

————— **A Handbook for Prosecutors** —————



# **PROSECUTORIAL LEADERSHIP**

**OSCE** Organization for Security and  
Co-operation in Europe  
**Presence in Albania**

**Tirana, 2020**



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**Prosecutorial Leadership**

**A HANDBOOK  
FOR  
PROSECUTORS**

Tirana, 2020

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# LIST OF ACRONYMS

<b>CC</b>	Criminal Code of Albania
<b>CPC</b>	Criminal Procedure Code of Albania
<b>EU</b>	European Union
<b>EUROJUST</b>	European Union Agency for Criminal Justice Cooperation
<b>EUROPOL</b>	European Union Agency for Law Enforcement Cooperation
<b>FIU</b>	Financial Intelligence Unit or General Directorate for the Prevention of Money Laundering
<b>GP</b>	General Prosecutor
<b>GPO</b>	General Prosecution Office
<b>INTERPOL</b>	International Criminal Police Organization
<b>IPA</b>	Instrument for Pre-Accession Assistance
<b>IT</b>	Information Technology
<b>JIT</b>	Joint Investigation Team(s)
<b>JP</b>	Judicial Police
<b>JPO</b>	Judicial Police Officer(s)
<b>MLA</b>	Mutual Legal Assistance
<b>OLAF</b>	European Anti-Fraud Office
<b>OSCE</b>	Organization for Security and Co-operation in Europe
<b>OSCE PiA</b>	Presence in Albania
<b>PPO</b>	Public Prosecution Office
<b>SIS</b>	State Intelligence Service
<b>SPAK</b>	Special Prosecution against Corruption and Organized Crime
<b>SPO</b>	Special Prosecution Office
<b>UN</b>	United Nations
<b>UNODC</b>	United Nations Office on Drugs and Crime

# ABBREVIATIONS

Law No. 9157/2003	Law No. 9157/2003 on Interception of Electronic Communications, as amended
Law No. 10192/2009	Law No. 10192/2009 on Preventing and Striking at Organized Crime, Trafficking Corruption and Other Crimes Through Preventive Measures Against Assets
Law No. 112/2015	Law No. 112/2015 on Public Financial Inspection
Law No. 95/2016	Law No. 95/2016 on the Organization and Functioning of Institutions for Combating Corruption and Organized Crime
Law No. 96/2016	Law No. 96/2016 on the Status of Judges and Prosecutors in the Republic of Albania
Law No. 97/2016	Law No. 97/2016 on the Organization and Functioning of the Prosecution office in the Republic of Albania
Law No. 25/2019	Law No. 25/2019 on the Organization and Functioning of the Judicial Police

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# INTRODUCTION

## 1. Background

In 2016, the Albanian Assembly launched a comprehensive justice reform by adopting constitutional amendments along with 27 ‘urgent’ laws, reforming *inter alia* the organization and functioning of the prosecution office in the Republic of Albania, increasing the autonomy of the prosecutors and formalizing their leading role in the investigative stage of the criminal proceedings.<sup>1</sup> Indeed, according to the amended Code of Criminal Procedure of Albania, the prosecutor and the judicial police conduct, within their respective competences, the necessary investigations in relation to criminal prosecution. The prosecutor leads the investigations and shall have judicial police at his/her disposal.<sup>2</sup>

In 2019, the Rule of Law and Human Rights Department of the OSCE PiA conducted a gap analysis on prosecution and judicial police cooperation in investigations in Albania. A number of areas in need of managerial, organizational, regulatory and legislative intervention were identified, the prosecutorial leadership in the investigative stage of the criminal proceedings standing up as one of the most pressing issues.<sup>3</sup>

The present Handbook was prepared in the framework of the 2020 PiA project on “Support to the advancement of the rule of law in Albania”.

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1 The so called “justice reforms package” includes *inter alia* Constitutional amendments, amendments to the CC and the CPC, the Law No. 95/2016, the Law No. 96/2016, the Law No. 97/2016, and the Law No. 25/2019.

2 Article 277 of CPC.

3 *Enhancing Cooperation and Coordination between Prosecutors and Judicial Police in Albania*, OSCE, Tirana 2019 <https://www.osce.org/files/f/documents/3/f/442660.pdf> (hereinafter, “2019 OSCE PiA Report”).

The Handbook does not intend to provide interpretation of the legal provisions. Also, it does not serve as manual how to conduct investigations. Rather, it focuses on practical solutions pertaining to the leading role of the prosecutors in the investigative stage of the criminal proceedings, by addressing the main challenges that practitioners face. The main goal of the Handbook is to encourage proactive behavior of the prosecutors and to provide them with recommendations to better exercise their leadership role. Thus, the Handbook will focus on organizational aspects that can help prosecutors make better use of the available resources and on practical aspects that prosecutors should have in mind while conducting the investigations.

## 2. Methodology

The process of developing this Handbook commenced with a review and assessment of the relevant legislative framework and supporting materials.

The legislative framework currently in force that regulates and affects the work of the prosecution offices with respect to the organizational as well as the procedural aspects of their work and the cooperation with the judicial police was carefully reviewed. That includes any primary and secondary legislation as well as other available regulatory documents. The sources for this are unofficial translations into English language of acts provided by the General Prosecution Office (GPO) and other official sources.<sup>4</sup>

In addition, the 2019 report on Enhancing Cooperation and Coordination between Prosecution and Judicial Police in Albania<sup>5</sup>, its statistical report and the transcripts of previous interviews with prosecutors and judicial police officers held in the course of the gap analysis by PiA staff throughout a number of prosecution offices and police directorates in the country, were also made available for the drafting of this Handbook. Supporting publicly available materials were consulted as well.<sup>6</sup>

The preliminary findings and working hypotheses resulting from the above mentioned desk study were used to develop semi-structured questions for anonymous interviews with a small group of prosecutors from the prosecution offices of Fier, Vlora, Elbasan, the SPAK and the GPO for

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4 Besides the laws mentioned *supra*, note 1, the following normative acts were reviewed: Law No. 9157/2003; Law No. 10192/2009; Law No. 112/2015; Law No. 9918/2008; General Instruction of the GPO on Prosecution Leadership within Prosecution Offices No.12/2020.

5 Quoted, *supra*, note 3.

6 EU Progress report, UNDOC Handbooks, Venice Commission recommendations etc. The full list of used bibliography is given at the end of the Handbook.

the purpose of developing a situational analysis prior to the drafting. The interviews aimed to gain an insight into the practical aspects of the work of the prosecutors and the biggest challenges in exercising their leadership role in investigations. The questions were mostly open ended to enable the interviewer to follow-up according to the received responses.

The Handbook is structured as follows:

**Part 1** examines the leadership in the public prosecution office, highlighting (i) the need for and the ways of improving the cooperation with the JP, (ii) the optimization of resources and (iii) the improvement of the public perception on the work of the PPO.

**Part 2** reviews the leadership of the public prosecutors, focusing on (i) the workload management and (ii) the case management.

**Part 3** consists of eight Annexes providing practical examples on concrete topics, Each annex contains one or more files, depending on the topic it covers. Reference to the Annexes is made in relevant chapter of the Handbook.

### **3. General remarks**

With the increasing developments of disruptive technologies, globalization and access to information, fighting crime becomes more and more difficult, since criminals make use of the new developments and possibilities that exist.<sup>7</sup> Accordingly, criminal investigations need to follow the new developments and tackle the new challenges. The prosecutors as leaders of the investigation, should more than ever, take the leading role that the law entrusts them with and adopt new, innovative approaches in conducting investigations, by using the legal requirements and possibilities in their favor, acting proactively and as an inspiration to all participants in the investigation. A comprehensive and contemporary approach in organizing their work, in managing the resources and in designing investigative strategies will bring an added value to every investigation.

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<sup>7</sup> For more information see:  
<https://www.europol.europa.eu/newsroom/news/do-criminals-dream-of-electric-sheep-how-technology-shapes-future-of-crime-and-law-enforcement>

# PART I

## LEADERSHIP IN THE PUBLIC PROSECUTION OFFICE AND THE SPECIAL PROSECUTION OFFICE

The great amount of workload and the limited amount of resources is what characterizes the situation in all the prosecution offices across Albania.<sup>8</sup> Thus, increasing the efficiency and effectiveness of the public prosecution office is essential for ensuring a robust prosecution process and supporting the work of the prosecutors. Having in mind the practical problems that prosecutors currently face, this section will deal with the managerial aspects of (i) improving the cooperation with the police, (ii) optimizing the use of resources, (iii) improving the public perception of the work of the PPO/SPO and (iv) increasing their proactivity.

Procedural aspects of some of the mentioned topics will be dealt with in part II of this Handbook.

### **I. Improving cooperation with the police**

The legislation in Albania emphasizes the leadership role of the public prosecutors in the investigations, stating that the prosecutor leads the investigations and shall have judicial police at his/her disposal.<sup>9</sup> Thus, improving the cooperation with the police is essential for providing more successful outcome of the prosecutorial work. While this relationship can be observed on different levels, in this chapter only organizational matters concerning the cooperation with the police will be elaborated, by tackling the main challenges that practitioners face.

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<sup>8</sup> For a detailed overview of the challenges encountered by the Albanian prosecution offices, see 2019 OSCE PiA Report, quoted, *supra*, note 3.

<sup>9</sup> Article 277, paragraph 2 of the CPC.

## 1. Double subordination and chain of command<sup>10</sup>

The double subordination of the JPO of services is an issue that creates delays in the proceedings, diminishes the trust between the public prosecutor and the judicial police and enables leaking of information without possibility of determining the source of the leaked information. In addition, the transfers of the JPO and their movement without prosecutor's authorization causes instability in the case management.<sup>11</sup> Regulating these important issues will not only contribute to solve current problems, but will also entail visionary leadership and proactive stand enabling higher independence of investigations.

### — Practical Recommendations —

The managerial, organizational and operational problems caused by the double subordination can be overcome in the practice by using the legal provisions envisioned in the legal framework. Regulating the relationship between the JP and the prosecutors with general instructions issued by the General Prosecutor appears to be an effective way to deal with most of the thorny questions concerning this relationship.<sup>12</sup>

Accordingly, a general instruction could regulate the chain of command and the subordination of the JPO in the course of investigations. The existing legal framework clearly states that during investigations the judicial police officers report to the prosecutor.<sup>13</sup> Having in mind the JPO's obligation to safeguard confidentiality and investigative secret and the prohibition against publishing documents and leaking of information,<sup>14</sup> the subordination of the judicial police officers to the prosecutor only does not give grounds to doubts.

In order to provide clear rules regarding the chain of command and subordination of the JPO in the course of investigations, the general instruction should envision protocols for communication between the

10 Relevant legal framework: Article 3, paragraph 1, Article 38, paragraph 2-gj and 2-g, Article 42, paragraph 1-a, 1-b, 1-e and 1-gj, Article 46, paragraph 1, 2, 3-a, 4 of the Law No. 97/2016; Article 3 paragraph 1-dh, Article 7, paragraph 1, Article 8, Article 21 paragraph 1 and 3, Article 22 paragraph 3 and 4, Article 33 paragraph 4, Article 103, Article 104 and Article 279 paragraph 1 of the Law No. 25/2019; Article 3 of the CPC.

11 2019 OSCE PiA Report, quoted, *supra*, note 3, p. 20

12 As per Article 7, paragraph 6 of the Law No. 25/2019, the general instructions to the judicial police issued by the General Prosecutor are of mandatory nature.

13 Article 7 of the Law No. 25/2019.

14 Article 8 of the Law No. 25/2019; Article 279 of the CPC.

## PROSECUTORIAL LEADERSHIP

prosecutors and the JP, focusing on the modalities of communication (for example, who needs to know, what they need to know, why they need to know it, by when they need to know and how will the information be delivered) and the main documents to be exchanged.

