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The Relations of the Somali Prosecutor with Police Investigators in Pre-Trial Criminal Procedures—The Missing Legal Framework

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Abstract

According to the UN GUIDELINES ON THE ROLE OF PROSECUTORS (1990), prosecutors shall perform an active role in criminal proceedings and, where it is authorized by law or consistent with local practice, in the investigation of crime, supervision over the legality of these investigations. This prosecutorial involvement constitutes an increasing tendency, even in countries where the prosecutor has no formal role in investigations, using the mechanism of the police seeking advice at the investigative phase (particularly in complex cases, such as fraud, corruption or terrorism). Somali law declares the leading role of the public prosecutor in the investigation of crime—Article 8.1 (A) of the Organization of Judiciary Law and Article 12 (3, 4) of the Criminal Procedure Code. These declarations, however, are not sufficient to guarantee the leadership of the Somali public prosecutor in pre-trial criminal procedures. His/her leading role should be strengthened by further developing the Criminal Procedure Code. The objective of this article is to identify the issues which should be additionally regulated to consolidate the leading position of the prosecutor, especially in his/her relations with police investigators.

Keywords

Prosecutor, Police, Criminal Investigation, Pre-Investigation, Procedural Subordination

1. Introduction

The "*on-going effort to help strengthen the cooperation between Somali police and prosecutors*" (EUCAP, 2017) is often announced in media. Their interaction, however, is hardly reducible to the word "cooperation" or any other word.

It must always be taken into consideration that the relationship between the prosecution office and police is a complex one and does not follow a single model in all countries of the world. Two different models exist, namely: a common law one, where cooperation *per se* between the two bodies is necessary, and a civil law model, where cooperation *per se* between them is inapplicable.

2. The Common Law Model and the Civil Law Model of the Prosecutor's Role

1) In most common law countries, such as Ireland, Kenya, Pakistan, Tanzania, Thailand and UK, public prosecutors are not authorized by law to take part in criminal investigations. Police are wholly responsible for the investigation of criminal offences and the storage of evidence even if exceptionally, as in Kenya, the investigation has been initiated at the request of the prosecution service (Mwalili, 1998)[1]. Once the investigation is over, the police investigators hand over all evidence and the case file to the prosecution office. The prosecutor in charge then decides whether or not the evidence is strong enough to mount a prosecution by bringing the case before the competent court. Until the prosecutor receives the case file, police investigators work independently. This is the case with Thailand also. Its prosecution office has no role in the investigation of the case, this being left solely to the police even in large, complex cases (UNODC, 2014).

Nevertheless, cooperation between the two bodies is often developed in practice and widely encouraged by domestic and international factors. In Europe, for example, such countries, "*where the police is independent of the public prosecution should take effective measures to guarantee that there is appropriate and functional co-operation between the Public Prosecution and the police*"—Item No. 23 of Recommendation (2000) about THE ROLE OF PUBLIC PROSECUTION IN THE CRIMINAL JUSTICE SYSTEM, adopted by the Committee of Ministers of the Council of Europe on 6 October 2000.

This means, most of all, that once the prosecution office is informed by a police investigator of an investigation into an alleged criminal offence, the prosecutor, assigned to the case, should acquire the opportunity to give legal advice to the investigator in relation to his/her investigative activities, especially into grave, serious or/and complex crimes. This occurs in practice. Although the police have no such obligation to consider the opinion of prosecutors, they consult with them quite frequently. For example, UK police investigators often ask the Crown Prosecution Service of England and Wales for advice. In turn, prosecutors may request from them further investigation. Such requests are rarely rejected by police investigators, especially as the prosecution has the discretion to continue with a case or not (Waters, 2008).

[1]The Kenyan Attorney-General is empowered under Section 26 of the Constitution to require the Commissioner of Police to investigate a matter where he thinks a criminal offence may have been committed. Nevertheless, the Attorney-General is not authorized to guide the initiated investigation.

