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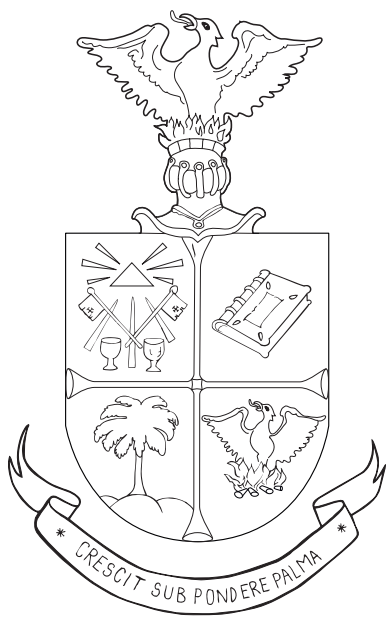

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Concept, principles of organization, jurisdiction and immunity rights of the public prosecutor in the Republic of Serbia

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Abstract

I want to present the Prosecutor's Office of the Republic of Serbia in this study. I am first, shedding light on the constitutional regulation, which legal reforms were necessary for Serbia to join the European Community. The most important task was to redefine the role of the prosecutor's office so that it could perform its priority tasks within the framework of the rule of law and represent the criminal justice needs of the state while performing the function of criminal prosecution. I have focused primarily on the prosecution's criminal law functions, which are the most critical determinant of its mission. To this end, it is essential to describe the organisational structure of the Public Prosecutor's Office and the legal principles governing the prosecutorial functions to be performed by each prosecution service. Also, the issues concerning the competencies of the prosecution service, the regulatory framework for the organisation of the work of prosecutors and the immunity of prosecutors in the light of legislative changes.

Keywords: public prosecutor, organization, ex officio, legality, criminal prosecution, jurisdiction

Fogalmi kérdések, szervezeti alapelvek, illetve az ügyész hatásköre és mentelmi joga a Szerb Köztársaságban

Absztrakt

Tanulmányomban a Szerb Köztársaság ügyészségét kívánom bemutatni. Elsősorban az alkotmányos szabályozás oldaláról szeretném megvilágítani,

hogy milyen jogi reformokra volt szükség ahhoz, hogy Szerbia csatlakozni tudjon az Európai Közösséghez. A legfontosabb feladat az ügyészség szerepének újradefiniálása volt, hogy a jogállamiság keretein belül ellássa kiemelt feladatait és képviselje az állam büntetőjogi igényeit a bünüldözési funkció ellátása mellett. Elsősorban az ügyészség büntetőjogi feladatkörére összpontosítottam, amely a legnagyobb mértékben határozza meg az ügyészség feladatrendszerét. Ennek érdekében elengedhetetlennek tartottam ismertetni az ügyészségi hivatal szervezeti felépítését és az egyes ügyészségek által ellátandó büntetőeljárási feladatokat meghatározó jogelveket. Ugyancsak az ügyészség hatáskörét érintő, továbbá az ügyészi munka megszervezésének szabályozási kereteit meghatározó és az ügyészek mentelmi jogával kapcsolatos kérdéseket a jogszabályi változások tükrében.

Kulcsszavak: ügyészség, szervezet, hivatalból való eljárás elve, legalitás elve, büntetőeljárás, hatáskör

1. Introduction

First of all, we should especially keep in mind the fact that, in order to provide preconditions for the desired degree of adequacy of the functioning of public prosecutors, amendments were made in the Republic of Serbia to its highest legal act – the Constitution (Articles 156-165 of the Constitution of the Republic of Serbia).[1] In the referendum held on January 16th, 2022, the constitutional provisions on courts and the public prosecutor's office were amended. According to the proponent (Government of the Republic of Serbia), there were two groups of reasons why the Constitution was amended on these issues. The first were "political and strategic" reasons, related to the long-determined path of the Republic of Serbia towards European integrations, which necessarily requires legal, primarily constitutional reforms, in order to harmonize the legal system with the European Union but also to meet most European standards and achieve the appropriate level of the rule of law. The second group of reasons was strictly related to constitutional law. It was based on the "weaknesses" of the 2006 constitutional text in the area of justice, and partly on the need to achieve a higher level of realization in practice of the fundamental constitutional principle, the rule of law, which, among other things, presupposes a consistently regulated and implemented division of power, the independence of the judiciary and the judicial protec-

1 *Official Gazette of the RS*, 2006/98.

tion of human rights and freedoms guaranteed by the Constitution.[2] There are four key novelties of the amended Constitution when it comes to the public prosecutor's office in the Republic of Serbia. However, none of them concerns the procedural position of the public prosecutor as a subject of detecting and proving criminal offences. The amendments, along with the change of the name of the holder of the public prosecutor's office, should only ensure a more adequate performance of the basic function of the public prosecutor, which is the criminal prosecution of perpetrators of criminal offences for which criminal prosecution is undertaken *ex officio*. Individually observed, the basic novelties brought by the amendment of the Constitution of the Republic of Serbia, when it comes to the public prosecutor's office, are the following: First, the name of the holder of the public prosecutor's office has been changed. Instead of the Republic Public Prosecutor, the Public Prosecutor and the Deputy Public Prosecutor, we now have the Supreme Public Prosecutor, Chief Public Prosecutors and Public Prosecutors. Secondly, instead of the State Prosecutorial Council, we now have the High Prosecutorial Council as an independent state body that ensures and guarantees the independence of the Public Prosecutor's Office, proposes to the National Assembly the election and termination of office of the Supreme Public Prosecutor, appoints acting Supreme Public Prosecutor, elects Chief Public Prosecutors and Public Prosecutors and decides on the termination of their function, as well as on other issues of the position of the Supreme Public Prosecutor, Chief Public Prosecutors and Public Prosecutors. It consists of 11 members (five public prosecutors elected by the chief public prosecutors and public prosecutors, four prominent lawyers elected by the National Assembly, the Supreme Public Prosecutor and the minister in charge of justice). Third, the function of the public prosecutor is permanent. The exceptions are the Supreme Public Prosecutor elected by the National Assembly for six years and the Chief Public Prosecutor elected by the High Prosecutorial Council, also for six years. Fourth, the Supreme Public Prosecutor, the Chief Public Prosecutor and the Public Prosecutor cannot be held accountable for an opinion given or a decision made in the exercise of their office, unless they commit the crime of violating the law.[3] Finally, in connection with this, let us

2 See: Decision on announcing a Republic referendum to confirm the Act amending the Constitution of the Republic of Serbia with the text of the Act amending the Constitution of the Republic of Serbia. *Official Gazette,* 2021/111.