Of particular concern in the existing legal framework is the lack of rules on the relationship between the prosecutor as a supervisor of the JPO and the Police Chiefs as their superior. In this regard, the general instruction could establish (i) procedures for reporting the JPO's involvement and the effective time devoted to the investigations and (ii) procedures for evaluation of the results and the quality of the work of the JPO in investigations.<sup>15</sup>

Indeed, the Police Chiefs of the JPO have an interest in tracking their employees work commitment in criminal investigations, and the general instruction should therefore enable them to get all the necessary data regarding the JPO engagement. Thus, the general instruction should contain clear rules how to overcome the overlapping of tasks of the JPO during investigations and rules on assigning new tasks of JPO that are already involved in investigations. The main purpose of these rules would be to ensure that the JPO Police Chief is aware of the tasks given to the JPO by the prosecutor and the time devoted to investigations, without being informed on the details and substance of the case in which the JPO is working on. In order to get insight of the police performance for evaluation and reporting purposes, a meeting at a senior level between representatives from the police and the GPO is advised. Reporting procedures on the JPO involvement and performance in the investigation should be standardized for consistency.

The common practice of transfer and command of the JPO is another issue of concern due to its potential negative impact on investigation the officers were originally assigned to.<sup>16</sup>

The double subordination the police officers of services requires them to attend to investigative tasks assigned by the prosecutors and to administrative and law enforcement tasks assigned by the chiefs of the respective police directorates. Thus, the general instruction should contain clear rules how to overcome the overlapping of tasks of the JPO during investigations and rules on assigning new tasks of JPO that are already involved in investigations.

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<sup>15</sup> Adoption of such guidelines will enable better implementation of paragraph 2 of Article 29 of the Law No. 25/2019.

<sup>16</sup> For a discussion of the issues surrounding the transfer and command of JPO in Albania see 2019 OSCE PiA Report, quoted *supra*, note 3, page 20.

A comparative analysis of other legal systems shows that JPO assigned to a certain task by the public prosecutor cannot be moved or transferred until that task is officially completed and the prosecutor has provided consent.<sup>17</sup>

In the presence of organizational or investigative needs in complex cases<sup>18</sup>, the Albanian legal framework allows the prosecutor of the case to ask the General Prosecutor to address to the Judicial Police Commission a reasoned request that a judicial police officer is commanded to another investigation. If the transfer impacts on the progress of preliminary investigations, the prosecutor of the case from which the police officer is removed can request for the transfer to be postponed to a suitable time.<sup>19</sup> In the described situation, the main problem pertains to striking a fair balance between the investigative needs of two cases and to allowing the prosecutor of the case from which the police officer is removed to be timely informed about the transfer.

An example of General Instruction for the relationship between the JPO and the prosecutor during investigations, with legal grounds and reasoning for its issuance, is given in Annex I of this Handbook.

## 2. Joint activities<sup>20</sup>

The specific and different expertise of the JPO of services and the JPO of sections as well as the added value of involving both agencies in the criminal investigation is widely recognized by the Albanian prosecutors<sup>21</sup>. Particularly, the use of joint investigation teams embracing various types of expertise is advisable for the investigation of complex cases, including corruption-related offences.<sup>22</sup> Even though to a certain extent this is a question of case management, there are some managerial aspects that can contribute to development and growth of a team-work culture, especially regarding the activities that require joint efforts and coordination between

17 See for example the Criminal Procedural Law of the Republic of North Macedonia, Official Gazette of North Macedonia No.150/2010, Article 50

18 Article 21 of the Law No. 25/2019.

19 Article 22 of the Law No. 25/2019.

20 Relevant legal framework: Article 5, 11 and 15 of the Law No. 95/2016; Article 42 paragraph 1- ç of the Law No. 97/2016; Article 12, 13, 14, and 15 of the Law No. 25/2019; Article 202, 208, 221 and 223 of the CPC.

21 Interviews with the prosecutors conducted for the purpose of this Handbook and prior interviews conducted for the preparation of the 2019 OSCE PiA Report.

22 2019 OSCE PiA Report, quoted, *supra*, note 3, page 42.

the prosecution office and the police.<sup>23</sup> Addressing these organizational issues at management level will contribute to the better use of resources not only within the prosecution office, but within the police as well and will enable sharing of common resources, creating closer relationship and enhancing trust.

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### *Practical Recommendations*

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Joint teams serve a number of purposes, and particularly they (i) enhance the prosecution offices ability to successfully handle complex and highly sensitive cases, (ii) foster a culture of team work, (iii) enable prompt and effective reaction in certain situations by purposefully utilizing the diversified skills of the JPO of sections and the services, (iv) enable the exchange of experiences and knowledge as well as professional growth of the members of the team<sup>24</sup>, (v) allow the development in a joint fashion of the best strategies for undertaking investigative activities.

The teams should include JPO of services and JPO of sections and should be supervised and directed by the prosecutor that leads the case. The JPO of sections could be chosen by the Head of the prosecution office and the JPO of services by the chief of their respective police unit, depending on the nature of the activities that need to be performed. In the latter case, the competent prosecutor could also give proposals on the JPO that should be included in the team.

Joint teams can be formed in advance, as a sort of organizational structure of the prosecution office that will become operational only when the need arises, or can be formed on case by case bases. In the former case, the Head of the prosecution office, upon consultation with the Chief of the Police, could create a list of JPO to be part of the joint teams and inform the prosecutors accordingly. The pre-existence of such list will facilitate the work of the judiciary, particularly in those cases – like for example the request for searches or sequestration addressed to the Court – where the name of the JPO in charge of executing the court order can be proposed by the prosecutor and included in the order.

If considered necessary, the Head of the prosecution office could issue a general instruction on the creation of joint teams, providing rules on

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<sup>23</sup> Such situations include for example the execution of search warrants, the sequestration of material evidence and items related to the criminal offence, interceptions, etc.

<sup>24</sup> For instance, JPO of sections would improve their field experience while the JPO of services their legal knowledge.

how the teams will be formed and how a prosecutor can obtain the support of the team.

When forming a team, several aspects need to be taken into consideration. The first one is the type of investigative activities that the team will be doing. Indeed, complexity and severity of the investigative actions might require specific expertise and /or the presence of more senior JPO with an extended field experience.

The second aspect to be considered is the opportunity or even necessity to set up a clear division of roles among the team members, particularly when it comes with key positions. Ideally, there should be one team leader, one JPO in charge for communication among the team members and the prosecutor, one JPO of sections in charge for any legal questions that might arise, and one or more JPO on call, able to step in, in case of need.

Thirdly, protocols for conducting investigative activities should be adopted by the team members before conducting the planned investigative activity. The prosecutor should always clear the protocol and the templates of documents and minutes that the JPO plan to use<sup>25</sup>, since the legal validity of some actions might depend on the accuracy of those materials and their consistency with the current legal framework.

Fourthly, when a team is formed and activated, the prosecutor must (formally request to) be promptly informed by the team leader of when the activities have started, what the state of the investigative activities is, whether some unpredicted challenges have occurred, when the activities ended and what the outcome of the activities was.

Joint teams may be established for activities such as search warrants or sequestration orders, interceptions, etc.

When it comes to interceptions, forming teams in charge of carrying out interceptions and transcriptions can prove to be highly effective. According to the CPC, interceptions and transcriptions shall be done by the judicial police officers, under the direction and supervision of the prosecutor of the case.<sup>26</sup> When assigning a JPO to do interceptions, the nature of the work needs to be carefully assessed, including the level of secrecy needed, the skills of the JPO to transcribe the intercepted conversation and select the most relevant information, etc. Depending on the cases, the officer who

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<sup>25</sup> Supporting materials should be provided to the team members such as templates for recording sequestered items, templates for recording of seized items etc.

<sup>26</sup> Article 223 of the CPC

initiated the investigation might not possess the necessary professional skills to carry out the interceptions and the team should therefore include skilled JPO able to perform said task. Having in mind the nature of the interceptions, the team should work in shifts in order to be able to follow the intercepted communications in real time.

Forming joint teams may be a particularly effective tool for the Special Prosecution Office as the National Bureau of Investigation performs judicial police services. The Director of the National Bureau of Investigations and the Chief Special Prosecutor can issue joint orders regulating the internal organization of the teams.<sup>27</sup>

The joint teams for accomplishing specific tasks should include professionals with different backgrounds, enabling thus exchange of experience and capacity building within the office. Having in mind the structure of the National Bureau of Investigation, a person responsible for teams should be appointed. This person could develop strategies for team activities, propose the composition of the team depending on the concrete situation, organize the team work and provide appropriate supporting materials and templates, and serve as a main contact point in cases where several teams will work simultaneously, etc. All suggestions given previously regarding the team formation, fields of activities and way of work are applicable to the Special Prosecution Office as well.

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### *Additional Considerations*

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The joint teams proposed in this chapter are different from the investigative teams that the Head of the PPO can establish for special cases, they are assigned very precise tasks and can act in different cases. Upon completion of their task, the joint teams can be involved in the same case only if such need arises. The reason for this is that in complex cases (for example, cases concerning narcotics), multiple search warrants might need to be executed. However, the proposed rules for forming the joint teams and their structure can be useful for the Heads of the PPO in establishing investigative teams for special cases as well.

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<sup>27</sup> Article 32 of the Law No. 95/2016.

### 3. Addressing emerging issues and sharing experiences<sup>28</sup>

In Albania the police and the prosecution office lack shared common goals in criminal investigations and tend to present their work independently.<sup>29</sup> This often results in leakage of information in the media before the prosecutor is made aware of certain events of potential criminal relevance. This kind of relationship not only harms the investigation but also diminishes the public trust in the justice system, since two main counterparts are seen as competitors rather than as collaborators.

#### — Practical Recommendations —

Having in mind the complexity of the investigation and the involvement of different agencies, exchanging information about emerging topics and issues is of great importance. This will increase the trust prosecutors and police. It will foster a culture of mutual respect and cooperation and will create a common approach in tackling the challenges connected to the investigation of crime and its prevention.

It is advisable for the Heads of the prosecution office/Chief Special Prosecutor to hold regular (for instance, monthly) meetings with the chiefs of the police of the territory under their competence, to discuss the most emerging issues that the police face, to adopt common strategies on how to address and fight certain types of crime and to exchange information about the existing resources and their allocation. This will enable both offices to take into consideration the challenges that their counterpart is facing.

When organizing and holding meetings with senior level police management, it is important to emphasize and keep the independence of the prosecution office against any instance of influence or pressure.

Also, it is advisable to develop common strategies on how the abuse of official powers by the police will be tackled. This can be followed by changes in the organization within the prosecution offices in terms of assigning a prosecutor as well as JPO of sections to deal with cases where police abuses were reported.

The general public should be properly informed about these meetings as a form of strategic approach of the prosecution office in performing its duties, carefully choosing the wording used in the information provided to the general

<sup>28</sup> Relevant legal framework: Article 42, paragraph 1-b and 1-d of the Law No. 97/2016.

<sup>29</sup> 2019 OSCE PiA Report, quote supra, note 3, p. 24.

public in order to get a sense of the cooperative and collaborative approach taken by the agencies with respect to the pursued criminal policy or action.

Heads of the prosecution office/Chief Special Prosecutor could establish electronic publications, available for internal use only, in which the best initiatives and practices of the police officers will be outlined. In order to be able to implement this activity, the Head of the prosecution office could task each prosecutor that has had positive experiences with JPO to report on the best practices and initiatives coming from the JPO and include these practices in a document that can be circulated within the prosecution office. Further on, this document can be communicated with the heads of the police where JPO work, this way stimulating a proactive approach by the JPO and enabling exchange of experiences and sharing of best practices. When reporting on best practices, prosecutors should take into account the background of the case, providing as little details as possible and explaining how the initiative has helped and influenced the outcome. Since the main focus of the reporting on best practices is to exchange experiences, improve work, generate ideas and trigger proactivity, the personal details of the officers involved should be avoided.