Thus, police investigators comply with the prosecutors' requests and pieces of advice, driven solely by professional interest. Also, this interaction with prosecutors occurs on an *ad hoc* basis: only in the cases when the police indicate that they need assistance. No prosecutor controls *ex officio* all the investigative actions and decisions of the police investigators. Nevertheless, the cooperation between prosecution offices and police is generally optimized "*but without departing from the principle of mutual independence of these two bodies*" (Fijnaut, & Van Daele, 2002). Besides, some provisions governing the cooperation may turn out to be of use. Indeed, not all of them are inserted in the Criminal Procedure Code (CPC). More often, they constitute some bylaws, guidelines or instructions on cooperation between the investigating police and the prosecution office, jointly issued by their superiors.

2) In most civil law countries, such as Germany, France, Italy, Poland and the Balkan Peninsular countries, the relationship between the investigating police and the prosecution office is different. First of all, the public prosecutors are explicitly authorized by law to take part in criminal investigations. Besides, if unlike the French version of this model, no investigative judge exists[2], the prosecutor is the one, who holds the position of *Dominus Litis* (Latin: Master of the Suit) in criminal investigations. Such investigations are designated as prosecutorial/prosecutor-led investigations[3]. The police act under the direction of a prosecutor who is responsible for the creation of the case file and storage of evidence.

The *Dominus Litis* position of the prosecutor necessarily requires that s/he takes active leadership in all pre-trial procedures from the beginning. In turn, the police investigators shall follow the instructions of the prosecutor in charge. S/he instructs them what to do and what not; s/he is empowered to *ex officio* control their actions and decisions, being the supervisor s/he is responsible for the progress of the investigation, including for the activities undertaken by the instructed investigators. Hence, the relations between investigating police and prosecutors are relations of subordination rather than any cooperation as prac-

[2]Iraq, for example, follows the French version of the model: with an investigative judge leading the investigation. According to Article 52 (A) of the Iraqi CPC, "*the investigative judge shall conduct the investigation into all offences in person or by means of* [*judicial*] *investigators. He may authorize any crime scene officer to carry out any particular action on his behalf.*"

[3]The absence of an investigative judge to lead the investigation does not mean that there is no judge at all in the investigation. On the contrary, there is such a judge (called "a preliminary proceedings judge", or "a judge of preliminary investigations", or "a liberty judge") but his/her duty is to only grant permissions for activities which may endanger human rights, e.g. detention of the accused, or some other essential interests, e.g. bank secrecy. Because of this duty s/he is called in Italy "*a judge without a file*". In Europe, such a judge is inevitable. S/he is irreplaceable even if the prosecutor leads the investigation and the prosecution office is part of the country's judiciary. Even such a prosecutor cannot exercise his/her judiciary functions of human rights protection (especially, when it comes to deprivation of liberty) under Article 5 § 3 of the European Convention on Human Rights, e.g. ECHR *Case of Nikolova v. Bulgaria (Application no.* 31195/96) 25 March 1999 and ECHR Moulin v. France, November 23, 2010Moulin v. France, November 23, 2010 Moulin v. France, November 23, 2010 Moulin v. France, November 23, 2010 Moulin v. France, November 23, 2010 ECHR, Moulin v. France, November 23, 2010 ECHR, Moulin v. France, November 23, 2010 Case of Moulin v. France (Application no. 37104/06) 23 November 2010.

tised between independent bodies[4]. As a result, the situation where the investigator performs procedural acts independently should be seen as an exception rather than any rule.

Under this civil law model, where "*the prosecution service has a monopoly on the criminal investigation*" (Di Federico, 2008) and the police investigators are in procedural subordination to prosecutors, the applicable Item of the quoted Recommendation (2000) about THE ROLE OF PUBLIC PROSECUTION IN THE CRIMINAL JUSTICE SYSTEM is Item No. 22. According to this Item,

"*In countries where the police are placed under the authority of the Public Prosecution or the police investigations are either conducted or supervised by the public prosecutor, that State should take effective measures to guarantee that the public prosecutor may*:

a) *give instructions as appropriate to the police with a view to an effective implementation of crime policy priorities, notably with respect to deciding which categories of cases should be dealt with first, the means used to search for evidence, the staff used, the duration of investigations, information to be given to the Public Prosecution…*"

On the one hand, the instructions of the prosecutors are mandatory. The police investigator is obliged to follow them. Understandably, these instructions shall also be precise, detailed and clear. On the other hand, the prosecutor shall possess the real capacity to direct and supervise police investigators. Otherwise, s/he is likely to mislead them and be responsible for their failures and eventually, for their unsuccessful investigations.