3 See: Ilić, G.: Javno tužilaštvo u Nacrtu akta o promeni Ustava. *Tužilačka reč*, 2021/36, Beograd, Udruženja tužilaca i zamenika javnih tužilaca Srbije, 2021, 58–74.

add that according to Article 2 of the Constitutional Law for the Implementation of the Act amending the Constitution, laws regarding constitutional provisions on the Public Prosecutor's Office (Law on the Public Prosecutor's Office[4] and the Law on the State Council of Prosecutors[5]) should comply with the Amendments to the Constitution within one year from the date of entry into force of the Amendment.

In this paper, I present the legal framework governing the organisation and functioning of the Serbian prosecution service. The position of the prosecutor's office in the state structure and its competencies.

2. Concept, arrangement and organization of public prosecutor's office

The issue of the notion of public prosecutor's office in the Republic of Serbia has been resolved by its highest legal act (Constitution), which in itself speaks to the importance of it. According to Article 156 paragraph 1 of the Constitution of the RS, the "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 to protect constitutionality and legality." The same approach to this issue exists in the Law on the Public Prosecutor's Office (hereinafter: LPPO), which in its Article 2 paragraph 1 also stipulates that "the Public Prosecutor's Office is an independent state body that prosecutes perpetrators of criminal offences and other punishable actions and takes measures to protect constitutionality and legality". The analysis of these two provisions speaks of four key features of this state body in the Republic of Serbia. First, it is organized as a collective rather than an individual body. Secondly, it is an independent state body. Third, the key function of the public prosecutor's office as an independent state body is to prosecute perpetrators of criminal offences. These are criminal offences for which criminal prosecution is undertaken *ex officio* and at the suggestion of the injured party. In these criminal offences, the public prosecutor is not only independent, but also the main and the only criminal procedure party with the function of prosecution (the only authorized prosecutor). Fourth, in addition to prosecuting perpetrators of criminal offences as the basic function of the public prosecutor's office, it also has the right and duty to take

4 *Official Gazette of RS,* 2008/116, 2009/104, 2010/101, 2011/78 – other law, 2011/101, 2012/38, – decision of the CC, 2012/121, 2013/101, 2014/111 – decision of the CC, 2015/106 and 2016/63 – decision of the CC.

5 *Official Gazette of RS*, 2008/116, 2010/101, 2011/88 and 2015/106.

measures to protect constitutionality and legality of course in accordance with the relevant legal acts.[6]

In addition to defining the notion, the Constitution has resolved a number of other issues regarding this state body. These are issues concerning its jurisdiction, establishment and organization, the Republic Public Prosecutor, the status of holders of the function of public prosecutors (public prosecutors and deputy public prosecutors), immunity and the State Prosecutorial Council as an independent body that ensures and guarantees the independence of public prosecutors and deputy public prosecutors in accordance with the Constitution (Articles 156–165 of the RS Constitution).[7] Without going into a detailed presentation of the solutions from the Constitution in connection with this state body, because it is the subject of analysis of other parts of the paper, it should be especially emphasized that Article 157 paragraph 1 of the Constitution stipulates that "the establishment, organization and jurisdiction of the Public Prosecutor's Office shall be determined by the Law" and several legal texts which, in accordance with the Constitution, specify certain issues in relation to establishment, organization and jurisdiction of public prosecutor's offices as well as the status of holders of the function of public prosecutors. These are: Law on Public Prosecutor's Office, Law on Seats and Territorial Jurisdiction of Courts and Public Prosecutor's Offices (hereinafter: LSTJCPPO),[8] Law on the State Council of Prosecutors.

The main features of these legal texts when it comes to the concept and general remarks on this state body are:

- Both the Constitution of the RS and the legal texts adopted on the basis of the Constitution in connection with this state body in the territory of the Republic of Serbia retain the earlier traditional organizational form of this state body.[9] Unlike the institute of the state prosecutor as an independent state body present in a considerable number of comparative criminal procedure statutes in the territory of the Republic of Serbia, this state body is organized as a collective body – the Public Prosecutor's Office, with the function of the Public Prosecutor's Office in accordance with the principle of monocratic organization performed by the Republic Public Prosecutor

6 Bejatović, S.: *Krivično procesno pravo.* Beograd, Službeni glasnik, 2019, 156.

7 In connection with this feature of the subject matter, one should take into account the fact that the amendments to the Constitution from 2022 have resolved these issues in a different way (see: Introductory considerations).

8 *Official Gazette of the RS*, 2013/101.

9 See: Ilić, G.: *Položaj javnog tužilaštva u Republici Srbiji i uporednopravna analiza.* Beograd, Udruženje javnih tužilaca i zamenika javnih tužilaca Srbije, 2017.

and other public prosecutors in accordance with the law;

- The key function of the public prosecutor gets to the fore in criminal procedure. In it, the public prosecutor is the authorized prosecutor in cases involving criminal offences prosecuted *ex officio* and at the suggestion of the injured party. As an authorized prosecutor in these criminal offences, the public prosecutor is not only an independent, but also the main subject of criminal procedure – a legal party with the function of prosecution.[10]
- In the territory of the Republic of Serbia, there are the Republic Public Prosecutor's Office, appellate public prosecutor's offices, higher public prosecutor's offices and basic public prosecutor's offices, whereas public prosecutor's offices of special jurisdiction are: the Prosecutor's Office for Organized Crime and the Prosecutor's Office for War Crimes. In such an organizational form, the public prosecutor's office is established for the area of the court of the appropriate degree. Accordingly, the Appellate Public Prosecutor's Office is established for the area of the Court of Appeals, the Higher Public Prosecutor's Office for the area of the High Court, and the Basic Public Prosecutor's Offices are established for the area of the Basic Court, provided that the establishment, seat and jurisdiction of appellate, higher and basic public prosecutor's offices are regulated by a special law.[11] The Public Prosecutor's Office may have a special department, which is formed to prosecute certain criminal offences, in accordance with a special law. The Prosecutor's Office for Organized Crime may have departments outside its seat, in accordance with a special law (Article 13 of the LPPO). The work of the Public Prosecutor's Office is managed by the Public Prosecutor, who is the holder of the administration in the Public Prosecutor's Office and is responsible for the proper, accurate and timely work of the Public Prosecutor's Office. He determines the organization and work of the public prosecutor's office, eliminates irregularities and delays in work, takes care of maintaining the independence and reputation of the Public Prosecutor's Office and performs other duties for which he is authorized by law or other regulations (Article 34, paragraphs 1 and 2 of the LPPO).[12]

10 Škulić, M.: *Reforma krivičnog procesnog zakonodavstva Srbije i poglavlje 23 (Neophodnost nastavka rada na reformi ili završetak procesa reforme)*. In: BEJATOVIĆ, Stanko (ed.): Reformski procesi i poglavlje 23 (godina dana posle-krivičnopravni aspekt). Beograd, Srpsko udruženje za krivičnopravnu teoriju i praksu, 2019, 56.