## **II. Optimization of resources in the Public Prosecution Office and the Special Prosecution Office**

Public prosecution offices normally lack sufficient material and human resources for the successful completion of their work.<sup>30</sup> Thus, the optimization of the existing resources proves to be a constant necessity. In Albania, two are the main aspects concerning these resources: the first one is the amount of unnecessary administrative work generated by the low quality of initial police reporting, and the second one is the lack of supporting staff for the prosecutors which often forces the latter to do administrative work themselves (photocopying, arranging files, etc.).

### **1. Improving the quality of police reporting<sup>31</sup>**

The most common challenge that the prosecutors face and that negatively affects the time management of the investigation is the quality

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30 2019 OSCE PiA Report, quote *supra*, note 3, p.25.

31 Relevant legal framework: Article 3, paragraph 1; Article 38, paragraph 2-gh and 2-g; Article 42, paragraph 1-a, 1-b, 1-e and 1-gj; Article 46, paragraph 1, 2, 3-a and paragraph 4 of Law No. 97/2016; Article 281, paragraph 1 and 4; Article 293 of the CPC.

of the initial reports coming from the police. Often this quality is rated as poor, the reports lack even the elements of the crime and create a need for additional checks and unnecessary administrative work<sup>32</sup>, thus making it difficult for prosecutors to meet the time limit of 15 days for deciding over the initiation of the proceeding.<sup>33</sup>

There are cases when the follow-up reporting from the JPO lacks quality as well, so prosecutors are often faced with the need to undertake additional activities and clarify certain aspects that can lead to prolongation of the investigation.<sup>34</sup>

### — Practical Recommendations —

A most effective way to deal with this challenge and to ensure at the same time uniformity of procedures in the territory of the whole state, is the issuance of **General Instruction for Police Reporting** that will have both administrative and procedural provisions. Such an Instruction could be issued by the General Prosecutor for the purposes of directing the activities of the Judicial Police and coordinating the work between the prosecution offices and the Judicial Police. Alternatively, the General Prosecutor could also adopt a General Instruction for the Judicial Police and include a chapter on Police Report.

As it pertains to matters of proper functioning and effective use of resources of the office, a General Instruction on Police Reporting may in principle be issued by the Heads of each prosecution office. However, reasons of frequent police turnover around the country and evaluation of the evidence by general courts such as the Court of Appeals and the High Court suggest some form of standardization and coherence of provisions of general applicability.

The main objective of the General Instruction for Police Reporting is to address the two main reporting stages: the initial police reporting and the follow-up or final police reporting. The General Instruction should aim to standardize the reporting done by the police, define procedural and administrative rules that will apply and that will enable duly implementation of the CPC standards. It will also set up a bases for evaluation of the

32 Interviews with the prosecutors, OSCE Statistical report of 2019, p. 186 and 2019 OSCE PiA Report, quoted *supra*, note 3, p. 34.

33 Article 291 paragraph 1 of the CPC

34 Interviews with the prosecutors, OSCE Statistical report of 2019, p. 180 -185 and 2019 OSCE PiA Report, quoted *supra*, note 3, p. 34-35.

## PROSECUTORIAL LEADERSHIP

police reporting. The mid and long term outcome will be the avoidance of unnecessary administrative work by the prosecutors and an increase in the quality of the reporting, thus enabling prosecutors to decide on the initiation of investigation within the time frame of 15 days prescribed in the CPC, as well as make final prosecutorial decisions on the basis of these reports.

The content of the General Instruction should include the legal standard for reporting mentioned in the CPC, with more detailed elaboration on the elements that the report must contain. Being the basis for prosecutorial decisions, special attention should be paid to the supporting documents that the reports must include. For instance, if the report is based on interviews with witnesses, short records of the witness' statement should be included. Rules on how to lay out, arrange and organize the supporting evidence, rules about the language to be used in the report<sup>35</sup> and rules about how to act when information is given orally to the prosecutor should be included as well.

In order to ensure that information regarding criminal investigations carried out by the police are kept secret and confidential, the General Instruction should provide rules on disseminating written information and copies of police documents that are later on sent to the PPO. The police should have one file that will contain all information<sup>36</sup> regarding one criminal investigation. If the information regarding a concrete case are coming from different police departments, each of the departments should send it in its original form to the department responsible for criminal investigation. An official note that the original information was transferred to the competent police department should be written instead of making and keeping copies of the transferred information.

In designing the General Instruction on police reporting, the level of legal literacy of some judicial police officers from the state police, the technical possibilities that they have, their workload and the time available for investigations should be taken into account. Thus, it is advisable that the General Instruction for reporting include templates of reports for the most common crimes.

In the absence of specific procedural rules for standardized reporting and sanctions for reporting in a way inconsistent with the CPC, the issuance of General Instruction for police reporting would play a key role

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35 Practical example on what can be included and how the Instruction on reporting can look like can be found on [https://www.csus.edu/campus-safety/police-department/\\_internal/\\_documents/\\_rwm.pdf](https://www.csus.edu/campus-safety/police-department/_internal/_documents/_rwm.pdf)

36 "Information" in this context means the information itself and everything that generates information like the evidence, police documents, etc.

in changing current unsatisfactory practices and enabling better use of the PPO resources. An administrative procedure to return the report that does not meet these standards and to ask additional clarifications and integrations could be established, together with a procedure for imposing disciplinary measures against the JPO that has been reported for not complying with the said standards.

The General Instruction for Police Reporting should be communicated to the Police chain of command in order to insure due implementation. It should be noted that the General Instruction, especially if issued by the General Prosecutor, can be later included in the programs for education and trainings of judicial police officers.

The existent legal framework enables the Chief Special Prosecutor to issue written general guidance to the National Bureau of Investigation to regulate the questions mentioned in this chapter.<sup>37</sup>

An example of the content that the General Instruction for Police Reporting can have, with legal grounds and reasoning for its adoption, is given in Annex II of the Handbook.

## **2. Introducing internships<sup>38</sup>**

Internship programs within prosecution offices have become more and more common in many jurisdictions around the world due to their diverse positive impact on the work of the offices and beyond. Indeed, internships provide support to the work of the office (for instance, accompanying the prosecutor to court, taking minutes of certain meetings, doing research on selected topics) while at the same times raising awareness among students and youth about the importance of the prosecutorial work, providing them with exposure to legal practice and generating enthusiasm for and interest in career development in the prosecution field. Although law students interested in a career in the field of legal practice are the most common applicants to this type of internship, students with a different educational background or professional expectations (for instance, students in the field of sociology, criminology, investigative journalism) may be willing to apply and can reveal a quality addition to the prosecution staff. Overall, internships will have a positive impact on building better public opinion about the work of the PPO/SPO as they will show the dedication and investment of the

<sup>37</sup> Article 15 paragraph 2/ ð of the Law 95/2016.

<sup>38</sup> Relevant legal framework: Article 42, paragraph 1-a, 1-b, 1-e and 1-gj; Article 46, paragraph 4 of the Law No. 97/2016.

PPO/SPO in educating and training young professionals and promotion of community involvement in the PPO/SPO work, thus fostering better acceptance of the work of the PPO/SPO, better openness and transparency.

### — *Practical Recommendations* —

The legislation in Albania provides possibilities for the Head of the prosecution office to issue General Instruction on matters of organization and functioning of the prosecution office led by them<sup>39</sup>, including instructions for interns. Additionally, the Chief Special Prosecutor can promulgate written general guidance on administrative procedures and regulations necessary for the effective functioning of the Special Prosecution Office,<sup>40</sup> including guidance for interns.

The General Instruction for internships should include the educational conditions that the intern is expected to meet, the duration of the internship, an outline of the possible tasks, the obligation for keeping the professional secret and confidentiality on all the information processed during the internship.

Interns should not be perceived as free labor force for carrying out mere administrative tasks the employees do not have time or will to attend. Rather, they should be welcomed as an integrated, though temporary part of the staff with educational and professional enhancement needs. Accordingly, interns should be provided a clear sense of what the benefits of undergoing the internship are. Particularly, students of law should be perceived and treated as future stakeholders and colleagues and quality, professional guidance should be provided to them during the internship.

Annex III of this Handbook, provides an example of the content that the General Instruction for the internships can have, including the legal grounds and reasoning for their adoption.

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39 Article 46 of the Law No. 97/2016.

40 Article 15 paragraph 2/ ë of the Law 95/2016.

### III. Improving the public perception of the work of the PPO and the SPO

Public opinion polls have shown that the trust of the public in the judiciary is very low. For instance, a public opinion poll conducted in 2017 has shown that 73.4 % of the interviewed citizens in Albania believed that the judicial system does not protect their rights, and the percentage is even larger for those who actually had experience with the system.<sup>41</sup> Even though Albania has undergone major changes in the legislation and in the organizational framework since then, limited trust in the justice system is still a matter of concern.

Improving the public perception of the public prosecutors' work is bound to increase public trust in the justice system, to provide more effective investigations and to create a culture of care for citizens' concerns. By increasing the trust in the prosecution office, the quality of work will also increase since people will feel more assured and freer to contact the prosecution office, report crimes, cooperate in investigations and support the work of the prosecution office. Thus, special attention should be paid to communication strategies, the track record of the work of the PPO/SPO and the need to increase its proactivity.

#### 1. Communication strategies<sup>42</sup>

Prosecutors in Albania argue that too often media receives information about certain events of criminal relevance even before the prosecution office is informed. In other situations, investigative acts or the identity of witnesses and suspects are leaked to the media in violation of the confidentiality and secrecy of the investigation.<sup>43</sup>

This clearly shows that there is lack of coordination between the prosecution offices and the police when it comes to communication with media during investigations. The described situation not only jeopardizes the effective conduct of criminal proceedings but is also a source of pressure on the work of the prosecutors who often act out of fear of public reaction and not according to what they consider to be the right decision in certain case.

41 Survey on Access to justice in Albania, UNDP - [https://www.undp.org/content/dam/albania/docs/FINAL\\_DRAFT\\_SURVEY\\_EN.pdf](https://www.undp.org/content/dam/albania/docs/FINAL_DRAFT_SURVEY_EN.pdf)

42 Relevant legal framework: Article 61 of the Law No. 97/2016; Article 7, paragraph 1 and 2 of the Law No. 96/2016 and Article 103; Article 104; Article 279 paragraph 1 and 3 of the CPC.

43 2019 OSCE PiA Report, quoted *supra*, note 3, p. 22 and interviews with prosecutors

Thus, the prosecution offices need good communication strategies that will address the challenges in everyday communication within and outside of the office, aiming to increase the transparency of the work of the PPO/SPO, to increase the public trust in the PPO/SPO and to raise awareness about the effects of the crimes, about the importance of the fight against crime and about success stories that have the potential to influence citizens' lives.

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### *Practical Recommendations*

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The communication strategy should focus on measures that will provide timely, accurate and available information to the public and interested persons, by addressing the internal communication (communication within the PPO/SPO), the external communication (communication between the PPO/SPO and other institutions and communication with the media) and the communication in crisis situations.

The communication tools that will be used by the prosecution offices to provide guidance on specific situations should also be envisioned in the communication strategy. For example, the communication strategy could include suggestions on which communication tools are advisable for special type of crimes, such as electoral crimes, sexual violence, hate crimes or money laundering, explaining what aspects should be taken into consideration when conducting press conferences or when writing press statements and what details can be included in facts sheets. Press conferences should be used as frequently as possible, especially in cases that are of high public interest, since it is an instrument that enables the media to directly pose questions and get answers in a transparent and unbiased manner.

An effective communication strategy needs to address the ethical, professional and legal standards of information management within the prosecution offices along with awareness raising activities and protocols of information for the benefit of the representatives of the media about the secrecy of the investigation and the negative effects that breaches of this secrecy have on the successful conduct of the investigation.

