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COOPERATION BETWEEN POLICE AND PUBLIC PROSECUTOR – LAW AND PRACTICE IN SERBIA*

Abstract: *Considering conceptual changes in by now not-so-new Criminal Procedure Code, the authors analyze relations between the prosecutor and police from the angle of law provisions but also in their implementation in practice. The paper is divided in two main parts. After introductory remarks, the authors consider a number of theoretical issues related to fair trial in the context of balancing roles, competences and powers of various procedural subjects with focus on relations and cooperation between police and the public prosecutor. The second part of the paper includes presentation of the results arising from empirical research dedicated to implementation of the novelties in the Serbian Criminal Procedure Code related to cooperation between prosecutors and the police.*

Keywords: *police, prosecutor, cooperation, Criminal Procedure Code.*

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1. PUBLIC PROSECUTOR AND THE POLICE IN THE REFORMED CRIMINAL PROCEDURE OF SERBIA

The current criminal procedure legislation of the Republic of Serbia is characterized by a number of peculiarities, and one of the key is the shift from the judicial to the prosecutorial concept of the investigation.¹ The public prosecutor has become one of the most powerful figures in the criminal procedure of the Republic of Serbia that is in line with modern comparative criminal procedure legislation² and international criminal law that is dominated by the prosecutorial concept of the investigation, which must also be taken into account when working on the reform process. The public prosecutor manifests his representative role in contemporary criminal procedural legislation, thus sublimating the criminal procedure of the Republic of Serbia, not only in conducting the investigation but also in the leadership role in the pre-investigative procedure, as well as in achieving the ideal of a fair trial as the key objective of the reform of the criminal procedural legislation of the Republic of Serbia³ and at the same time a critical tone of argumentation of the scientific and professional public regarding the legal text⁴ and its coherence.

Equality of arms as a derivative of the prohibition of discrimination and implicit of fairness⁵ implies the equal status of parties in criminal proceedings⁶,

¹ Stanko Bejatović, „Concept of Investigation and its Impact on the Efficiency of Treatment in Criminal Matters“, *Criminal Legislation, Organization of the Judiciary and Efficiency of Criminal Procedure* (ed. Stanko Bejatović), Belgrade 2008, 108 – 134; Vojislav Đurđić, „Initiation and Control of the Prosecutorial Investigation, *Prosecutorial Investigation* (eds. Stanko Bejatović, Ivan Jovanović), Belgrade 2014, 139-153. Snežana Brkić, “A Critical Review of the Organization of Investigation in the 2011 Criminal Procedure Code of Serbia”, *Zbornik Pravnog fakulteta u Novom Sadu* 2/2015, 559-575.

² Further reading: Stanko Bejatović, „Prosecutorial Investigation as a Characteristic of the Reforms of Criminal Procedural Legislation of the Countries in the Region“, *Prosecutorial Investigation* (eds. Stanko Bejatović, Ivan Jovanović), Belgrade 2014, 11-33; Miodrag Simović, „Prosecutorial Investigation Model in the Criminal Procedure Legislation of Bosnia and Herzegovina: Current Situation and Problems“, *Prosecutorial Investigation* (eds. Stanko Bejatović, Ivan Jovanović), Belgrade 2014, 43- 59; Aleksandar Jevšek, „Police Experiences in the Implementation of Investigation in Slovenia“, *Prosecutorial Investigation* (eds. Stanko Bejatović, Ivan Jovanović), Belgrade 2014, 133- 139.

³ Further reading: Milan Škulić, „New Code of Criminal Procedure – Expectations of Application“, *New Solutions in Criminal Law of Serbia and Its Practical Application* (ed. Stanko Bejatović), Belgrade 2013, 33- 69.

⁴ Further reading: Milan Škulić, „Misconceptions and Numerous Legal and Technical Errors of the New Code of Criminal Procedure – what further and how to reform the reform of the Serbian criminal proceedings“, *Criminal Law Reform*, Belgrade 2014, 23-66; Vojislav Đurđić, „Conceptual Assumptions in the New Criminal Proceedings of Serbia“, *Criminal Law Reform*, Belgrade 2014, 66-87.