11 It is the Law on Seats and Territorial Jurisdiction of Courts and Public Prosecutor's Offices.

12 See: KRSTIĆ, J.: *Organizacija javnog tužilaštva i njen uticaj na obim i efikasnost primene*

- The entrusted functions of the public prosecutor's office are performed on the basis of the Constitution, laws, ratified international agreements and regulations adopted on the basis of the law, and the prosecutor and deputy public prosecutor enjoy immunity in performing their functions. However, the Republic of Serbia is liable for the damage caused by the public prosecutor and the deputy public prosecutor through illegal or improper work, but when the final decision of the Constitutional Court, a final court decision, or settlement before a court or other competent body determines that the damage was intentional or caused by gross negligence, the Republic of Serbia may request from the public prosecutor or the deputy public prosecutor compensation of the paid amount.
- In addition to the function of the public prosecutor's office in general (prosecution of perpetrators of criminal offences and other criminal offences determined by law and appealing legal remedy to protect constitutionality and legality), the law also prescribed some special powers of this state body. Thus, for example, it has the right to submit a request for postponement and suspension of the execution of the court decision. When the public prosecutor considers that there are reasons to challenge the decision made in a court or other procedure by an extraordinary legal remedy, he may request a postponement or suspension of the execution of the decision and in case the request is adopted, the postponement or suspension of execution lasts until making a decision on an extraordinary legal remedy of a public prosecutor (Article 27, paragraph 1 and Article 28 of LPPO).[13]
- The tasks of the public prosecutor are performed by the public prosecutor directly or through the deputy, with the proviso that the deputy public prosecutor may undertake any action to which the public prosecutor is authorized, but is also obliged to perform all actions entrusted to him by the public prosecutor.[14] The incompatibility of the function of the public

Zakonika o krivičnom postupku. In: Škulić, M. (ed.): Zakonik o krivičnom postupku i javno tužilaštvo. Beograd, Udruženje javnih tužilaca i zamenika javnih tužilaca Srbije, 2009, 181–200.

13 Ilić, G.: *Položaj javnog tužioca prema novom Zakoniku o krivičnom postupku*. In: Simović, Miodrag (ed.): Aktuelna pitanja krivičnog zakonodavstva (normativni i praktični aspekt). Beograd, Srpsko udruženje za krivičnopravnu teoriju i praksu – Intermex, 2012, 156.

14 Regarding the manner of undertaking the actions of the public prosecutor, a disputable provision of Article 48 paragraph 1 of the CPC deserves special attention, according to which: "The public prosecutor undertakes actions in the procedure directly or through his deputy, and in the procedure for a criminal offence punishable by imprisonment

prosecutor with other functions, activities or private interests is one of the features of this state body and it is in the function of the adequacy of its activities. The incompatibility of the function of the public prosecutor with other functions, activities or private interests is provided for in both the Constitution of the RS and the LPPO. The Constitution prescribes a principle provision according to which "political activity of public prosecutors and deputy public prosecutors is prohibited", i.e. "the law regulates which other functions, activities or private interests are incompatible with the prosecutorial function" (Article 163 of the Constitution). This constitutional provision is concretized by law. Article 65 of the LPPO stipulates that the public prosecutor and the deputy public prosecutor may not hold office in law-making bodies, as well as in executive bodies, public services and provincial autonomy bodies and local self-government units, they may not be members of a political party, get engaged in public or private paid work, nor provide legal services or provide legal advice for a fee. Other functions, jobs or private interests that are contrary to the dignity and independence of the public prosecutor's office or damage to its reputation are incompatible with the public prosecutor's function, provided that the State Prosecutors' Council determines other functions and activities that are in contrast to the independence of public prosecutors or are harmful to their dignity.[15] This solution of the legislator finds its justification in the necessity of depoliticization and professionalization, which excludes the possibility of performing political and administrative functions, which derives from the relevant international conventions, and is introduced in order to ensure impartiality and independence in performing functions. The requirements of high professionalism in the performance of this function, which must be pursued in the interest of establishing a true rule of law, in themselves, necessarily impose incompatibility of its performance with any other activity, service or duty that could affect the independence of work and conduct the performance of which would negatively influence the reputation of both the functions and the institution of the public prosecutor's office.

for up to five years and through a prosecutor's associate, i.e. in the procedure for a criminal offence punishable by imprisonment imprisonment for up to eight years and through a senior prosecutor's associate" (See: ILIĆ (2012) op. cit. 153.)

15 ILIĆ, G.: *Državno veće tužilaca kroz prizmu međunarodnih dokumenata i uporednog zakonodavstva s osvrtom na Republiku Hrvatsku*. In: BEJATOVIĆ, Stanko (ed.): Reformski procesi i poglavlje 23 (Godinu dana posle- krivičnopravni aspekt). Beograd, Srpsko udruženje za krivičnopravnu teoriju i praksu, 2017, 378.

- Pursuant to Article 159 of the RS Constitution, the issue of the duration of the function of public prosecutor and deputy public prosecutor has been resolved in a different way than in the previous case.[16] The function of the public prosecutor is not permanent. According to Article 55 of the LPPO, the term of office of the public prosecutor lasts for six years, with the possibility of re-election, and the term of office of the deputy public prosecutor, who is for the first time elected to office lasts for three years, and each subsequent election is permanent. Before the end of the working life or the time for which they were elected, their duty may cease only under the conditions established by law.
- The public prosecutor, at the proposal of the Government, is elected by the National Assembly of the Republic of Serbia, with the proviso that the opinion of the competent committee of the National Assembly is necessary regarding the proposed candidates for the Republic Public Prosecutor (Article 74, paragraph 1 of the LPPO). As for the deputy public prosecutors, the competence of the bodies for their election depends on whether the election is held for the first time or not. According to this criterion, the deputy public prosecutor who is elected for the first time is elected by the National Assembly on the proposal of the State Council of Prosecutors, for a period of three years. On the other hand, the decision on the election of the deputy public prosecutor for the permanent performance of this function is within the competence of the State Council of Prosecutors (Article 75, paragraph 3 of the LPPO). Considering the aspect of the conditions for the election of the public prosecutor or the deputy, it can be concluded that the conditions are nearly identical to the conditions for the election of a judge for the area for which a specific prosecutor's office is established, both in terms of general conditions and in terms of special conditions regarding work experience in the legal profession (Articles 76 and 77 of the LPPO).[17]
- The termination of the function of the public prosecutor and the deputy public prosecutor occurs in four cases. These are: at personal request, when he completes his working life, when he permanently loses his ability to work or when he is dismissed. Observed from the aspect of reasons

16 Until the adoption of this legal text, the functions of the public prosecutor and his deputy were permanent (Bejatović (2019) op. cit. 195).