Consequently, the communication strategy should clearly define who will be providing information during investigations, emphasizing the managerial role of the prosecution office after the commencement of the investigation and the fact that the police cannot provide information on investigation without prosecution clearance. A baseline for what is going

to be considered official information from the investigation should be established as well. Before the formal initiation of the investigation there is a fluid moment where the state police acts or may act independently. This requires special rules agreed upon between the General Prosecutor and the Chief of Police on the procedures to be followed, to avoid that future formal investigations are jeopardized.

The prosecutors that are investigating corruption-related cases point out that people feel reluctant to cooperate with the prosecutor and to report on corruption cases, since corruption is often perceived as an ordinary way of doing business and corrupt officials are often being praised.<sup>44</sup> Thus, a community outreach program for fight against corruption should be part of the communication strategy. Explaining the negative effects of corruption and the consequences and damages that people face, can increase the awareness of people on the need of a more active involvement on their part in the investigations. Good examples are corruption cases in the health care system (where the lives of citizens are at stake), in the construction industry (where stability of buildings and their resilience during natural disasters can affect people's lives), food industry and any other area that can have a direct impact on the wellbeing of citizens. Thus, corruption cases should be regularly communicated with the media and the general public. The prosecution offices should not hesitate to underline the biggest challenges and the obstacles that the prosecutors faced during these investigations, since the general public is often the only ally prosecutors have in the fight against corruption. If political pressure is exerted on prosecutors, they should not be afraid of highlighting that while communicating with the public and should ensure the public that such a pressure will be in vain.

The communication strategy should contain basic explanation of legal terms, legal limitations and legal requirements that need to be met in order for an information from the investigation to be provided to the media. However, the communication strategy and the public relations of the PPO/SPO must not interfere in the editorial policy of the media and must maintain strictly a professional relationship.

Since the Albanian legal framework does not centralize the issues pertaining to the communication strategy and each prosecution office has a different amount and type of workload, each Head of the prosecution office can design a tailored-made strategy that should nevertheless be coherent and consistent with generally accepted standards elaborated at the level of the General Prosecution Office.

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<sup>44</sup> Interviews with prosecutors.

In the case of the Special Prosecution Office, the media relations coordinator should adopt an annual communication strategy defining mission and vision of the SPO and setting up a calendar of main activities, incorporating the general strategy of the office and defining the communication channels that will be used.

The Albanian legislation holds very clear and strict rules regarding the publishing of information from the investigations. Thus, the main challenge is to improve the practical implementation of these rules. This will require specialized and trained staff among the ranks of prosecutors and supporting staff along with more frequent contact of the prosecution office with the media in order to provide enough information under the limitations that the law prescribes. For increasing transparency, alternative means of visibility of the PPO/SPO should be considered (using social networks<sup>45</sup>, organizing outreach programs etc.).

Existing international standards and guides on communication with the media for prosecution offices should be taken into account.<sup>46</sup>

## **2. Track record of the PPO/SPO work**

Successful presentation of the work of the PPO/SPO is closely connected to high quality reports and solid track record of activities on substantive and procedural issues, especially for those ones that are highlighted as most important and which Albania has international obligations of reporting on. A track record is one of the tools to assess the effectiveness of the work of public prosecutors. One of the main recommendations given to Albania in the EU progress report of 2019 is further progressing towards establishing a solid track record of seizure and confiscation/recovery of criminal assets resulting from corruption-related offences. Establishing a solid track record of investigations, prosecutions and final convictions in corruption cases remains a long term objective to be further consolidated.<sup>47</sup> Nevertheless, the need for a proper track record of

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<sup>45</sup> The choice of the social networks shall depend on what is mostly used in Albania and which social network will have better outreach. If using FB, special attention should be made on privacy and commenting possibilities. Examples of use of social networks can be found from EU and international judicial authorities:

<https://twitter.com/IntlCrimCourt>

<https://twitter.com/Eurojust>

<sup>46</sup> CEPEJ(2018)15 communication guide - <https://rm.coe.int/cepej-2018-15-en-communication-manual-with-media/16809025fc>

<sup>47</sup> SWD(2019) 215 final, Commission staff working document, Albania 2019 Report,

activities is equally important when it comes to the prosecutors' workload and work results in all types of criminal cases.

— *Practical Recommendations* —

While there are no international standards for the assessment of effectiveness of prosecutors, it is possible to propose criteria based on good practice developed in various countries, as follows:

- ⊙ The prosecution ratio: number of persons prosecuted, including decisions on waiver of prosecution, as compared to the total number of indictments;
- ⊙ Speed of case-flow: how quickly a decision to prosecute or not prosecute is made;
- ⊙ Number of cases referred to the court as compared to the number of cases that have been referred for prosecution by investigatory bodies;
- ⊙ Uniformity of application of law for the most common types of prosecutorial decisions.<sup>48</sup>

The Albanian legal framework defines the aim of the ethical and professional performance evaluation of prosecutors and it correlates not only with the improvement of the ethical and professional skills of the prosecutors, but also with the establishment of consistent standards for the quality and quantity of their work and for the development of their career on a merit basis. It does so – among other ways - by identifying the training needs and those prosecutors who may have particular professional skills relevant for the justice system, and by contributing to the improvement of the organizational structure of the PPO/SPO and working conditions of the prosecutors as well.<sup>49</sup> In addition, the legal framework in Albania provides that the Heads of prosecution offices themselves are subject to evaluation<sup>50</sup>,

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Accompanying the document, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 2019 Communication on EU Enlargement Policy, {COM(2019) 260 final}, Brussels, 29.5.2019.

48 The Status and Role of Prosecutors, A United Nations Office on Drugs and Crime and International Association of Prosecutors Guide, Criminal Justice Handbook Series, United Nations, New York, 2014. Also, the chapter on evaluation of magistrates in the Law no. 96/2016 provides the criteria mentioned in the text.

49 Article 68 of the Law No. 96/2016.

50 Article 79 of the Law No. 96/2016.

this way calling the prosecution managerial level to show leadership and organizational skills<sup>51</sup> by taking appropriate measures to establish baselines for track record.

The baselines would certainly aim to provide sufficient statistics in terms of the volume of the work of the PPOSPO, including the number of new cases, the number of overall cases, the number of closed cases with reasons for closing, the number of filed indictments, the number of activities undertaken by the prosecutors (e.g.: number of court sessions attended), the number of court judgments, the number of requested preventive sequestration measures and the number of preventive sequestration orders issued by the court.

However, said baselines should also provide information regarding the types of crimes, the number of defendants (indicating whether the defendant is minor, first-time offender or returnee) and the average length of the proceedings, the measures undertaken to increase the efficiency of the PPO/SPO and ensure meeting of the deadlines prescribed by the law. Mainly, the track-record should follow the outcome of a case throughout all the processes—including the police investigation and the subsequent court outcome—and not merely the processes for which the prosecutor is responsible.

The prosecution office in Albania has a case management system but withdrawing statistical data has proven to be difficult.<sup>52</sup> Until this question is resolved systematically, the keeping of a track record by each prosecutor independently and the obligation to submit this track record to the Head of the PPO/SPO on a monthly basis, should be in place.

An example for keeping a track record is given in Annex IV of the Handbook.<sup>53</sup>

### **3. Increasing the proactivity of the PPO/SPO work**

Insufficient proactivity of the public prosecutors in initiating criminal investigations is a recurrent feature of the Albanian prosecution system.<sup>54</sup>

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51 Article 80 of the Law No. 96/2016 defines the leadership and organizational skills of the chairpersons of the prosecution offices that are subject to evaluation.

52 Interview with a public prosecutor from the General Prosecution Office.

53 The explanatory note to the Annex provides details on the possibility of extracting statistics for specific type of cases.

54 2019 OSCE PiA Report, quoted *supra*, note 3, p. 28

Indeed, most of the cases that the prosecution offices in Albania deal with are reported by the police. The number of *ex officio* initiated cases is very low<sup>55</sup>, despite the fact that the legal framework envisions the possibility that the prosecutors receive notice of criminal offences on their own initiative.<sup>56</sup>

### — Practical Recommendations —

Proactivity of the prosecutors mainly depends on the access to publicly available information that might indicate the existence of a criminal offence. In most cases, this information comes from the media reports which should be therefore accurately screened for this purpose. Dedicated staff with sufficient legal knowledge (for instance, judicial police officers of the section, legal advisers if available) could be assigned the task of regularly reviewing the information in the daily media and report to the Head of the office for any news that indicate suspicious activities.

Along the same lines, introducing periodical briefings with investigative journalists for following up the new trends and hearing about the existing concerns is another proactive tool available to the prosecution offices. When conducting briefings with journalists, it is important to have a daily agenda, so the participants will know the purpose of the meeting and have proper expectations. False hopes about getting inside information on issues that they find relevant must be averted.

In addition, dedicated staff could be assigned the task of receiving and assessing complaints about irregularities<sup>57</sup> that might not meet the CPC standard for reporting but nevertheless contain valuable information. Introducing this possibility will enable better access of lay persons to the prosecution office and justice system, enable direct access to justice for the whistleblowers and create a more open and transparent approach in receiving citizens' concerns about the proper functioning of the state institutions.

Leadership skills of the public prosecutors come into play at two different organizational levels, namely in managing the overall workload of the prosecutor and in managing the work on individual cases.

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55 The prosecutors that were interviewed for the purpose of this handbook clarified that only a few cases are opened *ex officio* and that most cases are reported by the police.

56 Article 280 of the CPC.

57 Irregularities in this regard mean all suspicions activities for fraud, corruption, non-compliance or wrong application of laws and other regulations as well as international agreements, which arises from the work or omissions of the users of public funds, and which has or could have a detrimental impact on the Budget, EU funds and funds from other domestic and foreign sources.

# PART II

## LEADERSHIP OF THE PUBLIC PROSECUTORS

### I. Workload Management

The workload of the prosecutors in Albania is high, forcing them to work on weekends and in their free time in order to meet the legal deadlines and the procedural requirements. Moreover, the absence of rules or guidelines for the organization of the work of the prosecutors brings a risk of inconsistent application of the law and at the same time prevents proper assessment of the prosecutor's work, which in turns impact on their motivation and dedication. Therefore, prosecutors and their heads of office need to develop strategies and work plans on maximizing the use of available resources against the existing and increasing workload.

### 1. Improving the track record

The importance of a track-record of the prosecutors' activities goes beyond the reasons mentioned in the previous chapter and directly affects the proper management of the office workload.

#### *Practical Recommendations*

As already mentioned before, due to the current insufficient development of the Albanian prosecution case management system, it is essential for the prosecutors to keep an efficient and up-to-date track record of the cases assigned to them.

The track record should clearly show the entire process of the case development, all the decisions made, the date of the decisions, the outcome, the length of the proceedings concerning different stages and the

precautionary measures implemented as well as organizational information such as where the case files are located or other information that the prosecutor finds relevant.

Prosecutors and prosecutors' staff should become adroit at and make effective use of available IT and technical tools. All prosecutors have official e-mail addresses and use automated personal information managers including functions such as email client, calendaring, task managing, contact managing, and note-taking. The use of calendars and agendas can be highly effective. Apart from the court sessions and deadlines for certain activities, a daily agenda of meetings with the JPO, with the Head of the PPO/SPO and other important meetings can be part of the track record. The daily agenda will clearly show the time allocated to administrative and other activities that fall out of the scope of the investigations and will enable better understanding of the most time-consuming activities.

While some of the prosecutors may feel more confident to fill in the track record tasks in hard copy, it should be emphasized that the advantage of the electronic forms is in that the process become faster and more accurate, whereas data and statistics can be more easily extracted and processed.