⁵ Further reading: Dragana Čvorović, “Implicit of Rights to a Fair Trial and Casuistry of the European Court of Human Rights”, *Zbornik Instituta za kriminološka i sociološka istraživanja* 3/2016, 43- 55; Milica Kolaković-Bojović, „Completion of Criminal Proceedings within Reasonable Time“ Doctoral dissertation, Belgrade 2016, 233; Milica Kolaković-Bojović, The right to legal defense of the accused and the efficiency of the criminal proceedings, *Zbornik Instituta za kriminološka i sociološka istraživanja*, 131-148.

⁶ Herve Henrion, *L'egalite des armes et le proces penal allemand*, Nemesis Bruylant 2003, 135.

manifested by the facilitation of equal procedural means to opportune parties in the process of proving the facts. Namely, on the one hand, we have a public prosecutor who bears the burden of proof and who, in accordance with his function of the prosecution, wishes to prove, beyond reasonable doubt, the guilt of the defendant, that is, whose greatest satisfaction would be passing a conviction, as an interested and biased party in the judicial criminal proceedings while, on the other hand, the defendant has the function of defense, and pretensions towards acquittal. The legislator's intentions for the realization of equality of positions of the parties in the proceedings in the criminal procedural legislation of the Republic of Serbia remained only in the domain of criminal procedural theory which represents the views of modern procedural systems that cannot exist without a fair trial, which is based on the equality of arms. Unverified doctrinal explications and their standardization in the Criminal Procedure Code of the Republic of Serbia have caused the adverse effects than expected, and therefore, instead of efficiency as a key element of the reform of the national criminal procedural legislation, occurred inconsistencies, deviations from equity and inequality as the foundation of this maxim.⁷

The critical attitude towards the CPC and the implementation of the principle of equality of procedural parties in the criminal proceedings stems from the nonconformity of the provisions of the Criminal Procedure Code with the adversarial model of criminal procedure that is newly incorporated in our procedural legislation, and which, due to convergence of elements from two different criminal-procedural systems, deviates from the realization of the of equality, primarily with regard to the inquisitorial maximum which the prosecutorial investigation is based on, while the adversarial court procedure is regulated by the indictment principle. The incoherence of the organization of the prosecutorial investigation and the judicial part of the criminal proceedings in the adversarial model requires irreconcilable distinctions between the pretensions that the public prosecutor has in the investigation and those he manifests during the main trial. In the prosecutorial investigation, the public prosecutor, as a party equal to the defendant, should impartially investigate and collect evidence both to the detriment and benefit of defendant whereas at the main hearing he should represent the prosecution and prove, beyond reasonable doubt, that the defendant is guilty. The question arises as to whether we can speak of one person who can be completely impartial in one part of the criminal procedure, and then modify himself to be extremely interested in the outcome of the proceedings namely by a conviction. The confusing character of such a legal solution is found in the fact that the legislator has arranged

⁷ Further reading: Veljko Turanjanin, Mirko Voštinić, „On Some Difficulties in the Application of the New Criminal Procedure Code of Serbia“, *Accusation and Other Criminal Laws of State Reaction to Crime* (ed. Stanko Bejatović), Belgrade 2014, 466-485.

the prosecutorial investigation as if it was judicial, basing it on the investigative maxim, and only appointed the public prosecutor instead of the investigating judge, whereas the credibility of the non-judicial evidence carried out in the stages prior to the main trial was equated with the judicial, which by the court decision become the factual basis of the judgment (Article 406 CPC), which is in direct conflict with the principle of directness, contradiction and equality of parties as key determinants of justice.

Although the public prosecutor is the chief investigator, he may entrust the police with certain evidentiary actions in accordance with the provisions of the CPC (Article 299, Paragraph 4 of the CPC). The equivalence between referring the conduct and the possibility of filing a formal motion instead of the public prosecutor, when entrusting them with a particular action, does not exist, so if the public prosecutor refers the search of a flat to the police, the motion to the preliminary proceeding's judge will have to be submitted by the public prosecutor. The critical attitude of the expert and the wider public regarding the equalization of judicial with non-judicial evidence is also reflected on the police, considering from the perspective of undertaking evidentiary actions and the possibility using them in further course of the proceedings. Hence, further reforms of the criminal procedural legislation of the Republic of Serbia should aim at creating a coherent criminal procedure, which would in all its stages reflect an adversarial model with emphasis on an equal duel of parties, direct, contradictory presentation of evidence at the main trial and enabling equal procedural means.