17 The only exceptions are years of work experience for basic and higher public prosecutors. Here, work experience of four and seven years respectively is required (Article 77 of the LPPO).

for dismissal, it is prescribed that the public prosecutor and the deputy public prosecutor are dismissed when they are legally convicted for a criminal offence to imprisonment of at least six months or for a criminal offence that makes them unworthy of public prosecutorial office; when they perform their function unprofessionally; or due to a serious disciplinary violation (Article 92 of the LPPO), and in order to avoid possible abuses of the law, cases of unprofessional performance of duties have been specifically specified.[18] In addition to the procedure for determining the reasons for termination of terms of office prescribed by the law, the provisions of Articles 94–97 of the LPPO deserve attention. According to them, the reasons for dismissal of the public prosecutor are determined by the State Council of Prosecutors, and the decision on termination of terms of office is made by the National Assembly, at the proposal of the Government. The decision on the termination of the function of the deputy public prosecutor is made by the State Council of Prosecutors.

- One of the most important bodies in the public prosecutor's office for the entire area of the Republic is the State Council of Prosecutors. It is characterized by three features. First, the State Council of Prosecutors is an independent body that ensures and guarantees the independence of public prosecutors and deputy public prosecutors in accordance with the Constitution (Article 164, paragraph 1 of the RS Constitution). Secondly, the Constitution specifies not only the composition of this body but also the manner of election of its members, as well as the duration of their terms of office. The State Council of Prosecutors has 11 members, of which three are *ex officio* (Republic Public Prosecutor, Minister in charge of Justice and chairman of the competent committee of the National Assembly) and eight members elected by the National Assembly in accordance with the law. The elected members include: six permanent public prosecutors or deputy public prosecutors, of which one is from the territory of autonomous provinces, and two prominent and reputable legal professionals with at least 15 years of experience in the profession, of which one is a lawyer and the other a professor at the Faculty of Law, and they are elected for five years (Article 164, paragraphs 2–5 of the RS Constitution). Thirdly, this body realizes its function of providing and guaranteeing the independence of public prosecutors and deputy public prosecutors through its competencies. These are: proposing to the National Assembly candidates for the first election for deputy public prosecutors,

18 ILIĆ (2007) op. cit. 56.

election of deputy public prosecutors for permanent performance of the function of deputy public prosecutors, election of deputy public prosecutors who are in permanent position for deputy public prosecutors in another public prosecutor's office, decision-making in the procedure of termination of the position of deputy public prosecutor, in the manner provided by the Constitution and the law, as well as performing other tasks stipulated by the law[19] (Article 165 of the Constitution of the RS).[20]

3. Principles of arrangement, organization and work of the public prosecutor's office

Some of the characteristics of the public prosecutor's office are the principles of its arrangement, organization and functioning. These are special principles of this entity in charge of criminal procedure. Their specificity is the result of the fact of its specificity as a special state body. The principles are numerous, but it should be borne in mind that in addition to the principles specific to the arrangement, organization and work of the public prosecutor's office, other principles also apply. These are general (basic principles) of criminal procedure law and general special principles of criminal procedure subjects[21] (for example, the principles of immediacy, orality, contradiction, protection of personal freedom, *ne bis in idem*, etc.).

Individually observed, the special principles of arrangement, organization and work of the public prosecutor's office are:

1. *The principle of monocratic organization,* the content of which is represented by the fact that the public prosecutor's office as an independent state body performs its function by only one person – the public prosecutor. With this state body, there is no performance of work and decision-making in the assembly. The principle finds its basis in Article 4 of the LPPO, according to which the function of the public prosecutor's office is performed by the Republic Public Prosecutor and other

19 It is the Law on the State Council of Prosecutors.

20 The presented solutions for the status of holders of the public prosecutor's office are the subject of criticism not only by the professional public but also by relevant European institutions. In view of this, amendments to the Constitution on these issues were made in January 2022 (See Introductory Considerations).

21 See: Đurđić, V.: *Izgradnja novog modela krivičnog postupka Srbije na redefinisanim načelima krivičnog postupka.* In: Simović, Miodrag (ed.): Aktuelna pitanja krivičnog zakonodavstva (normativni i praktični aspekt). Beograd, Srpsko udruženje za krivičnopravnu teoriju i praksu, 2012, 71–87.

public prosecutors in accordance with the law. In addition to this, the importance of the principle is evidenced by the fact that it also has a constitutional character. It is explicitly provided in Article 159 paragraph 1 of the Constitution of the RS which states that "the function of the public prosecutor's office is performed by the public prosecutor", either directly or through the deputy.

2. *The principle of hierarchical subordination of a lower ranking public prosecutor to a higher-ranking public prosecutor.* The essence of the principle is contained in the fact that in the organizational ladder of the public prosecutor's office, there is a constant relationship of subordination and superiority of the lower-ranking and higher-ranking prosecutors. According to Article 16 paragraph 1 point 3 of the LPPO the lower ranking public prosecutor is subordinated to the immediately higher-ranking public prosecutor, and the lower ranking public prosecutor's office is directly subordinated to the higher-ranking public prosecutor's office, i.e., each public prosecutor is subordinated to the Republic Public Prosecutor and each public prosecutor's office to the Republic Public Prosecutor's Office. This mutual relationship of this state body finds its practical realization in the so-called mandatory instructions of the higher-ranking public prosecutor. According to Article 18 paragraph 1 of the LPPO "The immediately superior public prosecutor may issue a mandatory instruction to the lower ranking public prosecutor to act in certain cases when there is doubt in the efficiency and legality of his performance, and the Republic Public Prosecutor may issue such an instruction to any public prosecutor." The instruction is issued in writing and must contain the reasons and justification for its issuance. In the event that a lower ranking public prosecutor considers that the obligatory instruction is unlawful or unwarranted, he may file an objection with an explanation to the Republic Public Prosecutor, through the public prosecutor who issued the obligatory instruction, provided that no objection is allowed against the obligatory instruction of the Republic Public Prosecutor. Analogous to this, the public prosecutor may issue obligatory instructions for his deputy in writing. The deputy public prosecutor who considers that the instruction is unlawful or unwarranted may file an objection with an explanation directly to the higher-ranking public prosecutor, through the public prosecutor who issued the instruction (Article 24 of the LPPO).[22]