At the beginning prosecutors might be reluctant to fill in the track record, the agenda or the calendar due to their overloaded schedule, but these activities - if conducted daily – will consume a very limited amount of prosecutors' time and will bring a clear overview of the amount of work done and the time spent on different activities. Thus, the track record can be used for advocating the need to improve the working conditions of the prosecutors and their staff. An example of keeping a track record is given in Annex IV of the Handbook.

## **2. Organization of the work**

Each prosecutor should adopt a way of organizing their work customized to identified needs and priorities. This chapter will provide some suggestions on how the work can be organized.

### *— Practical Recommendations —*

The practical recommendations for better work organization are divided in three main categories: (i) introducing records for undertaken activities, (ii) organization of work depending on the types of cases and (iii) prioritization of the work.

## **2.1. Introducing records for undertaken activities**

As already mentioned in the previous chapter, a proper track record system of the prosecutors' workload represents an important first step towards an efficient and effective organization of the office work. Here it is important to underline that the records should enable clear a distinction of types of cases (colors can be used), the timeframe in which certain activities were undertaken and a clear overview of the prosecutor's activities.

## **2.2. Organizing work depending on the types of cases**

Organization of the work of the prosecutor could be based on the criterion of the case type. Prosecutors could physically keep different types of cases in different shelves and mark them with different colors (color stickers, color markers, colored covers) so that they are immediately visible and discernible. A similar system could be used to mark all or part of the shelves where those files are stored.

Firstly, the work can be organized by dividing the criminal records from the criminal proceedings as the activities for each of these types of cases are different. Then, cases where the perpetrator is known can be divided from the cases where the perpetrator is unknown.

Also, the complexity of the files and the scope of actions that need to be carried out allows the organization of the cases in three main categories, namely criminal contraventions, crimes and complex cases.

Moreover, cases could be organized based on the competent JPO (from the section or from the service) in charge of managing the file or conducting certain activities.

In general, the suggested typologies of case organization enable better oversight of the prosecutors' workload, having in mind the stage of the proceedings, the complexity of the case and who assists the prosecutor in the investigation.

### **2.2.1. Criminal reporting and criminal proceedings**

After receiving a criminal report the prosecutor has 15 days to decide if a proceeding will be initiated. If additional checks and information are needed, within a few days after receiving the report the prosecutor should arrange a meeting with the JPO that filed the report and ask additional

documents that support the report or additional clarifications.

The existent legal framework does not limit the possibility for the prosecutor to ask clarifications before deciding to initiate a proceeding. On the one side, these clarifications do not represent a request for undertaking additional investigative activities but would rather focus on the information and evidence that the police has gathered prior to the filing of the report and that might not have been shared with the prosecutor. On the other side, in order to register a proceeding, the public prosecutor must make sure that legal obstacles for commencing a proceeding do not exist.<sup>58</sup>

In cases where the additional clarifications do not bring new insight and in cases where the prosecutor cannot decide if a proceeding should be registered or not, a decision not to initiate a proceeding should be made.<sup>59</sup> Since the CPC provides<sup>60</sup> that the decision to not initiate the proceedings issued due to lack of a complaint shall not prevent the conduct of investigations for the same act and against the same person if a complaint is subsequently lodged, there is no danger for impunity and the police can continue their work and can file again a report if new elements warranting a proceeding emerge. This is in line with the principle of effective use of resources, as the prosecutors will not be involved in cases where no such need exists.

### **2.2.2. Organization of work in cases of unknown perpetrator**

In cases where the perpetrator is unknown prosecutors should request that investigative activities for his/her identification are carried out. Depending on the type of case, the investigative activities that can contribute to the identification of the perpetrator will mainly focus on questioning of witnesses, reviewing material evidence, searching video surveillance records, forensic examinations, examination of existing databases and comparison with the evidence from the case, searching of online resources and electronic data, financial analyses, etc.

If despite all the efforts for identification of the perpetrator the

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58 Article 290 of the CPC.

59 See for example the *Implementation Guide and Evaluative Framework for Article 11 of the United Nations Convention against Corruption* which highlights that “[w]hen instituting criminal proceedings, the prosecutor should proceed only when a case is well-founded, upon evidence reasonably believed to be reliable and admissible, and should not continue with such proceedings in the absence of such evidence.”: [https://www.unodc.org/documents/corruption/Publications/2014/Implementation\\_Guide\\_and\\_Evaluative\\_Framework\\_for\\_Article\\_11\\_-\\_English.pdf](https://www.unodc.org/documents/corruption/Publications/2014/Implementation_Guide_and_Evaluative_Framework_for_Article_11_-_English.pdf)

60 Article 292 of the CPC.

perpetrator remains unknown, the public prosecutor should suspend the investigation.<sup>61</sup>

### **2.2.3. Organization of work in cases of known perpetrator**

The main objective in investigations with a known perpetrator is to provide evidence that will enable the prosecutor to determine what has happened, whether those activities amount to a criminal offence, what the exact role of the person that is reported as perpetrator is, whether that person can be held criminally liable as well as other facts that are important for the criminal prosecution.

### **2.2.4. Organization of work in criminal contravention cases**

Criminal contravention cases are clearly defined in the Criminal Code of Albania.<sup>62</sup>

In general, the nature of these cases and their (relative) lesser complexity allows the prosecutor to have mainly a coordination role and does not require investigative actions to be undertaken by the prosecutor him/herself. Thus, the organization of work in these cases should focus on proper planning of the investigation.

In particular, the prosecutor should determine the investigation objectives and scope, identify a range of information sources in order to define the investigative directions and develop the ensuing investigation plan. The order of the prosecutor for undertaking investigative activities in criminal contravention cases should be very precise and concise with clearly defined objectives to gather evidence that verify the reported criminal activity.

If considered necessary prosecutors can organize the work on those cases by distributing them between the JPO of sections and the JPO of services. This organizational approach may contribute to better understand the effectiveness, promptness and efficiency of the different sectors of the police in order to make more facts-based decisions on the relevant JPO in future criminal contraventions' investigations.

<sup>61</sup> Article 326 of the CPC.

<sup>62</sup> Articles 119, 119/a, 119/b, 120, 121, 122, 123, 125, 126, 127, 128, 130, 133, 149/a, 149/b, 167, 169, 170, 170/a of the CC.

The main procedural advantage in criminal contravention cases is the possibility to issue penalty orders. While the issuance of such orders is subject to a legal deadline,<sup>63</sup> if such deadline was not met and yet the prosecutor has gathered enough evidence, the possibility for reaching an agreement on the conditions of admission of guilt and setting punishment should strongly be considered.<sup>64</sup>

An example of investigative planning in criminal contravention cases is provided in Annex V of this Handbook.

### **2.2.5. Organization of work in crime cases**

The Albanian prosecution system is characterized by a progressive specialization both in terms of organizational structures (e.g., the so called SPAK) and in terms of general allocation of cases (e.g., the recent creation of the special structure against money laundering, financing of terrorism, financial crimes and confiscation and seizure of criminal assets within seven main prosecution offices throughout the country). This approach means better focus and better performance of prosecutors.

In principle, the organization of work for crimes, as for criminal contraventions cases, can be done based on the criterion of the JPO structure (section or service) which carries out the investigative activities. However, because their very nature or their complexity, certain type of crimes require direct involvement of the public prosecutor in conducting investigative activities.

Planning the main steps that the prosecutor expects to be done in the course of the investigation is key to success. Prioritizing these steps and adding mandatory deadlines for their fulfillment will increase the prosecutors' oversight of the investigation and thereby reacting promptly with corrective measures in case of delay or poor performance. For example, one stage of the investigative step could focus on proving certain elements of the crime and the prosecutor can give mandatory deadlines for this specific activity only. If within the given deadline there are no substantial results, the prosecutor could suggest different investigative activities and discuss proposals from the JPO for overcoming existing obstacles. The prosecutor should make sure that he/she is duly informed about all the investigative steps throughout all stages of the investigation and – if necessary - should proactively seek information from the JPO. A helpful tool for this kind

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63 Article 406/a of the CPC.

64 Article 406/d of the CPC.

of monitoring is the creation of an activity tracker to follow the activities assigned to the JPO and adherence to the set deadlines for concrete acts.

An example of a model for tracking the JPO activities in crimes<sup>65</sup> is given in Annex IV of this Handbook.

### 2.2.6. Organization of work in complex cases

Complex cases bring many organizational challenges to the prosecutors, ranging from the planning of the investigative activities by taking into consideration the available resources to managing the information flow and preventing information leakage, developing a system for archiving and recording purposes in order to facilitate the selection of evidence for further proceedings, establishing communication protocols, etc.

As no legal impediment exists in this respect, in complex cases the judicial police and prosecutors should consider discussing the content of the initial criminal report before the report is actually filed with the prosecution office. This can contribute to the drafting of a clearer and more comprehensive initial report and can shorten the time for the investigation since pre-selection of relevant evidence and facts would be done. Importantly, through this practice filing of unjustified reports will also be avoided.

After receiving a complex case, prosecutors should determine the scope and the type of the investigative activities that need to be undertaken, since this has a direct impact on the question of which agency will conduct the investigative activities. **Forming a team** of JPO in charge of the investigations is in many cases the most effective approach. Depending on the complexity of the case, the team may be a joint team composed of JPO of services and JPO of sections,<sup>66</sup> or it may require support from other agencies. The prosecutor needs to assign tasks to the team members and identify the team leader among the JPO. The prosecutor should make sure that the allocation of tasks among the team members is efficient and can at any time of the investigation change the tasks given or give new tasks.

In complex cases the prosecutor may need to **directly participate in specific investigative activities**, such as questioning of witnesses and suspects and participating in crime scene investigations. During these activities the prosecutor will be able to oversee the JPO's work, provide insights or further instructions on the ongoing activities and propose

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65 The model can be used for all the type of criminal offences.

66 Article 26 of the Law No. 25/2019.

additional ones they may reveal necessary and/or urgent. With regard to interviews, it is essential for the prosecutor to directly assess the credibility of the witnesses and to act promptly if grounds for witness protection or grounds for application of special questioning techniques of witnesses exist<sup>67</sup>. Also, establishing direct communication with the defendant during the investigation is important for increasing chances of cooperation in the investigations and enabling better conditions for reaching an agreement on admission of guilt as the case may be.<sup>68</sup>

While the number of people involved in the investigation depends on the complexity of the given case and the technical skills required for its successful completion, in complex cases it is difficult to safely manage the **access to confidential and secret investigative information**. The more people are involved, the bigger the chances of information leaking. Thus, the prosecutor should organize the work in a way that will clearly describe the information flow and the chain of command when it comes to the investigation.

For the most sensitive cases it is advisable that the case file remains at the public prosecution office. In this case, all evidence should be submitted to the prosecution office immediately after being gathered. The final explanatory report drafted by the JPO can be prepared in the office of the prosecutor. In order to prevent information leaking, the prosecutor should design a system of sharing of information during the investigation on a need-to-know basis. Details and relevant information should be shared only with the prosecutor and then the prosecutor will decide who else can access the information. Such a system will facilitate the prosecutor's efforts to identify leaks adopt corrective measures, request disciplinary proceedings and possibly start a criminal investigation.

In order to keep track of who receives what in one complex investigation, each copy of the document that leaves the prosecution office could contain distinguishing elements. This elements should be included in the part of the document indicating the case file number or the subject of the document. The most used distinguishing elements are numbers designating the number of the copies made of a document. For example, if in a case the

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67 Article 165/a of the CPC.

68 Article 304 paragraph 1 of the CPC provides, among other things, obligation for the prosecutor to ascertain any facts and circumstances in favour of the person under investigations. Since the collaborative attitude of the defendant may be considered a mitigating circumstance, it is important for the prosecutor to have clear perception of the defendant's attitude regarding the investigation.