The power of the public prosecutor in addition to conducting the investigation is manifested in a leading role in a pre-trial process that implies an initiative, and not just control, which often lacks both in domestic and foreign practice. Accordingly, it can be noted that the functional dependence of the police on the prosecution is only of a theoretical nature, since it *de facto* enjoys genuine autonomy during the preparatory phase of the previous proceedings.⁸ The correlation between the public prosecutor and the police in the pre-investigation proceedings is most active and, to a great extent, the efficiency of their conduct is in correlation with the efficiency of the criminal proceedings.⁹ Therefore, the importance of police action under the direction of the public prosecutor, in achieving the main goal of the reform of the criminal procedural legislation of the Republic of Serbia, which is the efficiency and the international standard of justice, is undisputed. In

⁸ Dragana Čvorović, „The public Prosecutor and the Police as Key Stakeholders Pre-Investigate the Investigative Stages of the New Criminal Procedure“, *Position and the role of the police in a democratic state*, Belgrade 2013, 116.

⁹ Further reading: Božidar Banović, Milomir Veselinović, „Special Evidence Actions and the new Criminal Procedure Code“, *Current Issues of Criminal Legislation – Normative and Practical Aspects* (ed. Stanko Bejatović), Belgrade 2012, 142-159.

the domain of detecting criminal offenses and their perpetrators, the Code explicitly regulates certain competences of the prosecutor which enable him to *de facto*, but not only *de jure*, leading role in criminal proceedings. Accordingly, the public prosecutor may order the police to take certain action to detect the crimes and to find the suspects, and the police are obliged to execute an order and to keep him informed about the actions taken. According to the CPC, the police are obliged to notify the public prosecutor about the performance of any operational measure and action immediately, or no later than 24 hours after performing (Article 286, Paragraph 4 of the CPC), whereas, in case of conducting an evidentiary action, the legislator foresees the time frame – “without delay” (Article 287, Paragraph 1 of the CPC)¹⁰. The correlation between the public prosecutor and the police in the pre-investigation proceedings is more extensively set in the provisions of the new Criminal Procedure Code compared to the previous pre-trial proceedings (CPC/2001), regarding the participation of the public prosecutor in activities that were previously predominantly related to the police and thus increased control of the public prosecutor over the work of the police in order to achieve a higher degree of efficiency of the criminal procedure, which in significant degree depends on the efficiency of the pre-trial procedure.¹¹

Realization of the efficiency of the criminal procedure as an international standard besides the manifestation of the public prosecutor as a key subject of realization, also standardizes the police without whose mutual cooperation it would be difficult to talk about the efficiency of the pre-investigative and investigative procedure, which must be based on the legal norm, with full respect for the generally accepted principles of their functioning. *A contrario*, the managerial role of the public prosecutor in the pre-investigative procedure and the main role during investigation, should not be merely a dead letter on paper, but a rule that is literally realized in practice. So, it is very important cooperation between public prosecutor and the police, which is analyzed in the main part of this paper.¹²

¹⁰ „The authority of the police to take precautionary measures in the pre-trial procedure should be understood as a derivative of the general authority of the police to take measures and actions in order to find the perpetrator of criminal acts and to secure cases and traces that can serve as evidence (Article 286, Paragraph 1 of the CPC), and accordingly, a 24-hour notice of the undertaken operational-tactical measures and actions could analogously be applied to the actions of evidence. Goran Ilić, „Preliminary Procedure“, *Handbook for the Application of the Criminal Procedure Code* (eds. Stanko Bejatović, Milan Škulić, Goran Ilić), Belgrade 2013, 227).

¹¹ The prosecution is no longer just a passive subject who is „awaiting“ a criminal report of the police, without great influence on its content, but a body that actively participates in its making and which prepares the basis for evidence and data for its submission. *Ibid.*, 211.