However, the leading role of the prosecutor under the civil law model does not mean that the investigators have no discretionary powers and responsibilities. On the contrary, beyond the decisions of competent judges and instructions of supervising prosecutors, they are in full control of the investigative activities. Although the prosecutors are legally authorized to conduct investigations personally, they rarely replace the investigators in performing the investigative actions. Most often, prosecutors only oversee and instruct investigators. In Germany, prosecutors are by law responsible for leading investigations even by themselves, and the police are only an investigatory body of the public prosecution office, whereas, in reality, it is the police who are leading investigations in most cases (Trendafilova & Roth, 2008). In Japan, prosecutors are also empowered to carry out investigations, but at the same time, the Japa-

[4]Thus, according to Section 165 (1, 2) of the Hungarian CPC, "1) *The investigation shall be conducted according to the orders of the prosecutor. The prosecutor shall instruct the investigating authority. The prosecutor shall have the right to examine the records of the investigating authorities specified in separate laws and to use the data therein. In order to perform certain investigatory actions, the prosecutor may require the help of the investigating authority, even if the investigation is conducted by the prosecutor himself.* 2) *The investigating authority shall perform the instructions of the prosecutor regarding the investigation of the case by the deadline and inform the prosecutor verbally or in writing as instructed—on ordering the investigation and the status of the case. If the investigating authority finds that a procedural action is necessary, but the decision thereon falls in the competence of the court or the prosecutor, it shall inform the prosecutor thereof immediately*".

nese CPC states that the primary responsibility of investigation lies with the police (UNODC, 2014). In Armenia, the investigator shall independently lead the course of the investigation, make necessary decisions, conduct investigatory and other procedural actions except for cases, when the CPC stipulates to receive orders from the prosecutor—Article 55.3 of the Armenian CPC. Finally, investigators may, in urgent circumstances, undertake investigative measures without any prior direction of the prosecutor and be held fully responsible for them.

3. The Situation in Somalia

3) Somalia adheres to the civil law model, but its CPC does contain sufficient rules authorizing the prosecutor to guide the investigation efficiently. In general, the investigative activities in Somalia are in the hands of police—Article 24 of the CPC.

According to the applicable Somali law, the police shall react to any incoming information of a perpetrated crime by launching an investigation into the situation. There is no prosecution filter by law to consider initial situations and sift out those of them which shall not constitute any grounds for triggering investigations. A prosecution filter exists only for the situations when the investigation against a specific accused is closed and reported to the prosecutor—Article 70 (2) of the Somali CPC. Once the file of the closed investigation arrives at the prosecutor's office, the prosecutor in charge must decide whether or not to prosecute the person by instituting trial proceedings against him/her. The prosecution of the person requires the existence of "a *prima facie* case that an offence has been committed and that it was committed by" him/her.

This is the moment when the prosecutor is obliged by law to step in. Before this moment, the prosecutor's interference is a matter of discretion. In practice, however, the prosecutor takes the decision only when the case file is sent to him/her by investigating police. Then s/he shall decide, in compliance with Article 70 of the CPC, whether: 1) to indict/frame a charge against the person and present the case before the competent court, 2) to apply to the court for the termination of the proceedings or 3) to order an additional investigation to the police.

Obviously, under the current CPC, the prosecutor has limited influence on the pre-trial criminal procedures. It is true that Article 8.1 (A) of the Organization of Judiciary Law and Article 12 (3) of the CPC stipulate that "*investigations of crimes shall be carried out by police under the direction of prosecutors*". However, this legal declaration stands alone. Despite its existence in two Somali laws, the specific details of the prosecutorial investigation under the civil law model, designed to support the leading position of the prosecutor, are missing. Probably, the only exception is the authorization of the prosecutor, by Article 8.1 (A) of the Organization of Judiciary Law and Article 12 (4) of the CPC, to take over investigations of crimes where necessary. Prosecutors, though, rarely make use of this opportunity. As a whole, police are factually independent of the prosecution office in conducting investigative activities. This situation is inconsistent

with the increasing tendency for prosecutors to become involved at an earlier stage of criminal proceedings (UNODC, 2014).