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prosecutor issues a document in three copies, each of them to be sent to different receiver, in the upper right corner of the copy of the document a different number is entered (Copy No.1, copy No.2 or copy No.3). The copy that will stay in the prosecution office will be copy No.1. The copy that – for instance – will be sent to the JPO will be copy No.2 and the copy that will be sent to court will be copy No.3. If later on during the investigation a copy of the document is leaked, the identification of the source of leakage (in the given example, whether the leakage came from the prosecution office, the JPO or the court) is facilitated.

Implementing a “chain of custody” for the documents, similar to the chain of custody for the evidence, can additionally contribute to narrow down the number of persons that have contact with the documents within the prosecution office. The system for “chain of custody” for documents enables the tracking of the person that is handling the given file at any given time, the person that inserts and removes documents from the case file, the person that requested copies of the files and the reasons for it, the person who permitted the issuing of the copies and the reasons for it, the person to whom the copies were later given to, etc. In order to implement such system, the Head of the prosecution office /Chief Special Prosecutor should envision internal records for accessing the case file. Consequently, a list of people that accessed the case file, the reasons for accessing, date and time for the accession as well as signature from the person allowing the accession to the case file should be part of each case file.

Averting the risk of leaks can be achieved by means of definition of the **chain of command** in the field of managing the flow of information during the investigation. In this respect, the prosecutor could issue orders to the JPO to communicate exclusively with the prosecutor of the case and to share with him/her any information regarding the case.<sup>69</sup> The prosecutor should at the same time inform the Police Chief about the involvement of the JPO of the Service in the case and about the order. This should not preclude the availability of the prosecutor to provide the Police Chief with information that the prosecutor believes it is possible to share.

Proper information flow between the prosecutor and the police officers assigned to a given case requires rules and practices on communication. **Regular meetings** (at least one meeting per week) between the prosecutor and the JPO either in person or online are needed. Online meetings can raise

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<sup>69</sup> Reporting of data on investigation outside of the prosecution office is considered serious disciplinary violation, according to Article 33 paragraph 4/a of the Law No. 25/2019.

the question of safety of communication. However it should be noted that today there are many software solutions that enable end-to-end encrypted communication (voice, video calls and instant messaging) between the interested parties that are considered secure.<sup>70</sup> Thus, if prosecutors use phones to discuss matters regarding the investigation, they should not feel reluctant to use software solutions that can enable online meetings with the JPO.<sup>71</sup> At these meetings each of the JPO would explain how far they have advanced with the investigation, which investigative activities were undertaken and what the preliminary results of such actions are. Future actions and activities should be discussed as well. If the case is highly sensitive, the prosecutor can have separate meetings with individual JPO or decide which of them should participate.

During the investigation there should be a **protocol for communication** in place. The JPO should know who of them is in charge for which investigative activity, who is the first person to contact in case of complications or other challenges, how they will communicate with the prosecutor (by phone, by internet through communication application, by SMS, by e-mail, etc.), how this communication will be recorded, especially if they receive different orders from the ones previously agreed, etc. These questions should be discussed on the first meeting between the prosecutor and the JPO. The prosecutor should keep in mind that code language/conclusive activities<sup>72</sup> can also be used in communication where high risk of verbal communication exists. For example, the prosecutors and JPO can agree that in case unexpected danger arises or in case the activity has been compromised, the JPO will send an empty SMS as a sign that the activities are aborted. When the JPO will have the possibility, he/she will contact the prosecutor and inform of what has happened.

Complex cases create enormous amount of paperwork. In order to have clear understanding of the case, the evidence and the activities conducted, it is essential for the prosecutor to develop a **system for archiving**

70 [http://www.eurojust.europa.eu/doclibrary/Eurojust-framework/Casework/First%20report%20of%20the%20observatory%20function%20on%20encryption%20%28joint%20Europol-Eurojust%20report%20-%20January%202019%29/2019-01\\_Joint-EP-EJ-Report\\_Observatory-Function-on-Encryption\\_EN.pdf](http://www.eurojust.europa.eu/doclibrary/Eurojust-framework/Casework/First%20report%20of%20the%20observatory%20function%20on%20encryption%20%28joint%20Europol-Eurojust%20report%20-%20January%202019%29/2019-01_Joint-EP-EJ-Report_Observatory-Function-on-Encryption_EN.pdf)

71 However, the most sensitive issues should be discussed in person and software solutions should not be used to send or receive documents, pictures or files connected to the investigation. Their only purpose should be communication during the investigation (video, audio or instant messaging).

72 Conclusive activities are activities that have predefined meaning and do not include verbal communication, like shaking head for disagreement.

**and recording purposes.** Even though in Albania hard copy files are kept as a rule, the electronic file organization is equally important and should reflect the organization of the hard copy file.

### 2.2.6.1. Organizing a case file

There are several ways to organize the hard copy file.

The most common way is to keep the file documents in chronological order (the most recent document on top of the file), to progressively number the pages (number one to be assigned to the first document in the file) and to prepare an index of the file and for its sub-files to be regularly updated.

This method – although the easiest to implement – might turn to be less practical especially with respect to voluminous files for which the issue of retrieving the material and/or organizing it in order of relevance and logic is often at stake. Nevertheless, it may be used in combination with other methods as described below.

In each case file, sub-files could be organized thematically, for specific categories of information, such as, for instance:

- (a) Involved person's file, further divided in **witnesses sub-file** (containing contact information and statements of witnesses), **suspects/defendants sub-file** (containing contact information about defendants, statements and supporting documents such as powers of attorney and contact information regarding the attorney, information about prior criminal activity of the defendant), **victims sub-file**, etc.;
- (b) External correspondence file, further containing different sub-files such as **sub-file for courts**, **sub-file for experts**, **sub-file for banks**, etc.;
- (c) Intelligence file, where all the intelligence information that is not supported/not yet supported by evidence is gathered;
- (d) Financial investigations file, where all the evidence and analyses for purpose of the financial investigation (if conducted) is held;
- (e) Legal research file, where relevant legal framework, legal research and examples of case law is kept.

Besides organizing the case file in sub-files, a protocol for naming documents should also be developed. Such a protocol enables easy location of the documents and smoother presentation of the evidence before the

court. It should be as accurate and detailed as possible.

An efficient way to do that is by implementing a descriptive naming protocol and naming each main sub-file with different capital alphabet letters, and each further sub-divisions with small alphabet letters. For example, the Involved Persons' File can be named with "P", the External Correspondence File with "E"; the Financial Investigations File with "F", etc. Within the "P" file, the sub-file for witnesses can be labeled with "w", and the sub-file for defendants with "d", etc.

Then a description of the evidence should be given. The description should be short, containing the essence of the evidence and other relevant details. For example, minutes of a witness statement could be named as "Statement XX," where XX are the initials of the witness. Instead of initials, a full name or surname can also be used. Date when the witness statement was given can also be entered (e.g.: "Statement XX 15.08.2020"). Bank accounts statements for 2009 could be named "Accounts 2009 (name of the bank)", while transcript of interception of the defendant should contain the date and time of the conversation, such as "interception AA (the telephone number can be added as well) 15.08.2020-18:00", etc.

Also, evidence can be tagged based on the technical medium which contains it, such as document ("doc"), picture ("pic") audio or video. When tagging the evidence type the date when the evidence was created may also be added if proven useful:<sup>73</sup> for example, "pic 01.01.2020".

Thus, a complete naming protocol would look like the following:

<name of the file>\_<name of the sub-file>\_<evidence description>\_<evidence type>

For instance, "P\_w\_Statement-XX\_doc" refers to the doc format of a statement given by witness XX contained in the witness sub file of the Involved Persons' File.

"E\_b\_2019\_XX account First Investment Bank\_doc" refers to the doc format of a bank account statement pertaining to a person XX and provided by the First Investment Bank as contained in the Bank sub-file of the External Correspondence File. Of note, in the latter example the document was put in the file E (External Correspondence) and not in the File F (Financial Investigation) because the document was gathered from the bank but not as a part of a financial investigation.

<sup>73</sup> In some situations the date will already be part of the naming protocol (e.g. witness statements). In cases like those ones, adding the date in the tag for the technical medium is not necessary.

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It should be noted that when organizing evidence in sub-files the basis for this organization is the source where the evidence is coming from rather than to whom the evidence refers to. In the Defendant sub-file only evidence gathered from the defendant should be sorted out (e.g. statements of the defendant, evidence submitted by the defendant, etc.). In the External Correspondence File there should be all evidence that was gathered from external parties like banks (Banks Sub-file), state institutions (Police Sub-file, Audit Office Sub-file etc.), legal entities (Service Provides Sub-file), etc.

Another methodology for naming protocols – less visual and comparatively less practical than the descriptive one - is based on internal numbering. According to this methodology, each main activity in the course of the investigation is labelled with a number and each result of that activity is properly linked to it through sub-numbers. For example, in one complex case the prosecutor submitted a request for search, and the court granted the search. During that search, evidence was obtained and minutes for the activity were made. The request for search issued by the prosecutor would be labelled with internal number 1, the court search order would be labelled with sub-number 1/2, the minutes would be labelled as 1/3, and each piece of evidence resulting from the search would take subsequent sub-numbers (e.g. 1/4, 1/5, etc.). If a request for interception is made by the prosecutor in the same case, it would be labelled as 2 and every following action connected to this request with sub-number 2/2, 2/3 etc.

Whatever method is chosen or even if methods are combined, if the organization of the file is done properly while the investigation is ongoing and while the evidence is still being gathered, at the end of the investigation the prosecutor will be able to efficiently assess its results and decide the appropriate course of action.

In addition, prosecutors should be well aware of available digital and forensic technologies that influence the format in which certain evidence is collected and presented. For example, for forensic accounting, the data from the bank accounts and other financial data are normally provided and better managed in excel or CSV format. If an electronic copy of the evidence is obtained as well, it is preferable that the copy is a readable and editable format.

Despite the fact that each prosecutor might have different preferences

when it comes to the organization of the file and developing a naming protocols, it will be more practical if standardized methods for naming protocols and arranging files are used. This will contribute to unification of practice of prosecutors in all stages of the criminal proceedings, facilitating the work of JPO who - by working with different prosecutors - would otherwise need to adapt to the naming preferences of each of them. Accordingly, the Heads of the PPO/SPO or the GP can adopt General Instruction on case file organization and naming protocols, defining (i) the sub-files that can be part of the case file; (ii) the content of each of the sub-file, describing the information, evidence and data that should be included in the sub-file; (iii) the naming of the sub-files and internal organization of documents (defining how the sub-file will be named and how the documents will be organized e.g. in chronological order of the date of each document); the final naming protocol that will be used for labeling each evidence, etc.

### **2.3. Prioritization of work**

The heavy workload of the prosecution offices makes handling all cases at the same time impossible. Also, different type of cases and investigative acts within cases require different types of care and different involvement of the leading prosecutors. Therefore, prosecutors are required to develop efficient ways of workload prioritization so that all the assigned cases are followed up properly and professionally while respecting the rights of suspects, victims and defendants as well as the constitutional duty to render justice in criminal matters.

Basic rules on case prioritization stem from the provisions of the CPC. In all other situations – which include prioritization among already prioritized cases or investigative activities - a professional commonsensical approach based on efficient resource management and effective delegation is essential.

Cases or investigative acts where **limitation on the rights and liberties of people** are at stake have the highest priority, including cases where personal precautionary measures as well as property precautionary measures are (to be) issued.

Likewise, cases subject to short **statutory limitations** or in which the statutory limitation is about to expire should have priority in order to avoid impunity.

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Cases where **victims' complaint** is required should have priority as well. In some of these cases the practice shows that delays in proceedings influence the victims' decision to file a complaint or to withdraw it, as victim are often subject to pressure and influence from the perpetrator and at times from their families and communities especially in sexual violence-related cases and contraventions in domestic relationship contexts. Prioritizing these cases will increase the victims' trust in the effectiveness of the justice system, making them feel confident to uphold the complaint.