¹² As Navickienė points out, the process of cooperation between an investigator and a prosecutor could be represented as interrelated connections between the elements of the process of management. Žaneta Navickienė, “Cooperation between investigators and prosecutors in pre-trial investigation: investigators’ viewpoint”, *Social Sciences Studies* 6/2010, 342. About critical review

2. RESULTS OF THE RESEARCH

In order to objectively present the cooperation between the public prosecutors, there was a need to examine the attitudes of the members of both parties. We conducted the survey between public prosecutors and member of the police using the standardized questionnaire, for the period 2013-2015.¹³ The survey was conducted in the four lower and four higher courts. The four lower courts were: The First Lower Court in Belgrade, The Lower Court in Novi Sad, The Lower Court in Kragujevac and The Lower Court in Niš. The four higher courts were: The Higher Court in Belgrade, The Higher Court in Novi Sad, The Higher Court in Kragujevac and The Higher Court in Niš. In this paper, we analyzed attitudes of the police members. The results of the research of the public prosecutor's attitudes were presented in the separate paper.¹⁴ Therefore, the majority of questions are identical. The sample included 118 police members. In accordance with the conducted research, the basic characteristics of mutual cooperation between the public prosecutor and the police in preliminary investigation and pre-trial investigation in order to realize efficiency as an international standard are as follows.

First, police officers evaluated cooperation with the public prosecutor's office. As it could be seen from the table below, 22, 4% of the respondents consider this cooperation to be unsatisfying, 28, 4% satisfying, 45, 7% good and 3, 3% very good. Two police officers did not answer the question. If we compare these results with prosecutorial results, we note that prosecutors were more stringent in evaluating the cooperation, since 14, 3% of the respondents defined this cooperation as bad, 40, 3% as satisfactory and only 36, 4% as good and 9% as very good¹⁵. This is to a certain extent expected, since the prosecutor is a subject in criminal proceedings

of the new Law on Police see: Sreten Jugović, Darko Simović, "The Police Act of the Republic of Serbia – a Critical View", *Zbornik radova Pravnog fakulteta u Novom Sadu* 1/2016, 71-85. About the criminalistic knowledge of the public prosecutor see in: Ištvan Feješ, "The Principle of Fair Trial and Criminalistics Knowledge of the Public Prosecutor", *Zbornik radova Pravnog fakulteta u Novom Sadu* 1/2017, 45-74. On historic perspective of some aspects of the prosecutor and trial judge's role see: Veljko Turanjanin, Dragana Čvorović, "Sarajevi 1914: Trial Process against Young Bosnia – Illusion of the Fair Process", *Zbornik radova Pravnog fakulteta u Novom Sadu* 1/2016, 183-199. Finally, when we talk about the police, see very interesting article: Dušan Marinković, Dušan Ristić, "Police and the Birth of Governmentality in the works of Michel Foucault", *Zbornik radova Pravnog fakulteta u Novom Sadu* 2/2017, 41-60.

¹³ On the results of the survey about the main trial see: Snežana Soković, Dragana Čvorović, Veljko Turanjanin, „The Main Hearing pursuant to the New Serbian Criminal Procedure Code: Empirical Research“, *Zbornik radova Pravnog fakulteta u Nišu* 1/2017, 145-159.

¹⁴ Attitudes of the public prosecutors are analyzed in: Snežana Soković, Dragana Čvorović, Veljko Turanjanin, „Cooperation between the Public Prosecutor and the Police in Serbia“, *Zbornik radova Pravnog fakulteta u Novom Sadu* 3/2016, 843-860.

¹⁵ S. Soković, D. Čvorović, V. Turanjanin, 850.

that will always demand more than the police. Nevertheless, it can be noted that the percentage of respondents who consider this cooperation to be poor is higher in comparison with results in prosecutors' offices, while the percentage of respondents who consider this cooperation to be very good is lower. Given the number of respondents from the last category, this difference can be considered negligible.

Table 1. How would you rate cooperation with the prosecution?

