

# THE ROLE OF THE PUBLIC PROSECUTOR'S OFFICE WITHIN CRIMINAL PROCEEDINGS

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**Abstract:** The public prosecutor's office is an independent state body tasked with protecting constitutionality and legality. In this regard, the prosecutor's office is responsible for prosecuting perpetrators of criminal offenses ex officio. The majority of criminal offences in the Republic of Serbia fall into this category, meaning that a significantly smaller number of offences are prosecuted by private complaint, which depends solely on the will of the injured party. The author first of all examines the historical development of the public prosecutor's office, which has its roots in France. In the early XIX century, French Code d'instruction criminelle formalized the role of prosecutors as essential participants in the court proceedings, a practice that proved highly effective. The French model was later adopted by other European countries. The paper aims to define the public prosecutor's office in the context of its organization, focusing on the principles that underpin this state body. These principles exist to ensure the office operates as efficiently as possible. They include the principles of indivisibility, unity, hierarchical structure and monocratic decision-making. The author provides a detailed analysis of each of these principles, thereby offering deeper insight into the organization of the public prosecutor's office. Particular emphasis is placed on the position of the public prosecutor in the criminal proceedings, as one of the main criminal procedure actors, alongside the criminal court and the defendant. The prosecutor's role is most easily defined through the analysis of the rights and duties assigned by law. Therefore, the author outlines the role of the public prosecutors not only during the main trial, but also during the investigation, emphasizing their authority to represent the prosecution in the public interest. The public prosecutor is obliged to present the court with relevant evidence showing that the accused has indeed committed the offence in question, which will result in a conviction and the satisfaction of justice. In this regard, the author highlights the role of the police, other state bodies, and all natural and legal persons who are obliged to provide the requested information to the prosecutor if so required. The public prosecutor may propose that the criminal court examine a person as a witness, believing that the individual possesses useful information about the perpetrator and the circumstances under which the crime was committed (location, motive, potential accomplices, etc.). The author's intention is for the research results to underscore the necessity of good organization and regulation of the position of the public prosecutor's office, as this is the only way to ensure the effective protection of social goods. These goods primarily relate to a wide range of fundamental human rights guaranteed by both domestic and international legal acts. In conclusion, the author stresses the importance of legal regulation of criminal proceedings because convictions can deprive individuals of their right to freedom for an extended period. For this reason, the author clearly points out the need for fairness in the proceedings, which also applies to the conduct of the public prosecutor, who is obliged to present both inculpatory and exculpatory evidences before the court. Finally, author addresses the anomalies faced by certain states regarding the independence of the public prosecutor's office, providing recommendations to eliminate, primarily, political influence on the work of public prosecutors.

**Keywords:** Public prosecutor, criminal proceedings, organization, justice

**Field:** Social sciences (Law)

## 1. INTRODUCTION

The prescription of criminal offenses and criminal sanctions would be entirely ineffective if there was no procedure to determine whether a certain person actually committed the offense, in what manner, and with what motives. Some parties are indispensable participants in criminal proceedings, with the criminal court being a prime example, as it is a state authority responsible for ensuring that the criminal process is conducted legally. The court has the obligation to consider the rights and duties of other parties and to undertake all necessary actions to ensure the efficiency of the judicial system. The prosecution of perpetrators of criminal offenses is most often in the hands of the prosecutor's office. As an independent state authority, the public prosecutor's office is responsible for prosecuting criminal offenses that are not subject to private charges. The role of the prosecutor is usually carried out by the public prosecutor as a state authority (Totić, 2024, 140). These are criminal offenses that primarily harm the public interest, regardless of which specific legal good is violated in the particular case. The scope of the public prosecutor's office is defined by the Constitution and laws, with its autonomy guaranteed by the principle that no one has the right to influence its work, whether judicial, legislative, or executive bodies. The main task of the public

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prosecutor's office is to protect the fundamental values and achievements of civilization, as proclaimed in numerous international and domestic legal acts. Therefore, public prosecutors are obliged to perform their assigned functions impartially and in accordance with the law.