Activities subject to time limit or mandatory **deadlines** should also be prioritized. The same applies to cases in which the time limit for the investigation is about to expire.

Also, **cases that have high public interest** might require prioritization. These cases exert a huge impact on the public opinion and the public perception on the effectiveness of the prosecution office and the justice system in general. It is important to show dedication and efforts in investigating these types of cases, but the expectations of the public about the outcome of the investigation must not be the main factor determining the level of dedication attributed on a case by the prosecution office.

It is advisable for prosecutors to keep official notes on prioritizing cases. The note should contain brief explanation of the reasons to prioritize that particular case. In case of evaluation of the prosecutors' work, this note might be very useful tool for showing objectivity and impartiality of the prosecutor, since the evaluator will have clear understanding of the motives of the prosecutor to select that particular case over others and the risk of accusations of bias will be averted.

Finally, it should be noted that prioritizing does not only mean making priorities among the cases the prosecutor is assigned to, but it also means making priorities when it comes to overall activities in his/her portfolio. Since prosecutors spend most of them time in court, it is essential to designate at least two days a week devoted exclusively to investigation activities, to hold meeting with the JPO and to exercise the leadership role in the investigation.

The Head of the prosecution office/Chief Special Prosecutor should communicate the weekly schedule of each prosecutor to the president of the competent court for efficient court management.

— *Additional Considerations* —

Prosecutors should learn to think out of the box when it comes to successful use of resources in the organization of their work. The legal framework in this regard leaves enough space for innovative approaches allowing the strategic use of all the possibilities and assistance available in the course of the investigations.

For example, interns can provide effective support in keeping record of the prosecutor's activities, in providing important administrative assistance and – depending on the nature and complexity of the cases - in dealing with criminal contraventions and drafting penalty orders.

Finally, it is almost impossible to produce effective investigative results if the prosecutor is not fully engaged in the investigation, does not know all the aspects of the case and is not able to process intelligence information gathered by the JPO. Thus, to be able to effectively lead the investigation, the prosecutor must have enough relevant information and knowledge of the case. Accordingly, besides the mere studying of the file, direct involvement of the prosecutor in certain investigative activities is of essence and should be sought for proactively.

### **II. Cases Management**

The role of the prosecutor as envisioned in the legal framework in Republic of Albania has its prime focus on leading investigations in concrete cases. The leadership role of the prosecutor is a managerial position performed during the investigation, which entails the overall organization of the investigation, the direction of the investigative activities and the oversight of the development of the case while ensuring that all the procedural rules are duly followed. The changes in legislation that envision the leadership role of prosecutors in investigations are relatively new. As a result, at the present moment prosecutors carry out their role in a context whereby this new leading role is not yet supported with sufficient resources and consolidated practices of the previous system continue to be applied, making the full, prompt and effective exercise of this new, more independent and leading role difficult. Said difficulty is epitomized in the diversified levels of leadership to be exercised during the course of the investigation.

#### **1. Conducting an investigation**

During one investigation three main stages can be identified, namely (i) the planning of the investigation, (ii) the carrying out of the investigation and (iii) the finalization of the investigation. Each of these stages have their own specificities that require different leadership approaches by the prosecutor. In the following paragraphs, some of the main challenges faced by the leading prosecutor will be addressed.

##### **1.1. Planning an investigation**

One of the most important steps for the successful conduct of the investigation is to properly plan. Planning of the investigation is not a onetime activity, but it should rather be seen as a process. As the investigation advances, especially in complex cases, revision and adjustment of the original plans and additional planning that will follow the developments in the case should also be made.

Every case requires a methodical, systematic and thorough approach. Since the main purpose of the preparatory stage is to provide investigative directions and define investigative activities, already during that phase the continuous communication and exchange of views with experienced JPO is essential to the development of ideas on what to investigate, where to look for evidence, what potential defenses may be available, etc.

### 1.1.1. Preparatory activities of the prosecutor

Initial planning of the investigation determines the direction of the investigation and its success rate. The initial information on the alleged criminal activity is normally provided in police reports<sup>74</sup>. Especially in complex cases, it is advisable to hold a short meeting with the JPO that filed the report and verify that all the information, including intelligence, are shared with the prosecutor. This will help the prosecutor to define the objective of the investigation and determine the investigative activities to be undertaken. During the meeting, the prosecutor should encourage the JPO to share opinions and ideas about the possible course of action. This type of initial cooperation boosts the professional relationship between the prosecutor and the JPO, creates a sense of teamwork and fosters a culture of continuous cooperation and trust.

Before drafting the investigation order(s), the prosecutor should first **determine the objectives and the scope of the investigation** in order to be able to provide effective directions and maintain operational focus. At this point the prosecutor should design a strategy for investigation, evaluating all the relevant factors for planning purposes and deciding the overall sequence of the investigative activities. In designing the strategy, the prosecutor should consider the need to collect evidence located abroad, the risks that evidence be destroyed, witnesses be tampered with and investigation be intentionally delayed by the suspects as well as the overall possibility of obstruction and prolongation of the investigation. This is especially important in corruption-related cases, since the perpetrators have often access to official documents and have the power to influence witnesses. Outlining the investigative activities that might be time consuming and the challenges that the investigation may face will help to design a strategy that enables better time management and more efficient collection of evidence.

The next step for the prosecutor is to **define the investigative directions, namely, the way(s) in which the prosecutor expects that the investigation will develop**. Those directions represent the first prosecutor's outline of his/her theory of the case<sup>75</sup>. When defining investigative

<sup>74</sup> However, as mentioned above, reports from public officers and private citizens as well as the smart screening of media represent equally relevant sources of information to proactively start an investigation and/or ordering the police to provide further, more accurate information.

<sup>75</sup> The theory of the case is nothing more than a logical persuasive story of what happened from the prosecutor's perspective. It is the "reason," "justification" or "explanation" of why the prosecution should prevail at trial. The theory of the case must be logically and consistently developed so that upon examination of the evidence and testimony from all the witnesses, the court can rationally render a judgment in the prosecutor's favor. See in this respect *Investigative*

directions, the prosecutor should have in mind the investigative objectives, the available sources of information, the available resources and the overall strategy for the investigation. While many sources are able to provide information or evidence for relevant circumstances and should be taken into account, the prosecutor should carefully evaluate the available human and material resources and identify investigative directions that are realistic.

Prosecutors should assess whether and to which extent the involvement in the investigation of other agencies<sup>76</sup> is needed. If such a need exists, before drafting the investigation order, the prosecutor should identify those agencies, gather relevant information about the members that should be involved in the investigation, assess their capability to contribute to it and negotiate their participation and roles in the investigation.

At this stage of planning of the investigation, the prosecutor should be open for any information, including intelligence information that might not be verified with evidence but can help in developing the theory of the case. However, at the end of the investigation the prosecutor should be able to cover all the aspects of the theory of the case with evidence, be that direct or circumstantial ones.

### 1.1.2. Drafting the investigation order

After the prosecutor has undergone all the preparatory activities, the next step is to **develop and draft an investigation plan** where the identified objectives, investigative directions, roles and responsibilities of stakeholders will be outlined. While the current legal framework does not foresee the investigative plan as a separate, formal document, its content is usually mirrored in the an **investigation order** whose content is freely determined by the prosecutor of the case since no specific content of the investigation order is prescribed by the law.

At minimum, the investigation order should be structured as follows:

**Section I:** defining the objectives of the investigation and the facts that need to be ascertained; **Section II:** defining the investigative activities, the order in which they need to be accomplished and the competent JPO to *Activities, a guidebook for practitioners*, OSCE Mission to Skopje, 2010 <https://www.osce.org/skopje/78151>. For an sample theory of the case see <https://law.indiana.edu/instruction/tanford/b584/CaseTheory.pdf>.

<sup>76</sup> For example, Ministry of Finance (providing experts on public financial inspection); Customs office; FIU; SIS etc. It should be noted that the investigative activities should be performed only by the JPO, while other professionals that are involved in the investigation can help in providing specific information, knowledge and suggestions for investigative directions.

undertake them; **Section III**: defining chain of command and information flow.

When drafting the investigation order the prosecutors need to be as concrete and precise as possible. Firstly, the prosecutor should state the objectives of the investigation, describing which circumstances and which elements of the criminal activity should be investigated and explaining the circumstances on which the evidence is needed. Next, the prosecutor should provide investigative directions, by explaining the expected investigative activities, and if needed the order and the deadline by which these activities should be carried out. Finally, the prosecutor should determine who will conduct the activities. If agencies other than the police should be involved in the investigation, the prosecutor should provide clear instructions on which investigative activities will be performed by the different agencies. Separate orders addressed to individual JPO can be attached to the main investigation order to carry out specific investigative actions. If it is decided for a team to be formed, the prosecutor can either assign or delegate specific activities to the team members, or leave the team to decide who will conduct which activity.

If needed, the prosecutor can adopt tactical plans - i.e. practical instructions for undertaking investigative activities - that might be part of the investigation order or be included in a separate written act of the prosecutor.

For example, in one investigation, among other questions, the prosecutor needs to clarify the relationship between several suspects that are business associates. In the investigation order the prosecutor has indicated that the following investigative activities should be conducted in the following order: (i) interceptions, (ii) collection of documents, (iii) searches of the suspected person and his/her home, (iv) questioning of witnesses and (v) questioning of suspects. The prosecutor then develops a tactical plan in form of an annex to the investigation order.

The tactical plan will prescribe that after two weeks from the starting of the interceptions and while the interceptions are still going on, the JPO will collect documentation from the company of one of the suspects. After five days from collecting the documentation, a search of the suspects and their home shall be carried out. The day after the searches, the questioning of the former wife of one of the suspects, his business associate and the accountant of the second suspect shall be conducted. The questioning of the suspect will be scheduled just before interceptions end. In this way the prosecutor will be able to follow the communications between the suspects

while investigative activities are still going on and hopefully will get useful information from that communication as well.

Prosecutors should keep in mind that there are situations where direct involvement and undertaking of investigative activities by the prosecutor is highly desirable and recommended, like participation in on-site verifications, questioning of witnesses, questioning of suspects etc.<sup>77</sup> Such activities can be identified already at this stage or later on during the investigation.

As mentioned above, issues of **information flow and chain of command** to protect the investigation against leaks should be addressed already at the stage of drafting the investigation order. The prosecutor should clearly describe the information flow, by adopting if necessary a protocol based on the **need-to-know principle** on (i) how the case file will move during the investigation, (ii) where will it be kept, (iii) how it will be handled by the JPO, (iv) who can have access to it, etc. As for the chain of command during investigation, the prosecutor can order the JPO to communicate exclusively with the prosecutor for the purpose of the investigation. The order can be given as a part of the investigative order or in a separate act with which the prosecutor assigns investigative activities to the JPO. As suggested above, the prosecutor should also inform the Police chief of the order while offering to remain at disposal to provide information that the prosecutor believes it is possible to share.

A template for an investigation plan is given in Annex VI of this Handbook.

### 1.1.3. Investigative activities

The main purpose of the investigative activities is gathering evidence of the alleged criminal offence. The Albanian Criminal Procedure Code provides that only evidence gathered in compliance with the procedural rules shall be admissible in court.<sup>78</sup> Accordingly, one of the main aspects in which the leading role of the prosecutors becomes most relevant is to ensure that the

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<sup>77</sup> More details on when and why it is advisable that the prosecutor directly participates in conducting investigative activities is given in Part II, Chapter 1.1.3 of this Handbook.

<sup>78</sup> Article 149 paragraph 1 of CPC provides as follows: “Shall be considered as evidence the information on the facts and circumstances related to the criminal offence, which are obtained from sources provided for by the criminal procedural law, as well as in compliance with the rules defined by it, and serve to prove whether the criminal offence was committed or not, its ensuing consequences, the guilt or innocence of the defendant the level of his/her accountability.”

investigative activities always remain within the legal boundaries relevant for the admissibility and usability of the evidence in court as well as for the respect of the fundamental rights of the suspects, victims and witnesses.