	Percentage	Total answered
Unsatisfying	22, 4%	26
Satisfying	28, 4%	33
Good	45, 7%	53
Very good	3, 4%	4
	<i>Answered the question</i>	116
	<i>Did not answer the question</i>	2

The following two questions are related to coordination meetings between members of the police forces and public prosecutors about future cooperation, since the legislator has introduced a number of changes regarding this relationship by passing the new Criminal Procedure Code. Primarily, all respondents answered the first question, with 27, 1% of respondents saying that coordination meetings had been organized, while the majority (72, 9%) took the opposite opinion. These results are significantly different from those arising from the prosecutorial position, where 67, 5% of prosecutors claimed that such coordination meetings had been held. If we pay attention to the next question, where the results indicate that in 79, 4% of cases, held meetings were about general topics of cooperation, while 20, 6% dealt with specific topics, we can give a little more credit to the attitudes of prosecutors. The results of the surveys carried out in the prosecutors' offices also show that in most of the cases the meetings were focused on topics of general cooperation, and less on concrete problems.¹⁶ However, one should bear in mind that not every member of the police who was the subject of the research had to know about such meetings.

Table 2. Before the entry into force of the CPC, did you have any coordination meetings with the prosecution on your future cooperation (changed powers) under the new CPC?

	Percentage	Total answered
Yes	27, 1%	32
No	72, 9%	86
	<i>Answered the question</i>	118
	<i>Did not answer the question</i>	0

¹⁶ S. Soković, D. Čvorović, V. Turanjanin, 851-852.

Table 3. The meetings held were related to:

	Percentage	Total answered
Generally to the subject of cooperation	79, 4%	27
On specific topics	20, 6%	7
	<i>Answered the question</i>	34
	<i>Did not answer the question</i>	84

Undoubtedly, one of the key procedural and evidentiary actions is examination of a crime scene, and the first subject who find out about the crime is police.¹⁷ Therefore, one of the key issues in this field is the moment when the police inform the public prosecutor about the reported crime. The results are roughly equal when it comes to the first two offered responses. Thus, in 47, 3% of cases, the police inform the public prosecutor before going to the crime scene, and in 48, 2% of cases while on the spot. In only 4, 4% of cases, the public prosecutors are informed after the performed examination. Compared to the results of the public prosecutors' offices, the results are slightly different, since public prosecutors believe that in 86, 1% of cases they were informed before conducting the examination, in 13% during this evidentiary action and in 5% of cases afterwards.¹⁸ In the police sample, there are 4 respondents who did not answer the question.

Table 4. At what point in time do you inform the public prosecutor that you were notified/found out about the criminal offence and that it is necessary to perform crime scene examination?

	Percentage	Total answered
Before going to the crime scene	47, 3%	54
While you are on the crime scene	48, 2%	55
After the completion of the crime scene examination	4, 4%	5
	<i>Answered the question</i>	114
	<i>Did not answer the question</i>	4

One of the extremely useful actions, and therefore the issues in this research, is the meeting between the police officers and the public prosecutor, after submitting a criminal complaint, to discuss the strategy of the investigation. The CPC stipulates that the public prosecutor is the head of pre-investigative and investigative proceedings. He is not obliged to discuss the strategy with the police, but we consider it as potentially useful. However, this is rare in practice, as can be

¹⁷ Milan Škulić, Tatjana Bugarski, *Criminal Procedure Law*, Faculty of Law, Novi Sad 2015, 297. (Serbian)

¹⁸ S. Soković, D. Čvorović, V. Turanjanin, 853.

seen from both samples. In this sample, the results show that such meeting between these two subjects of the investigative procedure is held in only 22% of cases, while the opposite situation is as high as 78% of the cases. The results from the public prosecutor's offices are slightly more positive, where we have 33, 3% versus 66, 7% in favor of not holding the meeting.¹⁹ Of course, public prosecutors are not supposed to meet with the police regarding any criminal charges for any criminal offense. Public prosecutors are sufficiently burdened with the lack of staff and with too many obligations. If we connect this with the employment ban still in force in the public sector, then our claim is even more effective. However, such a form of cooperation should be sought whenever possible and especially when it comes to more complex crimes.

Table 5. After submitting the criminal complaint to the public prosecutor, do you meet with the public prosecutor to discuss the strategy of the investigation?