22 Regarding the essence of this principle in the theory of criminal procedure law, there is a dilemma regarding the establishment of mandatory instructions of a general nature and

3. *The principle of devolution,* the essence of which is reflected in the right of the immediately higher-ranking public prosecutor to take over the function of the criminal prosecution, i.e., certain actions from the jurisdiction of a lower ranking public prosecutor. The immediately higher-ranking public prosecutor may undertake all actions for which the lower ranking public prosecutor is authorized (Article 19 of the LPPO).
4. *The principle of substitution* that entitles the higher-ranking public prosecutor to authorize the lower ranking public prosecutor to take over the function of criminal prosecution, i.e. individual actions from the jurisdiction of another lower ranking and legally competent public prosecutor. According to Article 20 of the LPPO "a higher-ranking public prosecutor may authorise a lower ranking public prosecutor to proceed in a matter under the jurisdiction of another lower ranking public prosecutor when the public prosecutor with competent jurisdiction is prevented by legal or objective reasons from proceeding in a particular case" but only in the area of his prosecutor's office.
5. *The principle of formality of criminal prosecution,* according to which the competent public prosecutor initiates and conducts criminal procedure *ex officio*, regardless of whether the injured person requests it or not, regardless of the position of the injured party. Of course, provided that these are criminal offences for which criminal prosecution is undertaken *ex officio*. According to the criminal procedure legislation of the Republic of Serbia, the public prosecutor does not have any competencies in criminal offences for which criminal prosecution is undertaken on the basis of a private lawsuit.[23] The principle of formality as a rule of work of this state body appears as a necessary consequence of the very nature of the criminal offence. Namely, starting from the premise that a criminal

several questions arise. For example, whether these instructions create law or interpret the meaning of certain legal norms, neither of these functions belong to the public prosecutor, regardless of his rank. Then, there is the issue of the discrepancy between this principle and the principle of legality, which may be particularly pronounced in the case when the instruction of the higher ranking prosecutor is not in accordance with the principle of legality. In this regard, the position that the instructions of the higher ranking public prosecutor must be, in accordance with the principle of legality, based on factual and legal facts, and not on the arbitrariness and wishes of the superior, is quite correct. Vasiljević, T.: *Sistem krivičnog procesnog prava SFRJ*. Beograd, Savremena administracija, 1981, 135.

23 Dragašević, Lj.: *Krivična prijava i zaštita prava oštećenog lica-žrtve krivičnog dela*. In: (n.a): Oštećeno lice i krivičnopravni instrumenti zaštite (Međunarodni pravni standardiu, norma i praksa). Beograd, Srpsko udruženje za krivičnopravnu teoriju i praksu, 2020, 459.

offence is an offence that is provided by law as a criminal offence, which is illegal and which is committed,[24] the legislator at the same time foresees that the commission of a criminal offence directly or indirectly injures or endangers general good. The commission of a criminal offence violates the legal order the protection of which the state is in charge of, and hence its right and duty to punish the violator of the legal order. Upon committing a criminal offence, a criminal claim arises for the state, which it realizes through criminal proceedings. According to this principle, the state has the right, as soon as the criminal offence is committed, to prosecute the perpetrator through its competent bodies, to initiate criminal prosecution against him, regardless of whether and whose legal interest is violated by the criminal offence. According to this principle, criminal prosecution is carried out exclusively in the public interest. Criminal procedure must not depend on the will of the wounded or injured person, which means that in criminal procedure, unlike civil proceedings, there is no dispositive principle.[25] For the state body in whose competence the prosecution of perpetrators of criminal offences is, and that is the public prosecutor's office, it is enough that it is a criminal offence prosecuted *ex officio*. Based on that, he immediately has the right to initiate and conduct criminal procedure, without waiting for the initiative of the injured party or another person. Of course, provided that there is a required degree of suspicion about the commission of a criminal offence and a certain person as its perpetrator, which depends on the fact of which phase of the criminal procedure it is.[26]

The principle of formality of criminal prosecution in the criminal procedure law of Serbia is envisaged as a rule and finds its application in the largest number of criminal offences. Exceptions to this rule are criminal offences prosecuted by private lawsuit and criminal offences prosecuted at the request of the injured

24 See: Article 14 of the Criminal Code RS, *Official Gazette of the RS*, 2005/85, 2005/88, 2005/107, 2009/72, 2009/111, 2012/121, 2013/104, 2014/108, 2016/94 and 2019/35.

25 Čvorović, D.: Subsidiary lawsuit (justification or not - norm and practice of the Republic of Serbia), In: (n.a.): *IV.* МОЛОДІЖНИЙ НАУКОВИЙ ЮРИДИЧНИЙ ФОРУМ. Київ, Міністерство освіти і науки україни національний авіаційний університет, 2021, 252–255.

26 Đurđić, V.: Osnovna načela krivičnog procesnog prava i pojednostavljene forme postupanja u krivičnim stvarima. In: (n.a.): *Pojednostavljene forme postupanja u krivičnim stvarima- regionalna krivičnoprocesna zakonodavstva i iskustva u primeni*, Beograd, Misija OEBS-a u Srbiji, 2013, 61.

party.[27] In criminal offences for which there is a private lawsuit, the will of the injured party is decisive, both for initiating and conducting criminal procedure. In criminal offences that are prosecuted on a private lawsuit, the injured party, as a private plaintiff, does not only decide whether or not to initiate criminal procedure, but if he or she wants criminal procedure to be conducted, he or she must take over the function of plaintiff. In these criminal offences, the public prosecutor, as a representative of a state body, has no influence on the criminal prosecution.[28] The situation is somewhat different in the case of criminal offences for which criminal prosecution is undertaken at the suggestion of the injured party, as derogation from the principle of formality of criminal prosecution. The public prosecutor is also responsible for prosecuting these criminal offences. However, in order for him to prosecute in these instances, he needs the prior initiative or consent of the injured party, and it is realized by his proposal for criminal prosecution. Prosecution in these criminal offences, despite the fact that it is under the jurisdiction of the public prosecutor, is not possible against the will of the injured party, which in essence makes the very informality of the proceedings.[29] This statement becomes even more important when it is supplemented by the fact that the public prosecutor who took over the criminal prosecution on the basis of the injured party's motion is not able to continue it in case the injured party abandons a motion, which they can do by the conclusion of the main hearing (Article 54 of the Criminal Procedure Code, hereinafter: the CPC).[30]

Finally, in connection with this principle, it should be pointed out that there are also such criminal offences for which, according to the circumstances, in terms of legal regulations, sometimes criminal prosecution is undertaken *ex officio*, and sometimes on private lawsuits.[31]

27 See more about this in Bejatović, S. – Radulović, D.: *Komentar Zakonika o krivičnom postupku.* Beograd, Kultura, 2002, 45–47.