Protecting the public interest is imperative, thus the prosecutor's office is authorized to inform the public about ongoing criminal proceedings in a manner that does not obstruct the efficiency of the criminal procedure. Before the criminal court, the public prosecutor's office is authorized to file indictments against perpetrators of criminal offenses and to contribute to establishing the facts in the criminal process through its actions. The prosecutor's office is tasked with collecting evidence that will be presented directly before the court during the main trial, implying that the court's decision will be based on this evidence, as well as that presented by the defense, and occasionally by the court itself. The subject of proof includes facts relevant to making a judicial decision, which have direct procedural significance or pertain to determining the criminal offense and sanction (Škulić, 2014). The significance of proving in criminal proceedings is exceptional because if a procedural party fails to prove a fact, it must be considered as non-existent (Brkić, 2012, 318). The position of the public prosecutor is specific when compared to the role of the opposing party in the proceedings, i.e., the defense. The public prosecutor not only has the duty to represent the indictment but also to treat evidence impartially, whether it favors or goes against the accused. This duty arises from the prosecutor's status as a state authority, which mandates unequivocal compliance with the principle of legality.

## 2. ORIGIN AND CHARACTERISTICS OF THE PUBLIC PROSECUTOR'S OFFICE

The public prosecutor is a party in criminal proceedings and, at the same time, an independent state authority with the right and duty to prosecute perpetrators of criminal offenses (Stevanović & Đurđić, 1998). However, until a criminal proceeding begins, involving the opposing party and ideally taking place before an independent and impartial court, the public prosecutor does not essentially fulfill the function of a party (Roxin, 1998). Historically, the origin and development of the public prosecutor's office are closely linked to the change in the concept of the prosecutorial function. In earlier times, the function of prosecuting accused persons was entrusted to the police and the courts. In the literature on criminal procedure, there is a consensus that the roots of the public prosecutor's office lie in France, emerging during the era of the absolutist monarchy as a form of state governance. The reasons for the establishment of this institution can be traced to the desire of the French kings at that time to secure a favorable position and outcome in proceedings that did not have an exclusively criminal-procedural character. The strengthening of their power eventually led to public prosecutors becoming mandatory participants in proceedings, further solidified by the decision to prohibit courts from operating without their presence. Over time, the role of protecting the ruler's interests was surpassed, and the public prosecutor's office took on the exclusive function of criminal prosecution. With the transition from the inquisitorial (investigative) to the modern type of criminal procedure, public prosecutors became legally authorized entities to whom citizens submit criminal complaints as acts initiating criminal proceedings. The adoption of Napoleon's Code d'instruction criminelle in 1808 fully aligned the public prosecutor's office with the modern type of criminal procedure. Given the significance and role of the well-organized French model for the functioning of the legal system, it is not surprising that the public prosecutor's office was established in other European countries as well. Good legislative solutions were adopted by other European states, such as Italy, Germany, and Austria. For example, in Germany, the public prosecutor's office was established in the mid-19th century by separating the investigative and judicial functions previously held by the investigating judge (Langbein, 1974, 440). In the Republic of Serbia the public prosecutor's office was established in 1929 with the enactment of the Judicial Criminal Procedure Code. Today, the Constitution of the Republic of Serbia from 2006 envisages the public prosecutor's office as an independent state authority, while its establishment, organization, jurisdiction, and other characteristics are detailed in the Law on the Public Prosecutor's Office, as well as the Law on the Seats and Jurisdictions of Courts and Public Prosecutor's Offices and the Criminal Procedure Code. By analyzing the constitutional and then legal provisions, it is established that the public prosecutor's office has the right and duty to prosecute perpetrators of criminal offenses, which implies the possibility of submitting legal remedies for this purpose. Any other way would hinder the effective functioning of the public prosecutor since it is precisely through the submission of the prescribed legal acts in criminal proceedings that the prosecutor fulfills its constitutionally and legally defined role as a party in criminal procedure.

The specificity of the public prosecutor's position in the proceedings lies in its ambivalence—it is both a party in the criminal procedure and a state authority prosecuting perpetrators of criminal offenses (Grubač, 2004). Thus, its legal nature is dual, as the prosecutor's office holds the status of a state authority