	Percentage	Total answered
Yes	22, 0%	26
No	78, 0%	92
	<i>Answered the question</i>	118
	<i>Did not answer the question</i>	0

The public prosecutor leads the pre-investigation proceedings. In exercising the authority, the public prosecutor undertakes necessary actions aimed at prosecuting the perpetrators of criminal offences. The public prosecutor may refer to the police the undertaking of certain actions aimed at detecting criminal offences and locating suspects. The police are required to execute the order of the public prosecutor and to inform him regularly about actions undertaken. Due to this obligation, the prosecutor has to provide adequate instructions to the police.²⁰

In the largest percentage of cases, the instructions received by the police are of general nature, that is, the orders to take all the necessary actions. In only 27, 1% of cases, public prosecutors have decisively determined the action that the police should take. However, such data are sharply different from those we received when analyzing the results in the prosecutors' offices, where prosecutors consider that in 90% of cases their instructions refer to precisely specified actions, and in only 10% of cases the instructions are of general nature.²¹ The question is whose answers are more reliable, and it is not easy to answer this question correctly.

¹⁹ *Ibid.*, 853.

²⁰ *Ibid.*, 853.

²¹ *Ibid.*, 854.

Table 6. What kind of instructions do you usually get from the public prosecutor?

	Percentage	Total answered
General (take any necessary actions)	72, 9%	86
Concrete (indicating the exact actions that should be taken)	27, 1%	32
	<i>Answered the question</i>	118
	<i>Did not answer the question</i>	0

An interesting question in the research is the issue of different versions of the police and the public prosecutor. Namely, it is not unthinkable that a member of police has his own theory of how a criminal offense has occurred, which differs from the theory of the public prosecutor. In such a case, the public prosecutor orders an investigation in accordance with his own understanding of the development of the criminal offense. However, 30, 5% of police officers in this case continue their investigation and gather evidence in accordance with their version of the criminal event. The majority of respondents, 45, 8% do not act in this way; while 23, 7% are of the opinion that such a situation has never happened to them. Since public prosecutors are not infallible, such conduct of police is correct, but only in case when they strictly follow the statutory rules.

Table 7. In case you have your own theory of how a crime happened that differs from that of public prosecutor, do you continue with your parallel investigation?

	Percentage	Total answered
Yes	30, 5%	36
No	45, 8%	54
Such a situation never happened to me	23, 7%	28
	<i>Answered the question</i>	118
	<i>Did not answer the question</i>	0

According to CPC, there are two subjects that police officers must inform regularly about their activities – the public prosecutor and then their direct superior. All of the respondents answered the question. The results have shown that 92, 4% of respondents regularly informs their supervisor of the investigation, while only 7, 6% do not. The law does not explicitly stipulate that members of the police are obliged to inform the superior about the investigation, but given the nature of the matter, this is the part of their obligation.

Table 8. Do you regularly report to your supervisor about the progress of the investigation?

	Percentage	Total answered
Yes	92, 4%	109
No	7, 6%	9
	<i>Answered the question</i>	118
	<i>Did not answer the question</i>	0

The issue related to the previous one is informing the superior about the instructions received from the public prosecutor. We have recently seen that these instructions are predominantly general in nature, but nevertheless, in 96, 5% of cases, police officers inform the superior about the instructions. It is not entirely clear why 4 respondents did not answer this question. Notifying the superior, as in the previous case, has more declarative character, but it certainly represents a positive step that superiors are always familiar with instructions and ongoing investigations.

Table 9. Do you regularly inform your supervisor about instructions received from the public prosecutor?

	Percentage	Total answered
Yes	96, 5%	110
No	3, 5%	4
	<i>Answered the question</i>	114
	<i>Did not answer the question</i>	4

Also in connection with previous questions is the supervisor's interest in the progress of the investigation and the instructions given to police officers by the competent public prosecutor. The largest number of respondents stated that the superiors are interested in the ongoing investigation. It is especially important to emphasize that in the observed sample there was no case in which the superior was not interested in investigation and/or for instructions.

Table 10. Has your supervisor ever asked about the progress of the investigation or the instructions you receive from public prosecutor?