28 Vasiljević, T.: *Komentar Zakonika o krivičnom postupku.* Beograd, JP Službeni List SFRJ, 1997, 156.

29 Vučković, B.: *Nepreduzimanje krivičnog gonjenja-odustanak od krivičnog gonjenja i prava oštećenog lica*. In: (n.a.): Oštećeno lice i krivičnopravni instrumenti zaštite (Međunarodni pravni standardi, norma i praksa). Beograd, Srpsko udruženje za krivičnopravnu teoriju i praksu, 2020, 382.

30 *Official Gazette of the RS,* 2011/72, 2011/101, 2012/121, 2013/32, 2014/55 and 2019/35, 2021/27 – decision of the CC and 2021/62 – decision of the CC. Criminal offences prosecuted on the basis of a motion by an injured party consist of criminal offences against freedoms and rights of man and citizen (Article 153, paragraph 2 of the Criminal Code) and some criminal offences against sexual freedom (Article 186 of the Criminal Code).

31 The case of e.g. with a criminal offence under Article 210 of the RS Criminal Code

6. The principle of legality of criminal prosecution solves the issue whose interests are decisive (social or individual) in initiating and conducting criminal procedure for a committed criminal offence. According to it, the public prosecutor is obliged to undertake and prolong the criminal prosecution if the legal conditions for that are met, i.e., if there is evidence in support of the necessary degree of suspicion that the criminal offence which is prosecuted *ex officio* has been committed. By failing to do so, the public prosecutor violates the law. According to the principle of legality of criminal prosecution, initiating and conducting criminal procedure does not depend on the will of the public prosecutor, because under the assumption of fulfilling the legally prescribed conditions, initiating criminal procedure for a public prosecutor is not only a possibility but also an obligation. When deciding on initiating and conducting criminal procedure, the public prosecutor should only assess whether there is a probability that all legal conditions for criminal responsibility of a particular person are met in a particular case, so if he considers that these conditions are met, he is legally obliged to prosecute.[32]

According to the RS CPC, the principle of legality of criminal prosecution is the rule provided for in its Article 6 paragraph 1. According to it, the public prosecutor is obliged to undertake criminal prosecution when there are grounds for suspicion that a criminal offence has been committed or that a certain person has committed a criminal offence for which he is prosecuted ex officio.[33] As such, the principle applies to the entire course of criminal

(petty theft, evasion or fraud), which belongs to both categories of criminal offences, depending on the damage to whose property the offence was committed. If the offence from paragraph 1 of this Article is committed to the detriment of the property of citizens, prosecution is undertaken by private lawsuit, and in other cases it is a criminal offence from the group of criminal offences prosecuted *ex officio*.

32 Grubač, M.: Načela krivičnog postupka i njihova transformacija. *Jugoslovenska revija za kriminologiju i krivično pravo*, 1995/1–2, 39.

33 Starting from the given provision of Article 6 of the CPC, in the theory of criminal procedure law we come across understandings according to which the name "principle of obligatory criminal prosecution" is far more adequate for this principle than the name "principle of legality of criminal prosecution". The provision of Article 6 prescribes the duty of the public prosecutor to undertake criminal prosecution if the conditions for that are met, thus excluding any possibility of whether or not he will initiate criminal procedure when the conditions for his conduct are met. In view of this, it is concluded that this is not a matter of legality which implies legality and compliance of an action with the law. From this point of view, legality, i.e. acting in accordance with the law, applies to the public prosecutor both when he withdraws from criminal prosecution and when he undertakes any action in criminal procedure, and not only when he initiates it. Therefore, the term obligatoriness or obligation of criminal prosecution,

procedure. In the criminal procedure law of Serbia, the public prosecutor is not only obliged to initiate criminal procedure for an offence prosecuted *ex officio* when there are legal conditions, but he is also obliged to prosecute within the procedure as long as there are legal conditions.[34] Such a conclusion is necessarily drawn from all provisions of the CPC that directly or indirectly relate to this issue. Thus, for example according to Article 49 of the CPC, the public prosecutor may withdraw charges not only from their confirmation until the end of the main hearing, but also at the hearing before the second instance court. From this it can be concluded that the principle of legality of criminal prosecution applies to the entire criminal procedure for criminal offences prosecuted *ex officio*, and not only for initiating criminal procedure.[35] In addition to the fact that the principle of legality of criminal prosecution is foreseen as a rule, it does not mean that it is of an absolute character. On the contrary, it is a principle with exceptions. There are a few exceptions to this principle as a rule. These are: the principle of opportunity for criminal prosecution, criminal offences for which criminal prosecution is undertaken on the basis of a private lawsuit and at the motion of the injured party, criminal offences in which criminal prosecution is conditioned by prior approval of the competent state body and subsidiary lawsuit.

4. Jurisdiction of public prosecutor

The public prosecutor realizes the functions entrusted to him, and thus the function of criminal prosecution of perpetrators of criminal offences, within the scope of his jurisdiction (substance matter and territorial) concretized with three legal texts (CPC, LPPO and LSTJCPPO), in almost the same way as the issue of substance matter and the territorial jurisdiction of criminal courts for trial in criminal matters.[36] According to the provision of Article 45 of the CPC, the substance matter jurisdiction of the public prosecutor shall be determined in accordance with the provisions of the law that apply to determining the substance matter jurisdiction of the court, unless specified otherwise by law. Pursuant to this provision of the CPC, according to Article

according to this understanding, is more in line with the nature of this principle, i.e. to the content determined by law. Jekić, Z.: *Krivično procesno pravo.* Beograd, Pravni fakultet Univerziteta u Beogradu, 2006, 157.

34 Đurđić (2013) op. cit. 64.

35 Đurđić (2012) op. cit. 84.