and simultaneously one of the main parties in the proceedings. Therefore, impartiality and objectivity in the work of the public prosecutor are imperative, just as they are for the criminal court. A more detailed examination of the legal nature of the public prosecutor's office reveals that it is not a judicial body. Namely, the public prosecutor's office does not have judicial functions within its jurisdiction, but its work indicates that it is not entirely independent of the court. The most accurate definition would be to consider the public prosecutor's office as a quasi-judicial body that collaborates with the court in protecting society from crime, thus acknowledging its judicial role. This cooperation is characterized by the submission of legal instruments to the court based on statutory authorization. In respecting the principle of fairness in criminal proceedings, the legislator also provides other criminal procedure subjects with the opportunity to challenge the prosecutor's decisions if they are dissatisfied with them for certain reasons. For instance, a victim may submit a request to the court to take over the prosecution if the public prosecutor has withdrawn from or decided not to initiate the proceedings at all. Although it acts as a party in the criminal procedure, represents the indictment, and undertakes activities with the criminal court to reach a lawful judicial decision, the public prosecutor's office does not have the authority to participate in rendering that decision. The prosecutor can only influence the court's decision regarding the existence or non-existence of the accused's guilt by presenting relevant evidence. Evidence is provided by the public prosecutor and the police forces, whose main task is to gather useful information from citizens and individuals who possess scientific and professional knowledge in specific fields (Totić, 2024, 106).

### 3. PRINCIPLES OF THE PUBLIC PROSECUTOR'S OFFICE OPERATION

Regarding its legal nature, an interesting viewpoint is that the public prosecutor's office is an independent body of the National Assembly functionally connected with the executive branch through the Government, which holds executive power (Ilić, 2018, 6). The work of the criminal court is always subject to criticism since the public is interested in respecting legality, fairness, and justice. Like the criminal court, which operates based on certain principles, principles also characterize the work and activities of the public prosecutor's office in criminal proceedings. Principles serve as the backbone of internal organization and relationships within the prosecutor's office (Bošković & Kesić, 2020). The first principle is hierarchy, which should be considered in two ways. It refers to the organization of the public prosecutor's office as a whole and each individual prosecutor's office. The public prosecutor's office is based on the principle of subordination and superordination, meaning a lower-ranking prosecutor is subordinate to a higher-ranking prosecutor, and vice versa. As a result, lower-ranking prosecutors often receive criticisms from higher authorities to correct irregularities in their work. In this regard, lower-ranking prosecutors may receive instructions aimed at improving their performance for more efficient prosecution. Such instructions are usually issued in writing but can also be given orally in exceptional circumstances when urgency is required. In practice, urgency typically implies the inability to perform a specific action in the future or the inefficiency of that action. However, the legislator stipulates that oral instructions must be formalized in writing within three days. The principle of unity and indivisibility of the public prosecutor's office means that it is a unified state body across the Republic of Serbia's territory. Furthermore, this unity and indivisibility are present in each prosecutor's office, suggesting a connection from the lowest to the highest level, creating a unified entity. There is also unity among prosecutor offices of different ranks, and all prosecutor's office members, without exception, act uniformly toward third parties. Therefore, any action taken by a prosecutor represents an obligation for the entire prosecutor's office.

The principle of devolution allows a higher-ranking prosecutor to perform actions authorized to a lower-ranking prosecutor, thus controlling the work of the prosecutor's office and correcting the lower prosecutor's actions if needed. The principle of substitution (delegation) enables a higher prosecutor to delegate actions to another lower prosecutor when the originally authorized prosecutor cannot perform the tasks. In such cases, the higher prosecutor must issue a decision explaining the reasons for this delegation. The principle of monocratic (unipersonal) organization of the public prosecutor's office indicates that the function is carried out exclusively by one person, the public prosecutor. Monocracy is a key feature, as it is not possible to perform tasks or decide on any matter collectively. In communication with external parties, one person from the public prosecutor's office is always responsible. Undoubtedly, the principles underlying the public prosecutor's office are primarily established in the public interest. The public interest, which guides criminal proceedings, demands a complete and undisputed truth about the facts forming the basis of the accused's criminal responsibility since only the accused, whose criminal liability has been fully and indisputably established, may be punished. This foundation establishes the state's right to punish, known as *ius puniendi* (Sijerčić-Colić, 2012, 77). The establishment of principles aims to enhance the functionality of the public prosecutor's office, ensuring it serves citizens more efficiently.