	Percentage	Total answered
Never	0, 0%	0
Yes, sometimes in important cases	16, 9%	20
Yes, regularly	83, 1%	98
	<i>Answered the question</i>	118
	<i>Did not answer the question</i>	0

Bearing in mind the fact that a member of the police is subordinated both to his superior and the public prosecutor, an interesting question arises in regard to orders that came from those subjects, but which are contrary in their content. Only 7, 6% of respondents answered that they encountered such a situation, while 92, 4% did not get this kind of opposite order. This is a result that significantly differs if compared to the results from the prosecution, where 41.8% of prosecutors met with the described situation²². The question certainly falls into a group of delicate ones, so potential dishonesty in giving the answer to it is understandable in a certain percentage. We believe that this percentage is higher in the police, especially if we pay attention to the next question, in which it is clarified whose order a police officer followed. The answers are partial (50%), but attention should be paid to the fact that a large number of respondents who answered this question in relation to the previous one appeared. However, due to the extremely low number of respondents who answered this question, the results were relativized and should be taken with reserve.

Table 11. Have you ever received orders from your superiors that are contrary to the instructions you received from Public Prosecutor?

	Percentage	Total answered
Yes	7, 6%	9
No	92, 4%	109
	<i>Answered the question</i>	118
	<i>Did not answer the question</i>	0

Table 12. If so, whose order did you follow?

	Percentage	Total answered
Prosecutor's	50, 0%	7
Your own superior's	50, 0%	7
	<i>Answered the question</i>	14
	<i>Did not answer the question</i>	104

The Criminal Procedure Code prescribes a number of police competences in pre-investigative and investigative proceedings. One of the most important is certainly interrogation of the suspect. In the observed sample, only 4, 5% of police officers never questioned the suspect; in a slightly higher percentage (28%), the police were entrusted with questioning of the suspect once or more times, while the police often question the suspect in as many as 67, 8% of cases. As for prosecutors, the situation was somewhat different, where 22% of prosecutors stated that they never refer questioning the suspect to the police, 40, 3% once or more times, while 37, 7% of prosecutors often entrust the police with this evidentiary action²³.

²² *Ibid.*, 855.

²³ *Ibid.*, 857.

Table 13. Have you ever questioned a suspect acting on an order of the public prosecutor?

	Percentage	Total answered
Never	4, 2%	5
Yes, once or several times	28, 0%	33
Yes, often	67, 8%	80
	<i>Answered the question</i>	118
	<i>Did not answer the question</i>	0

According to the CPC, the prosecutor can entrust the witness and expert interrogation to the police. Nevertheless, it is not an easy decision, and in most cases, the prosecutor interrogates witnesses and the expert himself.

As follows from the following tables, opinion of the police officers on the issues of interrogation of the two criminal procedural entities is not unison, and partially oppose to the public prosecutors' allegations. Primarily, 17, 9% of police officers have never questioned the witness, and 21, 4% once or several times. The largest number, 60, 7% of them, undertakes this evidentiary action very often. However, 79, 5% of public prosecutors stated that they had never entrusted questioning the suspect to the police, 11, 5% once or several times, and only 9% often²⁴. We believe that in this case, more honesty is shown by members of the police compared to public prosecutors. Examination of the expert witness, however, shows an approximately similar situation in both the police and the prosecution. The highest percentage of police officers (88, 1%) has never questioned the experts, 11% of them once or several times, while only one police officer (0, 8%) stated that this is often the case. In the public prosecutor's offices, this distinction is even harsher, since no prosecutor stated that he often entrusted expert witness examination to the police, 1, 3% did this once or several times, and 98, 7% have never assigned this evidentiary act to the police.²⁵ Such attitude of public prosecutors on the question of expert witnesses is perceived as correct and we believe that public prosecutors need to continue in the same direction.

Table 14. Have you ever questioned a witness acting on an order of the public prosecutor?

	Percentage	Total answered
Never	17, 9%	21
Yes, once or several times	21, 4%	25
Yes, often	60, 7%	71
	<i>Answered the question</i>	117
	<i>Did not answer the question</i>	1

²⁴ *Ibid.*, 857.

²⁵ *Ibid.*, 857.

Table 15. Have you ever examined an expert witness acting on an order of the public prosecutor?