In view of thereof, the Somali authorities might be advised to strengthen the position of prosecutors in criminal investigations by further developing the legal framework for the prosecutorial investigation in line with the civil law model. To this end, the following essential peculiarities and mechanisms of influence, inherent in this type of investigation, should be taken into account and eventually, implemented in the CPC.

4) First of all, the CPC-s of civil law countries, which adhere to the prosecutorial investigation, distinguish between the official/judicial criminal investigation (as the first phase of the criminal proceedings), and the prejudicial inquiries designed to establish whether or not the institution of any criminal proceedings is justified. The CPC-s differentiate between the two procedures by explicitly outlining the prejudicial inquiries. In Turkey, for example, "*as soon as the public prosecutor is informed of a fact that created an impression that a crime has been committed, he shall immediately verify the factual truth… The public prosecutor may conduct any exploration either directly or through the judicial security forces under his command*" to make sure that an official/judicial investigation is worth initiating—Articles 160 (1) and 161 (1) of the Turkish CPC.

If the Somali legislative authorities want to follow this civil law model, they should also delineate the prejudicial inquiries starting with their purpose. Such inquiries serve an initial filter for the situations when no official/judicial investigation shall be triggered at all. The prosecutor is in charge of setting this filter in motion. S/he does not just receive a notification from the police that they obtained information about an alleged crime as under Article 24.1 (a) of the Somali CPC. The prosecutor is the decision-maker; he shall decide whether or not to institute criminal proceedings by initiating an official/judicial investigation based on the data from the prejudicial inquiry.

a) It follows that the prejudicial inquiries constitute a formal check as to whether the prerequisites for investigations exist. Necessarily, the foreign CPC-s define these prerequisites starting with the information which would justify an official/judicial investigation. Thus, the CPC-s of many civil law countries contain legal definitions of the information, necessary and sufficient for the launch of the official investigation. The definitions support the principle of legality, which, undoubtedly, governs criminal justice in civil law countries, at least. Thus, under Article 206 (1) of the Bosnian CPC, "*the Prosecutor shall order the conduct of an investigation if grounds for suspicion that a criminal offence has been committed exist*". However, the subjective suspicion (subjective assumption) alone, including a grounded one, is not sufficient by itself for initiation of the official investigation. This suspicion shall always derive from specific data. Moreover, the data must be sufficient. Such data is required, for example, by Article 211 (1) of the Bulgarian CPC: "*Sufficient data for initiation of investigation shall be considered to be at hand, where a reasonable assumption can be made that a crime has been committed*". Hence, it is the

sufficient data of a likely crime which substantiates grounded suspicion in that a criminal offence has been committed.

In many cases, where the commission of a crime seems unlikely, some additional information is needed for the justification of the investigative (evidentiary) actions. is collected under the guidance In civil law countries, where the prosecutor manages all pre-trial work in criminal matters, including pre-investigation, s/he guides the collection of the necessary information. If the tasked authorities do not manage to obtain sufficient information, indicating some likelihood of a committed crime, no official investigation is allowed. In this situation, the prosecutor in charge shall issue a non-investigation order.

This order, whereby the prosecutor refuses to initiate an official investigation, is sent to and may be appealed against by the person who reported the alleged crime as well as by the person who states to be the injured party if different. In case they provide new relevant data, completing the threshold information, indicating the likelihood of a committed crime, or in case such data is obtained through some additional pre-investigation carried out by the prosecutor in person or by the police, then the non-investigation order shall be overturned, and initiation of an investigation ordered.

The existence of sufficient data in question justifies the launch of the official investigation. Its initiation, in turn, opens the way to collecting admissible (valid) evidence. Before this moment, it is highly questionable what might be collected. In foreign countries, the preceding activities for the data collection are under different names, such as "procedure prior to the initiation of criminal prosecution" (Sections 158-159b of the Czech CPC), or "preparatory proceedings" (Article 326 of the Polish CPC), or "pre-investigation" (in the former Yugoslavian countries). The latter term, "pre-investigation" will be used further in this text.