#### 4. THE POSITION OF THE PUBLIC PROSECUTOR'S OFFICE

The primary task of the public prosecutor, as an authorized prosecutor and organ of criminal procedure, is to objectively, comprehensively, and lawfully clarify and resolve a particular criminal matter, thereby achieving criminal law protection of society from crime (Milošević & Tošić Sremac, 2023). There are theories suggesting that upholding legality is the main function of the public prosecutor, implying that the prosecutor is primarily a protector of the law (Ilić, 2007). The public prosecutor's position in criminal proceedings is unique, resulting from a wide range of rights and duties defined by law. The public prosecutor is a party to the criminal process who represents the indictment and is responsible for initiating and maintaining the proceedings. Before initiating criminal proceedings, the prosecutor plays an active role in the investigation phase, focusing on gathering evidence to support the claim that the accused committed the alleged crime, leading to the indictment. It is the prosecutor's duty to prosecute offenders for crimes that are prosecuted *ex officio*. If there is sufficient evidence creating the necessary level of suspicion that a crime has indeed been committed, the prosecutor is obliged to initiate criminal proceedings. Through procedural actions by both the prosecutor and other participants in the criminal process, the final goal—resolution of the criminal matter—is achieved. Although the public prosecutor is primarily responsible for the function of prosecution, it should not be overlooked that various actors assist in this role. For instance, while gathering evidence of the crime, the prosecutor may encounter individuals who can provide relevant information about the perpetrator or other important circumstances. In such cases, these individuals will be designated as witnesses by the prosecutor's office and summoned to testify in court about what they know. A similar situation occurs with experts who, at the prosecutor's request, offer specialized assistance in non-legal fields to clarify the factual situation further. The prosecutor can publicly invite anyone with relevant information for a particular case to provide it to the prosecutor's office. The Criminal Procedure Code stipulates that criminal reports for offenses prosecuted *ex officio* should be submitted to the competent public prosecutor in writing, orally, or through other means.

However, in practice, criminal reports are often first submitted to the police (Kiurski & Stepanov, 2022). The most important cooperation exists between the prosecutor's office and the police, involving numerous measures to gather crucial information. Police officers assist the prosecutor's office during crime scene inspections, reconstructions, and other evidentiary actions, significantly aiding the acquisition of essential information for the proceedings. Police officers are legally required to cooperate with the prosecutor's office, but this duty extends to other state bodies and all legal entities. Specifically, if a police officer refuses to cooperate with the prosecutor, the prosecutor can inform his/her superior. In such situations, the prosecutor can also notify the relevant ministry, the Government, or a parliamentary committee. The police and other state bodies must act upon the prosecutor's request within 24 hours after receiving the notification, otherwise, the prosecutor can request the initiation of disciplinary proceedings against the individual who failed to act. While the police, as a state body responsible for ensuring security and peace, generally act independently, the prosecutor's office may assume the execution of certain actions during the pre-investigation phase. However, this raises questions about the prosecutor's expertise, and in practice, prosecutors seldom resort to this authority. Instead, the police are obliged to report to the prosecutor immediately after performing any evidentiary actions. The law empowers the police to detain individuals found at the crime scene for up to 6 hours, pending the arrival of the prosecutor. These are individuals who possess crucial information for the criminal process, and questioning them later may be impossible or inefficient. Courts are also required to cooperate with the prosecutor's office, usually by providing case files and other information necessary for the prosecutor's further actions. Failure of the court or any other state body to comply with the prosecutor's request results in monetary penalties.

#### 5. DISCUSSION

Punishing offenders is a fundamental characteristic and *conditio sine qua non* for the functioning of the rule of law. Only through a lawfully conducted criminal procedure the state has the opportunity to prosecute and sanction individuals who have committed offenses against protected interests. Overall, the efficiency of the public prosecutor's office depends on numerous factors, with expertise and technical resources standing out. However, practice shows that the most crucial element for the prosecutor's office's efficiency is ensuring its independence in performing its duties. Only through autonomy can the prosecutor's office adequately respond to the challenges it faces and continually contribute to the stability of the legal order. Therefore, eliminating any external influences that could undermine the autonomy of the prosecutor's office is imperative. In countries where there is governmental influence over the prosecutor's office, organized crime finds fertile ground, leading to a decline in public trust in state institutions and an

increase in corruption. This results in unwanted outcomes, as a small portion of the population remains unaccountable for their illegal activities, creating a group of "untouchables." In such cases, the prosecutor's responsibility is particularly significant, as these often involve criminal offenses that must be prosecuted. It is not uncommon for the police to gather the necessary evidence against an individual, only for the prosecutor's office to decide not to prosecute. This is where the influence of politics on the prosecutor's office becomes most evident, undoubtedly leading to a widening gap among people. Legislative solutions are therefore needed not only to regulate the work of the prosecutor's office but also of all state bodies, with the primary goal being to ensure conditions for their unimpeded operation and proper functioning. Only in this way can the prosecutor's office, in cooperation with other state bodies, effectively work on prosecuting those who disregard accepted social norms.