36 Bejatović (2019) op. cit. 156.

14 of the LPPO, the substance matter jurisdiction of the public prosecutor is determined in accordance with the provisions of the law that apply to determining the substance matter jurisdiction of the court, unless otherwise provided by law. In accordance with this, the Basic Public Prosecutor's Office acts before the Basic Court, the Higher Public Prosecutor's Office before the High Court, the Appellate Public Prosecutor's Office before the Court of Appeals, and the Republic Public Prosecutor's Office before the Supreme Court of Cassation. The issue of the substance matter jurisdiction of the public prosecutor resolved in this way refers to his basic function, the function of criminal prosecution of perpetrators of criminal offences.[37] The public prosecutor in criminal procedure is a party with the function of prosecution for criminal offences prosecuted *ex officio*. With the aim of realizing this basic function of his, the law prescribes certain powers and duties, that is, gives them certain powers to undertake criminal procedure measures and actions, the order of which starts even from the pre-investigation procedure and ends with extraordinary legal remedies. In accordance with such a position of the legislators, and with the aim of successful realization of criminal prosecution of perpetrators of criminal offences prosecuted *ex officio*, the public prosecutor is competent, i.e. has the powers and duties to undertake the following activities: manage the pre-investigation procedure; decide not to initiate or defer criminal prosecution; conduct an investigation; conclude a plea agreement and an agreement on testifying of defendant; raise and represent the prosecution before the competent court; drop the charges; file appeals against non-final court decisions and submit extraordinary legal remedies against final court decisions; undertake other actions when determined by the CPC. The stated powers of the public prosecutor are only the powers that characterize his activities related to initiating certain phases of criminal procedure, i.e., pre-investigation procedures, while individual measures and actions taken by this body in certain phases of procedures are listed and elaborated in a special part of CPC.[38]

In the practical realization of the functions entrusted to him – the criminal prosecution of perpetrators of criminal offences prosecuted *ex officio*,

37 Čvorović, D.: Javni tužilac kao moćna figura savremenog krivičnogprocesnog zakonodavstva. *Zbornik Instituta za kriminološka i sociološka istraživanja*, 2015/1, 223–237.

38 Ilić, G.: *Uticaj javnog tužioca kao organa postupka i stranke u krivičnom postupku na suđenje u razumnom roku.* In: (n.a.): *Oštećeno lice i krivičnopravni instrumenti zaštite (Međunarodni pravni standardiu, norma i praksa)*. Beograd, Srpsko udruženje za krivičnopravnu teoriju i praksu, 2020, 339–354.

the public prosecutor, as a rule, acts according to the principle of legality, meaning that he is obliged to undertake and prolong criminal prosecution if the legal conditions for that are met, i.e. if there is evidence to support the necessary degree of suspicion (grounds for suspicion) that a criminal offence prosecuted *ex officio* has been committed.[39] Of course, all of this is within his jurisdiction (substance matter and territorial).

The territorial jurisdiction of the public prosecutor is determined by the provisions that apply to the jurisdiction of the court of the area for which the prosecutor is appointed, i.e. the territorial jurisdiction of the public prosecutor's office is determined in accordance with the law governing the seats and areas of public prosecutors' offices (Article 15 of the LPPO).[40] If the criminal offence was committed or attempted in the territories of various courts or on the border of those territories or it is uncertain in which territory it was committed or attempted, the public prosecutor in whose territory the first action was taken to check whether there are grounds for suspicion that a person has committed a criminal offence shall have jurisdiction (Article 46, paragraphs 1 and 2 of the CPC).

One of the indispensable issues when it comes to the jurisdiction of the public prosecutor is the issue of resolving conflicts of jurisdiction in the event that it occurs. Resolving conflicts of jurisdiction between individual prosecutors depends on which prosecutor is involved. Conflicts of jurisdiction between public prosecutors shall be resolved jointly by the immediate higher ranking public prosecutor who is superior to public prosecutors who are in conflict of jurisdiction, and conflicts of jurisdiction between public prosecutors of special jurisdiction or public prosecutors of special jurisdiction and other public prosecutors shall be resolved by the Republic Public Prosecutor (Article 47, paragraphs 1 and 2 of the CPC).

In connection with the above, it should be pointed out that the actions in the procedure that cannot be delayed are also taken by a public prosecutor who is not competent, but he must immediately inform the competent public prosecutor.

39 Grounds for suspicion as a condition of the obligation to initiate and conduct criminal procedure is a set of facts that indirectly indicate that a criminal offence has been committed or that a certain person is a perpetrator of a criminal offence (Article 2, paragraph 1, item 17 of the CPC).

40 It is the Law on Seats and Territorial Jurisdiction of Courts and Public Prosecutor's Offices.

When it comes to the jurisdiction of the public prosecutor, there are the following three facts:

First, in order to perform the function entrusted to him more comprehensively and efficiently, and especially in order to detect criminal offences and their perpetrators, the public prosecutor cooperates, above all, with the police[41] with whom he determines and undertakes the necessary measures. The police are obliged to act on every request of the competent public prosecutor. If they do not act, the public prosecutor shall immediately inform the head who manages the body, and if necessary, they may inform the competent minister, the Government or the competent working body of the National Assembly. If the police do not act upon the request of the public prosecutor within 24 hours from the receipt of the notification, the public prosecutor may request the initiation of disciplinary proceedings against the person he considers responsible for failure to act upon his request. In addition to the police, the public prosecutor also cooperates with other legal entities and citizens in the exercise of his function.[42] Thus, for example, the public prosecutor is authorized to request from the court, other state bodies and legal entities to deliver to him records and information that he needs to take actions within his competence, and they are obliged to act on his request. On the other hand, it is the obligation of the public prosecutor to receive submissions and statements from state bodies, legal entities and citizens in matters within his competence in order to take actions for which he is authorized (Articles 8 and 9 of the LPPO).

Second, the public prosecutor is a state body established to protect not only the state but also the general (public) interest. That is why he must be characterized by objectivity and impartiality in criminal court procedures. The basic task of the public prosecutor as an authorized prosecutor in criminal procedure is objective, versatile, and lawful resolution of certain criminal matters, regardless of whether it is to the detriment or to the benefit of the other party to the proceedings. The goal of the entire procedural activity of the public prosecutor in criminal procedure must not be to advocate for a court decision that will be to the detriment of the other party to the proceedings, but to advocate for a lawful decision, which may be in favour of the opposing party if it undoubtedly derives from the law. It is the obligation of the

41 Čvorovič, D. – Vince, V.: Az ügyészség és a rendőrség viszonyának reformja a szerb büntetőeljárási törvényben. *Ügyészek Lapja*, 2020, 27 (2–3), 97–109.

42 Ilić, P. G.: Odnos javnog tužioca i policije u svetlu novog Zakonika o krivičnom postupku. *Revija za kriminologiju i krivično pravo*, 2011/2–3, 317.

public prosecutor to contribute to the establishment of the truth in criminal procedure, as a result of which he will sometimes come into a situation to file an appeal in favour of the accused, i.e. to perform material defence of the defendant from possible wrong and illegal court decisions.[43] Within this, it is worth noting that the public prosecutor may withdraw charges from the moment of confirmation of the indictment until the conclusion of the main hearing, or at the hearing before the second-instance court (Article 49, paragraph 1 of the CPC).