The actual problem, though, is that such evidence *per se*, the one produced in the course of criminal proceedings, is collected by specially appointed judicial actors (prosecutors, judicial investigators, judges). Other government officials are not authorized: what they would collect, shall never be admissible in court. Hence, should the evidence, produced before the prosecutor's order/act for an official investigation, be as well admissible in court, the first condition to this end must be that this evidence shall also be collected by the specially appointed judicial actors. As a result, they might be overloaded with work in many situations when the information might be easily obtained by any ordinary police or other law enforcement public servant, especially the one who was present at the event and has already some knowledge about it. Besides, in situations, where the likelihood of a commission of a crime is not sufficiently high, it does not make much sense to task judicial actors with the job. They should be tasked with the job only when the likelihood of a commission of a crime is sufficiently high, but this can be done by mandatory initiation of an official investigation in such situations.

This is why in foreign countries the admissible evidence is producible before the

official investigation either on an exceptional basis or in compliance with some strict rules. Thus, in Azerbaijan, only one investigative (evidentiary) action is allowed during the pre-investigation. This action is the crime scene inspection—Article 207.4.II of the Azeri CPC. Besides, an official investigation shall be immediately ordered under Article 209.2 of the Azeri CPC and the conduct of any investigative (evidentiary) action be allowed in the following circumstances:

- where a corpse is found with evidence to indicate murder;
- on the discovery of an unidentified corpse, parts of a human body or their place of burial;
- where there are signs of mass death, disease or poisoning;
- where a serious explosion or fire has occurred in a public place, on private premises or in a building used by state authorities or organisations;
- on the discovery of firearms, ammunition, explosives, radioactive materials, or poisons;
- where there are signs that a person has been kidnapped or taken hostage; etc, etc.

Serbia is the example of the other option regarding the evidence producible before the prosecutor's order/act for an official investigation. In that country, all investigative (evidentiary) actions are allowed during the pre-investigation, regardless of the circumstances. However, the information from these actions is admissible into evidence if they are: 1) carried out by police, 2) in full compliance with the CPC and 3) the result is accepted as valid evidence by the prosecutor in charge who shall issue an order to this end—Article 287.2 of the Serbian CPC.

The criminal justice system of Somalia may benefit if the CPC provides a more detailed legal framework for the activities before the prosecutor's order/act for an official investigation. Special attention deserves the rules on evidence producible before the investigation, and the rules on the information required for the initiation of the investigation.

A formal initiation of a criminal investigation is not required under the domestic law in many countries. In other countries, an investigation requires an official "opening". According to the prevailing opinion, it is preferable to provide for such an official opening under the CPC (O'Connor & Rausch, 2008). The official opening of the investigation would clearly distinguish between pre-investigative activities and investigation and make it possible to determine easier the admissibility of collected evidence taking into account the time when it was gathered. Also, the differentiation between the pre-investigation and the official investigation is essential for international legal assistance. Usually, a judicial request for evidence admissible in court (international letter rogatory) is granted only if it was made for an official investigation initiated in the requesting country. Otherwise, solely non-judicial (police/law enforcement) requests for information might be granted (Girginov, 2017).

b) Additionally, to reduce the possibility of unjustified launches of official in-

vestigations, the CPC may explicitly enumerate the occasions on which the investigations shall be initiated. Usually, such enumeration aims to eliminate hearsay/gossip and anonymous complaints as sole causes to trigger any fact-finding activity on behalf of the government bodies. Thus, according to Article 208 of the Bulgarian CPC and Article 322 of the Uzbek CPC, the legal occasions (reasons) to initiate a criminal case are as follows:

- report of a criminal offence,
- information from the media about a perpetrated criminal offence,
- confession of the alleged offender notice sent to the prosecutor or the judicial investigator of the perpetration of a criminal offence or
- direct discovery by them of signs of a perpetrated crime.

It is to be concluded that the prerequisites for the initiation of official/judicial investigations in civil law countries are two: the main and mandatory one, which is the existence of sufficient data for the initiation, and an auxiliary and optional one, which is the existence of a legal occasion (reason) for the initiation of the respective investigation.