Unfortunately, anomalies in the work of judicial bodies are pervasive in the countries that emerged from the former Yugoslavia. As a result, the most severe consequences are felt by citizens, who justifiably believe that fairness and justice are not the guiding principles of those in judicial positions. For decades, the ruling structures in these countries have tightly held all the levers of power, which significantly impacts the perception of the entire region in the eyes of other European and global nations. Ruling parties often view the prosecutor's office as a form of private property intended to serve their political goals, which are primarily lucrative. Such a state of affairs is incompatible with the original function of the prosecutor's office, justifying the claim that this state body largely does not serve the interests of all citizens but rather those of specific interest groups. As a result of the inefficient exercise of prosecutorial functions, individuals responsible for various criminal acts remain unpunished and undeservedly gain an advantage over the general population, whose interests the prosecutor's office should be protecting. There are numerous examples from European countries that also struggle with the link between political and criminal structures but have achieved significant results in combating their influence. Italy is a prime example of a country that has faced a decades-long issue with organized crime, but it also has strong judicial institutions and trained individuals ready to free Italian society from the grip of the mafia.

## 6. CONCLUSION

Given that criminal proceedings can result in long-term imprisonment sentences that restrict the right to freedom, it is not surprising that such proceedings are rigorously regulated by legal provisions. These provisions determine who the subjects of criminal procedure are, as well as their roles and positions in establishing a person's guilt. This meticulous regulation is necessary because criminal acts threaten and harm fundamental human values, which are the achievements of civilization. Any assault on a person's life, body, or property disrupts the stability of the system. The most important aspect is having a well-organized system where victims can receive adequate protection before competent authorities, and perpetrators receive appropriate sanctions. Any other outcome is incompatible with the modern concept of establishing criminal liability. To ensure that criminal proceedings are conducted lawfully, the institution of the public prosecutor's office was introduced as a state authority responsible for prosecuting offenses that violate the public interest. The development of the public prosecutor's office is a direct consequence of the progress of human civilization, expressing the desire to provide adequate protection for essential human values. This, in turn, safeguards the existing social order, as any other power dynamic would lead to lawlessness and the negation of fundamental human rights and freedoms. The primary task of the public prosecutor's office is to uphold constitutionality and legality, underscoring the importance of this institution in modern states. In the Republic of Serbia, its operation is governed by the Constitution and legal provisions that thoroughly regulate the organization, jurisdiction, functioning, and role of the prosecutor's office. One of the main characteristics of the prosecutor's office is its independence in carrying out assigned tasks, along with the ability to collaborate with various entities in collecting relevant information, which will later serve as the basis for a court's decision after the completion of criminal proceedings.

The prosecutor's office has the right to seek assistance from the police primarily in gathering information deemed important for the successful conduct of criminal proceedings, as well as from all individuals and legal entities capable of contributing to the clarification and resolution of a criminal matter. Thus, the public prosecutor can request that a particular person be questioned as a witness or that an expert examination be carried out on an item believed to have been used in the commission of a criminal offense. The public prosecutor's office is one of the main participants in criminal proceedings, alongside the criminal court and the defendant. Throughout the process, the prosecutor's task is to convince the court that a particular individual committed the offense by presenting valid evidence. It is the prosecutor's duty to prosecute offenders in the public interest and contribute to a conviction through activities. However, during the collection of evidence, the prosecutor may also encounter facts that favor the defense. In such

cases, the public prosecutor is obliged to present these to the court, adhering to the principle of fairness. The possibility of reviewing the legality of the public prosecutor's work also stems from the hierarchical structure of this institution, where higher prosecutors can review the work of lower ones, providing advice and comments. Additionally, victims who believe that the public prosecutor is not acting in line with their expectations can address higher authorities to point out shortcomings in the prosecutor's actions. Finally, it is worth noting that the legislative framework governing the position and role of the public prosecutor's office in the Republic of Serbia is robust. However, it is evident that significant negative influences from political and criminal factors hinder the effective fulfillment of its assigned responsibilities.

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