the basis for suspicion that a criminal offense has been committed, the subject of the investigation, and which manages the investigation.

Accordingly, the order on the conduct of the investigation can not be considered as a strictly formal act, deciding on the legal validity of the undertaken actions in the investigation procedure.

9. Completion of the investigation

By the provision of Article 225 of the Criminal Procedure Code of BiH, by analogy with the provisions of the Criminal Procedure Code of RS, FBiH and BD, the issue of termination of the investigation is regulated, and so it is determined:

"(1) The plaintiff completes an investigation when he finds that the state of affairs is sufficiently clarified to be he can pick up the indictment. The completion of the investigation will be recorded in the file.

(2) Before the investigation is concluded, the prosecutor will hear the suspect, if he has not previously been examined in terms of the principle of contradiction, immediacy, orality and others.

(3) If the investigation is not completed within six months from the issuance of an order to carry out the investigation, the necessary measures to complete the investigation shall be taken by the college of the Prosecutor's Office. "

Regarding this provision, it regulates the completion of the investigation that results in the indictment.

As stated in the provision itself, paragraph 1, the prosecutor terminates the investigation when it finds that the state of affairs is sufficiently clarified that the indictment can be raised.

If you are in contact with the standard of evidence necessary for raising and establishing the charges, it can be concluded that the prosecutor suspends the investigation when he determines that this status has been sufficiently resolved under the conditions of a gap from a reasonable suspicion that the suspect committed the criminal offense, and in view of the clarification the state of affairs affecting the pronouncement of a sentence, the establishment of security measures, or, respectively, related to the facts that are important for seizing the proceeds of the criminal and property claims.

Therefore, the basic condition for the completion of the investigation is to establish a reasonable suspicion, that is, the spread of the suspicion of suspicion in the established suspicion, while the preconditions for determining the above mentioned other facts.

The prosecutor is the one who makes the assessment, however, his assessment is subject to review by the preliminary hearing judge when deciding on the confirmation of the indictment, which in the case of a preliminary hearing judge can assess that the state of affairs is not sufficiently clarified in the investigation, hence the evidence

proposed with the indictment do not indicate the existence of a reasonable suspicion that the suspect committed the criminal offense that is the subject of the charge.

In this case, if optužnioce not be confirmed, the Prosecutor may continue the investigation in order to further clarification of the situation, the person respectively in order to gather evidence that will lead to the confirmation of the indictment.

When it comes to the completion of the investigation, the legislator foresees the obligation to hear the suspect if he had not been examined before in the investigation, and hence it follows that the investigation can not be completed before the suspect in the criminal proceedings does not hear the investigation.

Furthermore, it should be stated that this provision establishes the Criminal Procedure Code that the optimum time for conducting the investigation is six months, and if the investigation is not completed within that period, it is stipulated that the College of the Prosecutor's Office will take the necessary measures.

It should be emphasized here that this six-month deadline does not have any limiting character, but it is more about a kind of declaratory deadline, which has no formal or substantive effect on the investigative procedure, nor is there any criminal procedural effector the sanction of breaking that deadline, except that in order to accelerate and end the abusive proceedings of the college of the Prosecutor's Office, the necessary measures (the law does not determine what measures can be taken by the College of the Prosecution), it could be said that these measures are moving in a very broad from the engagement of additional prosecutors to the release of the prosecuting prosecutor with a number of other indebted files, etc.

Namely, the purpose of this provision and the establishment of this deadline after which the necessary measures should be taken by the College of the Prosecutor's Office is to emphasize the need to respect the rights of the suspect to be brought to trial in the shortest possible time and to be tried without delay as a right guaranteed by Article 6 of the European Convention on human rights and fundamental freedoms, and not the restriction of the prosecutor regarding the possible duration of the investigation.

Final considerations

Prosecutor in criminal proceedings participates in a double role: first as a state authority as parties in criminal proceedings equal to suspected or accused as the other party in criminal proceedings.

Therefore, it also appears in the role of the state body in charge of representing state interests in the criminal procedure, that is, social-public interests aimed at proving the truth, *i.e.* constitutional and legal principles, "that no one will be convicted of innocence, and that the perpetrator of the criminal offense deserved criminal sanction.

In every criminal case, he, as a state body, must also take into account the interests of the other party in the proceedings, which is not the case with the civil proceedings, and the purpose of his procedural legal activity is not to reach a court decision that will at any cost go to the detriment of the other party in the process, already in making a valid and lawful court decision.

Having in mind his state function and representation of the victim in the proceedings, he is authorized to declare the appeal both in favor and at the expense of the accused or the convicted person. The reason is that more, which not only concerns the state interest, but also the public interest.

Through the work, it was noted that the Prosecutor is an independent state body that is subject to the Constitution and the law by its work. And the court is an independent state body, and according to that characteristic these two bodies are similar, with different rights and duties. It is important to emphasize that, apart from the function of independence, the court also relates to the function of independence, which the state prosecutor does not have, despite the fact that in the literary sense, the state prosecutor is independent in his work even though this does not expire in the law.