When the investigation is finalized, indeed, the CPC-s of all civil law countries provide for another filter like the one under Article 70 of the Somali CPC. This filter sifts out the cases which are not to go under trial. Thus, pursuant to Article 238 of the Kyrgyz CPC, for example, the prosecutor shall take one of the following decisions: 1) bringing the alleged offender to trial as indictee by referring the case to court; 2) dismiss the case or 3) reverse the case to the investigator with written instructions additional investigation.

5) When the official criminal investigation is launched, the procedural subordination of the investigator to the prosecutor in charge may acquire different intensity and forms.

a) Usually, the subordination is not absolute. There might be investigator's decisions on some issues which are beyond the prosecutor's control. They stay within the discretion of the investigator. Thus, according to Article 178 (1) in conjunction with Articles 219 and 220 of the repealed CPC of Bulgaria, the prosecutor was prohibited from instructing the investigator as to what proposal about the future of the criminal proceedings s/he should make when closing the investigation: 1) for prosecution of the accused in court, 2) for suspension of the proceedings or 3) for their termination. No such legal prohibition exists in the CPC of Bulgaria—in force since 2006. It means that, now, the prosecutor is entirely in charge of each and every action and decision taken during the investigation.

The situation in the UAE is similar: the prosecutor there is authorized to instruct the judicial police investigators under his supervision unlimitedly. Thus, under Articles 30 - 31 of the country's CPC, "*The judicial police shall inquire about crimes, search for their perpetrators and collect the necessary information and evidence for investigation and indictment. Members of the judicial police are answerable to the public prosecutor and are under his supervision as concerns the performance of their duties*".

b) Also, in most civil law countries the investigator has the right to appeal against the instructions of the prosecutor to the superior prosecutor: either against all (with the exceptions prescribed by law if any) or against some of them only, exhaustively enumerated. In turn, the superior prosecutor has the correlative obligation to consider the appeal in question.

In Georgia and Hungary, for example, the investigating authority may appeal against all instructions of the prosecutor. Moreover, the appealing investigator is allowed to turn to the superior prosecutor directly. As per Article 37 (3) of the Georgian CPC, "*If an investigator does not agree with the prosecutor's instructions, s/he may submit the case and his/her opinions in writing to a superior prosecutor. A superior prosecutor may annul the instructions of a subordinate prosecutor or task another investigator with the investigation. The decision of a superior prosecutor on the issue shall be final.*"

In Hungary, the appeal is forwarded to the superior prosecutor through the higher level investigative body rather than directly by the investigator to the superior prosecutor. Thus, according to Section 165 (7, 8) of the Hungarian CPC,

"(7) *The head of the investigating authority may file a motion against the order of the prosecutor to the Superior Prosecutor through its higher level body. The higher level investigative body shall forward the motion… to the Superior Prosecutor. The motion has no delaying effect.*

(8) *The Superior Prosecutor examines the documents of the case upon the motion and shall inform the submitter about the result… within* 15 *days reckoned from the arrival of the motion in writing*".

At the same time, in Georgia, for example, the investigator is not authorized to appeal against all instructions of the prosecutor. The investigator may appeal only in a limited number of cases. Pursuant to Article 85.5 of the Georgian CPC, "*If the investigator disagrees with the instructions or decisions of the prosecutor in charge of the procedural aspects of the investigation on the prosecution of the accused, the choice, changes in or termination of restrictive measures, the classification of the offence, the scale of the charge, termination of the case or committal for trial, s/he shall have the right to send his/her reasoned objection to the superior prosecutor. If the latter agrees with his/her arguments, s/he shall rescind the written instructions of the initial prosecutor, if s/he disagrees with the arguments, s/he shall transfer the investigation to another investigator. An objection to the prosecutor's written instructions shall not stay the execution of those instructions."*

Similarly, Article 114 (2) of the Ukrainian CPC stipulates that "*Whenever investigator disagrees with prosecutor's instructions with regard to prosecuting an individual as an accused, determining the nature of crime and scope of charges, referring the case to court or dismissing the case, investigator shall have the power to submit the case to a superior prosecutor with his/her written comments. In such a case, the superior prosecutor either revokes instructions of the lower prosecutor or assigns investigation in this case to another investigator.*"

If the investigator is not authorized to appeal against the instructions or decisions of the prosecutor (on all or on some issues) this does not mean that s/he shall never inform the superior prosecutor of his/her disagreement with the lower prosecutor who guides (leads and supervises) the investigation. Actually, it is the other way around: the disagreeing investigator may seize the superior prosecutor with the issue by forwarding a "signal" to him/her; however, this prosecutor is not legally obliged to react. It is within his/her discretion to respond to the signal given his/her duty to *ex officio* control everything performed by the investigator, including the activity which has been appealed against. Therefore, the appealing investigator can solely rely on the prosecutor's duty to keep track, on his/her own, of what the investigator has done.