Third, in order to ensure objectivity and impartiality in the work of this state body, the law provides for the institute of exemption of public prosecutors, which has two features. First, the provisions on the exclusion of judges and jurors apply accordingly to public prosecutors and persons who are authorized by law to replace the public prosecutor in the procedures. Secondly, the exemption of the public prosecutor is decided, as a rule, by the higher-ranking public prosecutor, and the decision on the exclusion of the deputy public prosecutor is reached by the public prosecutor. That is, the State Council of Prosecutors decides on the exclusion of the Republic Public Prosecutor based on the obtained opinion of the Collegium of the Republic Public Prosecutor's Office (Article 42, paragraphs 1–3 of the CPC).

5. Immunity rights of holders of public prosecutor's office

One of the very important institutes that should ensure the functioning of the public prosecutor's office in the manner prescribed by law, and above all its conduct following the principle of legality of criminal prosecution as a key principle of its work is the institute of public prosecutor's immunity. The importance that is attached to this institute is also shown by the fact that it also has a constitutional character. According to Article 162 of the Constitution, the public prosecutor and his deputy enjoy immunity in their work. Its essence is reflected in the fact that they cannot be held accountable for expressing an opinion in the performance of prosecutorial function, unless it is a criminal offence of violating the law by the public prosecutor, i.e. deputy public prosecutor. In the procedures initiated due to a criminal offence committed in the performance of a prosecutorial function, i.e. service, public prosecutor, or deputy public prosecutor, cannot be deprived of

43 Škulić, M.: *Žalba kao redovni pravni lek (Pojam,vrste i osnovne karakteristike).* In: Bejatović, S. (ed.): Pravni lekovi u krivičnom postupku (Regionalna krivičnoprocesna zakonodavstva i iskustva u primeni) Beograd, Misija OEBS-a u Srbiji, 2016, 123.

liberty without the approval of the competent committee of the National Assembly. Accordingly, the procedural and legal immunity of the public prosecutor and his deputy relates only to the deprivation of liberty. In everything else, criminal prosecution and criminal procedure against them, even for the criminal offence committed in the commission of prosecutorial function, can be undertaken without any regards to their function.[44] In addition to the Constitution, when it comes to the immunity of holders of public prosecutor's office, there is also the provision of Article 51 paragraph 1 of the LPPO, according to which the public prosecutor and the deputy public prosecutor cannot be held accountable for the opinion expressed in the performance of the prosecutorial office, unless it is a criminal offence of violation of the law by the public prosecutor, i.e. deputy public prosecutor.

6. Summary

There are a lot of entities operating in the field of combating criminality. However, in addition to the accuracy of such a fact, it is more than indisputable that, apart from the court that decides on the criminal matter in question, the role of the public prosecutor is crucial, which is especially evident after the novelties brought by the reform process in the criminal procedure legislation of Serbia. One of the key features of the reform process is granting of new powers to public prosecutors, by using which the public prosecutors themselves are able to solve a specific criminal case in many instances, which, according to some opinions, means giving powers to the public prosecutor which should belong to the court.[45] The case is, for example, with the principle of opportunity of criminal prosecution when prosecuting adult perpetrators of criminal offences as one of the most important features of the work done so far on the reform of criminal procedural legislation of the Republic of Serbia, which began with the adoption of the Criminal Procedure Code in 2001,[46] which for the first time envisages this principle for adult perpetrators of criminal offences.[47] The importance of the novelty and thus the changed

44 ILIĆ (2012) op. cit. 163.

45 Škulić, M., ILIĆ, G.: *Novi Zakonik o krivičnom postupku Srbije (Reforma u stilu 'jedan korak napred-dva koraka nazad').* Beograd, Udruženje javnih tužilaca i zamenika javnih tužilaca Srbije, 2012, 153.

46 *Official Gazette of the FRY,* 70/01 and 68/02 and *Official Gazette of the RS*, 58/04, 85/05, 115/05, 49/07, 20/09, 72/09 and 76/10.

47 Čvorović, D.: *Principle of opportunity of prosecution as an instrument of efficiency of resolving criminal matters (norm and practice in the Republic of Serbia).* In: (n.a.):

procedural position of the public prosecutor in the criminal procedure of the Republic of Serbia is best illustrated by the fact that the public prosecutor can use this principle to resolve the criminal matter without the involvement of the court, to resolve the criminal matter in question without initiating and conducting criminal procedure, despite the fact that all the preconditions for that fulfilment are prescribed by the law and the percentage of criminal offences in which the public prosecutor can use this principle is extremely high when other conditions are fulfilled. These are all criminal offences with a prescribed fine or imprisonment of up to five years, and this legal option is now used by the public prosecutor in solving about 20% of all reported criminal offences.[48] If we add to this the possibility of concluding a plea agreement between the public prosecutor and the defendant and the fact that conducting investigation is within the competence of the public prosecutor, then such a statement about the public prosecutor as a key subject of detecting and proving criminal offences becomes even more important.[49] However, despite the fact that these three novelties regarding the procedural position of the public prosecutor speak for themselves about the importance of this criminal procedural subject in criminal procedures, these are not the only arguments in favour of the statement about the public prosecutor as a key subject of criminal procedure. On the contrary, there are also numerous other arguments, two of which stand out. First, the initiation and course of criminal procedure for criminal offences prosecuted *ex officio* is impossible without a public prosecutor. The court never acts *ex officio* in criminal procedures. In this category of criminal offences, the public prosecutor is the only entity that decides on the initiation of criminal procedure in accordance with the principles of legality and officiality. Secondly, after initiating the criminal procedure, the public prosecutor may drop the charges and thus prevent the further course of criminal procedure. Exceptions to this are only cases of taking over the criminal prosecution by the injured party, which is used in practice in a very limited number of cases.

''Юриспруденція в сучасному інформаційному просторі''. Київ, Міністерство освіти і науки україни національний авіаційний університет, 2020, 315–318.

48 Kiurski, J.: *Načelo oportuniteta krivičnog gonjenja.* Beograd, Institut za kriminološka i sociološka istraživanja, 2019, 84–91.

49 Turanjanin V., Čvorović, D.: *Pojednostavljene forme postupanja u krivičnim stvarima-Načelo oportuniteta i sporazum o priznanju krivičnog dela.* Beograd, Službeni glasnik, 2021, 217.