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## **PUBLIC PROSECUTOR AS A SUBJECT FOR THE PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS IN THE CRIMINAL PROCEDURAL LEGISLATION OF THE REPUBLIC OF SERBIA**

Contemporary tendencies in the criminal procedural legislation of the Republic of Serbia have brought a number of novelties, one of the most important ones being the introduction of the prosecutorial investigation model, thus setting up a public prosecutor as a powerful figure in the criminal procedure of the Republic of Serbia. The managing role of the public prosecutor in the pre-trial procedure, the decision-making on the dismissal of criminal charges, the initiation of criminal proceedings - represent only but a few of the key features of the public prosecutor's legal position in the criminal procedural legislation of the Republic of Serbia, but also pose certain dilemmas of the expert and scientific public which require further consideration. Accordingly, the author analyses the subject matter from several aspects: firstly, the concept and the organization of public prosecution and the protection of fundamental rights and freedoms by the public prosecutor; secondly, the position of the public prosecutor in the process of detecting and proving criminal offenses; thirdly, statistical indicators of filed criminal charges in case of violation of fundamental rights and freedoms, and final considerations.

Notion of public prosecutor's office and protection of fundamental rights and freedoms

The importance of the public prosecutor in the criminal procedural legislation of the Republic of Serbia requires the analysis of the public prosecutor's office as a separate state authority within which the public prosecutor operates. Namely, the Constitution as the supreme legal act in its Article 156 (1) defines the concept of this authority. According to the above, "Public Prosecutor's Office shall be an independent state body which shall

prosecute the perpetrators of criminal offences and other punishable actions, and take measures in order to protect constitutionality and legality".

While performing its function, the public prosecutor's office is subject only to the Constitution and the Law (Article 1 of the Law on Public Prosecution), and within its independence all forms of influence by the executive and the legislative authorities on the work of the public prosecution and its activity in cases, attempted by using public office, the public information media and any other means, which may threaten the independence of the work of a public prosecution (Article 5 of the Law on Public Prosecution) are prohibited.

The realization of fundamental rights and freedoms represents one of the basic principles in a modern, democratic society. Accordingly, in addition to the judge for preliminary proceedings, the public prosecutor in the Republic of Serbia has a key role in the protection of fundamental rights and freedoms. Namely, the right to the inviolability of home is considered one of the fundamental rights, that is freedom in the domain of choosing the way of organizing life within one's home, or the sphere of privacy in its narrowest term, since after the business segment of one's life, most of the privacy is connected to the home in which we live. In accordance with the constitutional provisions, the Criminal Procedure Code regulates the search of a dwelling and other premises or persons, as evidentiary action, which, if undertaken in accordance with the law, can serve as evidence at the main trial. Namely, the legislator provides for the possibility of a search on the basis of a court order and on the basis of legal power.

The significance of the above evidentiary action is manifested through finding the perpetrator of the criminal offense, the traces of a criminal offense or objects important for the proceedings, which is at the same time the goal of undertaking the search, subject to the fulfilment of the material condition - the likelihood.

In addition to the fulfilment of the material condition, as a formal condition of the search, the legislator provides for a court order or a search on the basis of legal power. A precise normative framework provides for the issuance of a search order by the court on the proposal of the public prosecutor. We can conclude that the legislator has remained faithful to the judicial final control of the decision on the search, but there must be a proposal by the public prosecutor, and that their mutual relationship, as well as the role of these two main criminal procedural entities - the public prosecutor and the court, coincide with the significance of the above right and the new concept of the prosecutorial investigation.

Also, the public prosecutor is the subject who decides on the retention of 48 hours which restricts the right to freedom and security of a person in pre-trial proceedings and investigation (Cvorovic, 2016) and he is the one who makes a decision on whether a detained person is released or he submits a motion to a judge for preliminary proceedings to order detention (Article 293 (4) of the

Criminal Procedure Code).

In addition to the above, the public prosecutor submits a proposal for undertaking all special evidentiary actions in the pre-trial proceedings and investigation, and determines the controlled delivery.

Position of the public prosecutor in the process of detecting and proving criminal offenses

In the newly adopted party model of criminal procedure in the Republic of Serbia (Criminal Procedure Code from 2011) (Bejatovic, 2014; Skulic, 2014), the role of the public prosecutor (Cvorovic, 2015) has become even more significant and more intense, which before the processes of the latest reforms in the countries of the European-Continental legal system, was mostly the case with the criminal proceedings of the countries of the Anglo-Saxon legal system (for example in the United States the public prosecutor is the most powerful figure in the criminal procedure). The role of the public prosecutor in criminal proceedings with the function of charges greatly complicates the impartiality of conducting an investigation now in the hands of the public prosecutor, but also the duty of the public prosecutor and the police to impartially clear up suspicion about the criminal offence in connection with which they are conducting official activities, and to examine with equal attention both the facts against the defendant and the facts in his favor (Article 6 (4) of the Criminal Procedure Code). Namely, the fundamental right and the basic duty of the public prosecutor is the prosecution of perpetrators of criminal offenses. Accordingly, the legislator prescribed (Article 43 of the Criminal Procedure Code) that for criminal offences prosecuted *ex officio*, the public prosecutor is authorized 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; conduct other actions when specified by the Criminal Procedure Code.

The aforementioned powers of the public prosecutor determining his legal position start from the pre-trial procedure and end with the use of extraordinary remedies.

Statistical indicators of filed criminal charges in case of violation of fundamental rights and freedoms and final considerations

As pointed out, the public prosecutor is the sole decision-maker of filed criminal charges, including criminal offenses that violate fundamental rights and freedoms. The obtained statistical indicators of filed criminal charges for 2018 were related to criminal offenses against the freedom and rights of man and citizen provided in the Criminal Code of the Republic of Serbia. Namely, given the larger number of criminal offenses that violate fundamental rights and freedoms, and the limited sample, the requested data referred to the following

criminal offenses: violation of the right to expression of national or ethnic affiliation (Article 130 of the Criminal Code); infringement of inviolability of home (Article 139 of the Criminal Code); illegal search (Article 140 of the Criminal Code) and violation of freedom of speech and public appearance (Article 148 of the Criminal Code).

The statistical indicators of filed criminal charges for 2018 indicate the absence of criminal offenses when it comes to the offences provided for in Articles 130, 140 and 148 of the Criminal Code, while in case of infringement of inviolability of home we can notice that the number of committed criminal offences is 2, filed criminal charges 2, while in the case of perpetrators of criminal offenses, this number is 3 for 2018. The above values point to a high level of protection of fundamental rights and freedoms in the Republic of Serbia in relation to the above offences, which should remain similar in 2019, given the large number of legal texts that were adopted in the Republic of Serbia, which protect fundamental rights and freedoms and provide for the possibility of their limitation only in the legally envisaged cases, restrictively and for the purpose of prosecution. Also, the novelties brought by the Criminal Procedure Code even more actualize the issue of the realization of fundamental rights and freedoms, that is, they point to a high level of harmonization of national legislation with international standards that regulate fundamental rights and freedoms.

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### **ПРОБЛЕМЫ ПРАВОВОГО РЕГУЛИРОВАНИЯ ЖЕСТОКОГО ОБРАЩЕНИЯ С ЖИВОТНЫМИ**

Статья 339-1 Уголовного кодекса Республики Беларусь (далее – УК), предусматривающая уголовную ответственность за жестокое обращение с животными, была внесена в него относительно недавно – в 2015 году.