In the end, it is noteworthy that if the superior prosecutor confirms the disputed instruction or decision of the lower prosecutor in charge of the case, because s/he does not agree with the arguments of the appealing investigator, then, usually, the investigation reassigned to another investigator. In this way, the investigator is not made to further proceed with the investigation against his/her inner conviction.

6) Under the civil law model, the prosecutor does not address only the issues for which s/he was requested for consultations by the investigator. The prosecutor shall *ex officio* guide all investigative activities of the investigator, regardless of his/her position in the structure of the government (s/he might be an employee of the prosecution office or the ministry of interior, or the ministry of defence, or the ministry of finance, or an employee of a separate investigation service).

This guiding job of total supervision and control is not an easy one; it cannot be done on a case-by-case basis. The guidance requires a comprehensive set of rules which to regulate the relationship of the prosecutors with the investigative authorities given their procedural subordination to him/her. Usually, such rules constitute the so-called guidelines on pre-trial criminal activities. Along with the interaction between prosecutors and investigators, the rules in question govern all other matters about pre-investigations and official investigations, such as disqualifications, evidentiary actions and interaction details.

The object of the guidelines on pre-trial criminal activities is the domestic pre-trial procedures, namely: the pre-investigations and the official investigations, mainly. However, the interaction between prosecutors and investigators to obtain necessary international judicial cooperation from other countries is of growing importance and complexity. In response, when creating the legal framework for the relationship of the prosecutors with the investigative authorities, the initial problem to be solved is whether the rules on their interaction for international judicial cooperation should also be included in the general guidelines on pre-trial criminal activities or they must form separate guidelines. Foreign countries tend to produce separate guidelines given the growing number and difficulty of the international judicial cooperation modalities. Moreover, a

lot of countries, especially in Europe, have even separate laws on international judicial cooperation in criminal matters, e.g. Bosnia and Herzegovina, Croatia, Germany, Hungary, Montenegro, North Macedonia, Portugal, Romania, Serbia, Turkey, etc.

A serious issue, which must be properly regulated through both statute law and guidelines, is the coordination between international police cooperation and international judicial cooperation in criminal matters. If this cooperation is inefficient, failures in obtaining fugitives, valid evidence or/and other procedural results from abroad would often occur.

4. Conclusion

The system, under which police investigators are wholly responsible for pre-trial criminal procedures, seems outdated. Even in common law countries, the role of public prosecutors in such procedures grows steadily. Thus, a prosecution-led investigation unit will be set up in South Africa to tackle state corruption. Given the intended accession of Somalia to the UN Convention against Corruption, this country is expected to strengthen the system of the prosecutorial investigation by securing the leading role of the Somali prosecutors in pre-trial criminal procedures under the CPC.

The role of public prosecutors in pre-trial criminal procedures (pre-investigations, official investigations), whatever it is, would not be necessarily affected by their position in the structure of the government. In particular, their leading role shall not be dependent on the status and place of their Attorney General's Office (AGO) within the Federal Government of Somalia. These are separate issues, which do not interact significantly.

Historically, Somalia's AGO was established under the Organization of the Judiciary Law, Leg Decree 12 June 1962, No. 3, and subsumed within the structure of the judiciary. Although the Law is currently in force, there is some indication that the model for the AGO it has established may change. The Federal Republic of Somalia Provisional Constitution, which was adopted in August 2012, for example, creates an independent AGO that would incorporate the prosecutorial functions. The Provisional Constitution is still under parliamentary review, but it is possible that the AGO will be spun off as an independent organ of government. Either way, this shall not influence the procedural role of the prosecutors as leaders of pre-trial criminal procedures.

Conflicts of Interest

The author declares no conflicts of interest regarding the publication of this paper.

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