	Percentage	Total answered
Never	88, 1%	104
Yes, once or several times	11 %	13
Yes, often	0, 8%	1
	<i>Answered the question</i>	118
	<i>Did not answer the question</i>	0

An investigation is initiated by an order issued by the competent public prosecutor. An order to conduct an investigation is issued before or immediately after the first evidentiary action undertaken by the public prosecutor or the police in the pre-investigation proceedings, but not later than 30 days after the public prosecutor was notified about the first evidentiary action undertaken by the police. The order to conduct an investigation must specify the following: the personal data of the suspect, if his identity is known, the description of the act on which the legal elements of a criminal offence are based, the legal qualification of the criminal offence and the circumstances from which the grounds for suspicion are derived. However, a special question arises: whether the public prosecutor is obliged to inform the police officers about the issuance of an order to conduct the investigation. Legally, he does not have such an obligation. However, for the purpose of better cooperation between these two subjects of the procedure, we believe that the public prosecutor should inform the police about this step. Research data is similar. Namely, 22% of police officers stated that public prosecutors inform them of issuance of this order, while 78% claim that public prosecutors do not do that. Also, 81, 6% of public prosecutors stated that they did not inform the police about the order for conducting the investigation, while only 18, 4% of public prosecutors²⁶ does so.

Table 16. Does the Public Prosecutor inform you about issuing an order to conduct an investigation?

	Percentage	Total answered
Yes	22, 0%	26
No	78, 0%	92
	<i>Answered the question</i>	118
	<i>Did not answer the question</i>	0

The last question in this research is expressing views of the respondents about the existing legal framework that regulates the relationship between the police

²⁶ *Ibid.*, 858.

and the public prosecutor's office. Expectedly, the largest percentage of respondents (60, 2%) believes that the existing regulation does not regulate this relationship satisfactorily, while 39, 8% have a positive attitude about it. A similar attitude is also present in public prosecutors' offices, where 65, 5% of respondents do not consider the existing legal framework satisfactory.²⁷ Of course, there is much more to be done and improved in this field.

Table 17. Does the existing legal framework adequately regulate the relationship between the public prosecutor and the police?

	Percentage	Total answered
Yes	39, 8%	47
No	60, 2%	71
	<i>Answered the question</i>	118
	<i>Did not answer the question</i>	0

CONCLUSION

The relationship between the police and the prosecutor's office and the role of the defense counsel in the reformed criminal procedure are topics that have been dealt with, more or less, for the past few years, more precisely, from the implementation of the prosecutorial investigation in the criminal legislation of the Republic of Serbia. However, there is almost no empirical research in this field. The results presented in this paper represent the final part of a larger survey conducted among police officers, public prosecutors and defense counsels, as well as monitoring of main hearings. In addition, the complete results of the relations between the police and the prosecutor's offices could not be summarized in one paper, and this paper represents a kind of upgrade of the paper published in the Collection of papers of the Faculty of Law in Novi Sad, entitled Cooperation between the Public Prosecutor and the Police in Serbia. As expected, perception of the cooperation between police and prosecutors differs, whereby members of the police strongly believe that they are doing everything in their power to make this cooperation better, but that it is still not at a satisfactory level, nor is it adequately regulated by the existing legal framework. In any case, even though the Criminal Procedure Code is far from the ideal legal text, its existing provisions and possibilities should be used in accordance with the basic objective of criminal procedural legislation.

²⁷ S. Soković, D. Čvorović, V. Turanjanin, 858.

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Однос полиције и тужилаштва: закон и пракса у Републици Србији

Сажетак: Законодавац је, сада не тако новим, Закоником о кривичном поступку предвидео више решења којима се мења положај процесних субјеката у односу на решења каква су била предвиђена с почетка овог века. Превасходно, главно обележје новог законског текста из ове области јесте драстично мењање положаја јавног тужилаца увођењем тужилачке испраге. Тиме је и положај полиције унеколико промењен, те је било неопходно сировести практично испраживање о односима ова два процесна субјекта за прве три године примене Законика о кривичном поступку. Стога, након теоријског уводног дела, главни део рада се односи на резултате испраживања сprovedеног међу припадницима полиције.

Кључне речи: полиција, тужилац, кооперација, Законик о кривичном поступку.

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