It is important to emphasize that the Prosecutor is, by its very nature, a special state judicial and administrative body, established to cooperate with the court, performs an administrative and judicial function, equally separated from both the court and the administration.

The basic function of the state prosecutor is to prosecute perpetrators of criminal offenses, in accordance with the principle of officiality, legality and prosecution of criminal prosecution.

In addition to his basic duty, he is authorized to invest legal remedies for the protection of constitutionality and legality, if the issues of constitutionality and legality arise within his job description.

Functionally, the position of the prosecutor in the criminal procedure is determined by the rights and duties he/she has as a party in the criminal procedure and as a state body.

Some of the actions undertaken in accordance with the Criminal Procedure Code are at the same time their right and duty. The basic right and basic duty of the state prosecutor is the prosecution of perpetrators of criminal offenses.

In order to implement the law established rights and duties of the state prosecutor, the established function is carried out not only in the criminal procedure, the initiator of which should be, but also before the criminal proceedings.

This activity before the criminal proceedings takes place before the criminal proceedings, that is, in the investigation, and it is precisely dominated by the investigation, that is, the manager is in front of the criminal procedure, whose task is to collect the evidence and data on the basis of which the necessary level of knowledge and probability of the criminal offense and the perpetrator, which would be sufficient to initiate criminal proceedings, which is a grounded suspicion.

References

1. Aleksić, Živojin, Škulić, Milan, *Criminalistics,* Dosije, Belgrade, 2000;

2. Aleksić, Živojin-Milovanović, Zoran, *Criminalistics lexicons, otherth Edition,* Glosarium, Belgrade, 1999;

3. *Bulletin of the case law,* Supreme Court of the Federation of Bosnia and Herzegovina;

4. *Bulletin of the case law,* Supreme Court of Republika Srpska, Banja Luka;

5. *Bulletin of the case law,* Supreme Court of Serbia, Official Gazette, Belgrade;

6. *Choice of case law,* Glosarijum, Belgrade;

7. *Decision-making, Supreme Court of the Republic of Croatia,* Narodne novine, Zagreb;

8. Edition, *Glosarium,* Belgrade, 1999;

9. Friesen i dr., *English Criminal Justice,* Birmingham-England;

10. Group of authors - *Comments on the Law on Criminal / Criminal Procedure in BiH*, 2005;

11. Harland, Christopher, Ralph Roche and Ekkehard Strauss, *Commentary on the European Convention on Human Rights, according to the practice in Bosnia and Herzegovina and Strasbourg,* Grafičar promet, Sarajevo, 2003;

12. *Judicial practice, expert and informative journal for judicial, administrative and Commercial misdemeanor practice,* Privredna štampa, Sarajevo;

13. Jašarević, N. Osman, *Alibi as Evidence in Criminal Proceedings,* Kiseljak, 2009;

14. Jašarević N. Osman, *Criminal Proceedings I and II, Second Amended Edition,* Travnik 2012;

15. Jašarević N. Osman, Kazić, Ena, Merisa S. Jašarević, *Practicum from criminal law (general and special part),* Travnik 2015;

16. *Law on Criminal Procedure* (Official Gazette No. 110/97 and 27/98). Judicial practice. Prepared and written by Ivica Kramarić. Zagreb, 1998;

17. Pavlović, Z. (2015), *Criminal Proceedings II,* University Privredna akademija u Novom Sadu, Novi Sad. (textbook);

18. Pavlović, Z., Joksić, I., (2015). *International European and police cooperation in the fight against severe forms Crime, XIV Thematic International Scientific Conference titled: "International Court, prosecutorial and police cooperation in the fight against crime",* Association for International Criminal Law and Intermex, Tara, p. 434-443;

19. Pavlović Z., *Public Prosecutor as a Crime Prevention Authority,* Institute for Criminological and Sociologicalin monograph Criminal Legislation and Crime Prevention, Belgrade, 2008, p. 170 -186;

20. Sijerčić-Čolić, Hajrija, Vuleta Draško, Hadžiomeragić Malik, *Commentary Criminal Procedure Code, OSCE - Democratization Office,* Sarajevo, 1999;

21. Simović, Miodrag, *Law on Criminal Procedure of Republika Srpska,* with Explanations and register of terms, "Srpska štampa", Srpsko Sarajevo, 1996;

22. Simović, Miodrag: *Criminal Proceedings*, Faculty of Law, Srpsko Sarajevo, 2001;

23. Simović, Miodrag, *Criminal Proceedings in Bosnia and Herzegovina,* High School Internal Affairs, Banja Luka, 2003;

24. Simović, Miodrag, *Criminal Proceedings in Bosnia and Herzegovina, Collection of Laws Criminal Proceedings, with an introductory commentary and a register of terms, "Privredna štampa",* Sarajevo, 2004;

25. Simović, Miodrag, *Practical Commentary on the Criminal Procedure Code of the Republika Srpska,* 2005;

26. Vasiljević, Tihomir, Grubač Momčilo: *Commentary on the Code of Criminal Procedure,* "Official Gazette", Belgrade, 2003;

27. https://sr.wikipedia.org/wiki/Javni_tu%C5%BEilac.