Even though the main purpose of investigative activities is gathering evidence, the prosecutor should keep in mind that in order to maximize the chances of a successful investigation, he/she must have the broadest possible picture of the alleged offence and surrounding circumstances, regardless of the fact that at the end of the investigation he/she may not be able to prove some of the aspects of the case. Thus, gathering intelligence during investigations is as important as gathering evidence to prove the events.

The CPC prescribes a wide range of investigative activities. It is up to the prosecutor and the judicial police to choose the most appropriate ones for gathering the evidence, having in mind the circumstances in each case. In Annex VIII a diagram of the investigative activities is given, containing steps for choosing the most suitable one.<sup>79</sup>

The following sections provide some considerations pertaining to the leading role of the prosecutor during the phase of evidence gathering. Some paragraphs make a direct reference to the text of the procedural code and others include reference to tasks that the code assigns mainly to the JPO. This was one on purpose to draw the prosecutors' attention to certain procedural mandatory requirements as well as to the need to exercise a leading, monitoring role over the entire investigative cycle.

### **1.1.3.1. Identification of persons of interest<sup>80</sup>**

The identification of persons of interest – be that the persons under investigation or persons who may indicate useful circumstances for the purpose of the investigation – is typical police activity.

The prosecutors should pay special attention to the respect by the police of the procedures provided for in the CPC – particularly when it comes to fingerprints, photographic and anthropometric examinations as well as biological samples<sup>81</sup> of the persons under investigation – including the time limits for the restriction of the liberty of the persons under identification.

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79 The diagram is followed by explanatory note on its.

80 Article 295, Article 297 paragraph 1 of the CPC.

81 Article 201/a of the CPC requires consent of the person from whom the biological samples are taken. In case the consent of a person is missing, the prosecutor should make sure that a court order for taking biological samples.

After being informed about the accompaniment of a person to the police offices for identification purposes, the prosecutor should keep notes about the time when he/she was informed, the identity of the police officers who undertook the activity, the identity of the person who was accompanied, the place of accompaniment, the grounds for the accompaniment, the time of release and the outcome of the checks.

### **1.1.3.2. Gathering information and taking testimony from witnesses<sup>82</sup>**

According to the Albanian legislation, witnesses can be interviewed by the prosecutors themselves or by the JPO. The legal framework prescribes some procedural requirements on which the prosecutor of the case has to exercise vigilance.

As a general rule, witnesses **shall be questioned on the facts constituting the object of evidence<sup>83</sup> and on specific facts<sup>84</sup>.**

In addition, prosecutors should pay special attention to **existing grounds for incompatibility with the witness role<sup>85</sup> and on existing exemptions from the obligation to testify<sup>86</sup>.** When tasking the police to collect statements from witnesses, the prosecutor should point out for the JPO the relevant articles of the CPC. If during the questioning the JPO finds that grounds for incompatibility or exemptions from the obligation to testify exist, he/she should stop the questioning and inform the prosecutor. In such situation – as the witnesses can use their right not to testify before the court even though during the investigation they decided to give their statement -

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82 Article 297 of the CPC, Article 312 of the CPC.

83 Article 153 and 154 of the CPC. This procedural requirement has two main exceptions: 1) the witness is allowed to testify on the morality of the defendant only if such testimony concerns facts that may be suitable for qualifying his/her character relating to the criminal offence and his/her social dangerousness and 2) the witness questioning may also be extended to relations of kinship and any interests that exist between the witness and the parties or other witnesses and to circumstances that need to be ascertained to assess his/her reliability. The testimony on the facts that may be useful in defining the victim's character shall be admitted only if the charge against the defendant must be evaluated relating to the victim's behavior.

84 The witness shall not testify on public rumors nor give his/her personal opinions, unless they are an inseparable part of the testimony on facts. Also, indirect (hearsay) testimony is not accepted, unless the persons from whom the witness heard the facts testify themselves. Exception exists only in situations where questioning of these persons is impossible because they are dead, seriously ill or untraceable. However, if the witness refuses to indicate the person or the source that informed them of the facts, his/her testimony shall not be used.

85 Article 156 of the CPC.

86 Article 158, Article 159 and Article 160 of the CPC.

the prosecutor should ensure that other evidence of the facts that the witness was supposed to testify on are collected.

Even though the CPC does not formally oblige the prosecutors and the JPO to warn the witnesses about the criminal liability in case of false testimony or refusal to testify, the objective existence of such liability and the interest in an efficient conduct of the proceedings makes it advisable that before and during the interview (in case of statements that are contradictory, incomplete or in contrast with other evidence) the witnesses are warned about the consequences of false reporting<sup>87</sup>, false declaration<sup>88</sup> and false testimony<sup>89</sup> or refusal to testify.<sup>90</sup>

Prosecutors should pay special attention to the regime of usability of witness statements as enshrined in the provisions of the CPC and their judicial interpretation. Indeed, the violation of the provisions pertaining to the collection and content of the statements may turn into a declaration of invalidity. While a more lenient case law applies the principle of efficiency and declares the “partial invalidity” of a statement (thus saving the parts of it which are not affected by the violation), more strict approaches would lead to the removal of the entire statement from the list of evidence.

**Prosecutors should consider taking witness statements directly by themselves** in some situations, for example when the witness is also the victim of the crime, when the witness is from a vulnerable category<sup>91</sup>, when crimes under Articles 230, 230/a, 230/b, 230/c, 230/ç, 231, 232, 232/a, 232/b, 234, 234/a, 234/b, 265/a, 265/b, 265/c of the CC were committed in order for the prosecutor to determine if special questioning techniques need to apply<sup>92</sup> as well as any other time deemed necessary or appropriate. Among the reasons that suggest a direct intervention of the prosecutor is the possible hostility, resistance or feeling of “victimization” developed by the witnesses towards the police officers if they have to be questioned repeatedly. Moreover, the presence of the prosecutor during the questioning of vulnerable witnesses increases their trust in the justice system and also develop a sense of checks and balances, whereby there is a higher authority that evaluates the work of the police, enabling the victims to get full protection from the system. For instance, even though the judicial police

87 Article 305 of the CC.

88 Articles 305/a and 305/b of the CC.

89 Article 307 of the CC.

90 Article 165 of CPC.

91 Young or disabled offenders, female offenders, female victims, child victims, child witnesses, elderly witnesses, disabled witnesses, victims of hate crime, etc.

92 Article 165/a of the CPC.

officers can gather information from minors in presence of a parent or legal guardian or an adult person chosen by the minor and psychologist, it is preferable that such witnesses be questioned by the prosecutor in order to make sure that only one statement will cover all relevant facts.

With specific reference to cases of questioning with hidden identity, witnesses often feel reluctant to discuss with the police officers the risks they are facing since they are usually whistleblowers who mistrust other public authorities or have suffered from previous threats. The practice has shown that the presence of a prosecutor during the questioning brings feeling of higher commitment in the witness's eyes and perception of seriousness in the approach. Also, when submitting the request to the court for questioning a witness with hidden identity, the prosecutor shall present the reasons why the use of one or more of the special questioning techniques are needed.<sup>93</sup> Thus, the prosecutor must be personally persuaded that such reasons truly exist and what is the scope of the potential risk the witnesses are faced with.

Questioning of a witness requires **keeping of minutes**. The CPC does not prescribe the content of the minutes of hearings conducted during investigation. However, reference should be made to the general provisions contained in Article 115 at seq., *mutatis mutandis*.

Part of the prosecutor leadership skills is to find ways to **motivate the witnesses** to give their statements, by making them feel safe and willing to contribute to the investigations. Thus, the prosecutor should take all the necessary measures to ensure that a trust-based relationship with the main witnesses is established.<sup>94</sup> For this purpose, witnesses could have several informal conversations with the JPO or the prosecutor and when trust is established, official statements can be taken by the police or the prosecutor, depending on the circumstances in each case. In sensitive cases, and prior to the interview - intelligence on the background of a potential witness able to provide relevant information might turn extremely useful.

In sensitive cases – including cases of domestic violence, witnesses may feel reluctant to cooperate with the investigative authorities. In most cases, the unwillingness to cooperate is due to the fear of public exposure, threats and retaliation. Also, some witnesses can be subject to intimidation and tampering before the official authorities get in contact with them or in

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93 Article 165/a of the CPC.

94 Building such relationship in no way should be understood as “feeding” the witness with a certain version of the facts under investigation. Such behaviour would not only be unethical, but would also lead to the declaration of invalidity of the testimony.

the course of the investigation. Thus, prosecutors should be ready to take appropriate measures to deal with these difficulties, including request for personal precautionary measures against those who exert influence, request for pre-trial admission of evidence, protection of witness identity and person when applicable, measure of maintenance of physical distance between witness and suspect during the interviews, etc. When questioning a victim of domestic violence, the JPO or the prosecutor should inform the victim about the available types of support (legal support, shelter centers etc.) and encourage the victim to use these services, especially in cases where the perpetrator is a recidivist.

### **1.1.3.3. Collecting information from and questioning of the person under investigation<sup>95</sup>**

The prosecutor can delegate to the JPO the interviewing of the person under investigation. Special attention must be paid to the rules pertaining to the correct summons' procedure, to the presence of the defense counsel during the investigation as well as to the provisions regulating the appointment and participation of the defense lawyer in investigative actions.

Especially in more complex cases and in cases where possibilities for plea bargaining exist, the questioning of the person under investigation should be made by the prosecutor personally.

If one person is a defendant in a joined proceeding, the questioning should be conducted by the prosecutor.<sup>96</sup>

### **1.1.3.4. Confrontations<sup>97</sup>**

Confrontations as investigative activities should be conducted only when there are different contradictory statements and the prosecutor doubts on which one to trust. Having in mind that this investigative activity is intended to clarify facts and circumstances and to remove contradictions, it is most appropriate that the prosecutor conducts it in person.

When deciding whether to conduct confrontation the public prosecutor should take into consideration the type of the crime, the status of

<sup>95</sup> Article 296, Article 308 of the CPC.

<sup>96</sup> Article 311 of the CPC.

<sup>97</sup> Articles 169-170 of the CPC.

the people that are subject to confrontation and the need for such activity. Confrontations should be avoided when there is enough evidence that supports one of the statements. Also, confrontations between a defendant charged with criminal offences of domestic or sexual violence and their alleged victims bring the risk of further traumatization of the victim and should be avoided.

### **1.1.3.5. Recognition<sup>98</sup>**

Recognition is an investigative activity that under the Albanian legislation can be conducted towards persons and items.

The rules for conducting the recognition are strictly defined in the CPC and failure to observe these provisions will result in the invalidity of the recognition. When ordering recognition, it is advisable that the prosecutor underlines in the investigative order the conditions for validity of the procedure, with specific reference to the mandatory presence of the defense lawyer during recognitions of persons and the obligation to keep the minutes of the activity.

This investigative activity should be carried out by the JPO in cooperation with police officers from the state police who may provide help in finding people or items with features similar to the ones object of the recognition. If doubts about the way recognition should be undertaken exist, the JPO should contact the prosecutor and seek guidance. Also, the prosecutor can assign a JPO of sections to participate in the recognition procedure and make sure that all procedural requirements are met.

Persons, items and other objects shall be visually presented or shown to the person that has to make the identification. When there are grounded reasons to believe that the person summoned to make the identification may be hesitant or influenced by the presence of the person under identification, the prosecutor takes measures for carrying out such activity without the person summoned for the identification being seen. In very serious cases (terrorism, organized crime or high corruption cases) it is advisable that the prosecutor organizes and personally attends the identification of persons. Prior to the recognition taking place the prosecutor can order video and audio recording of the recognition procedure, since later in the procedure the persons that have made the recognition can argue that they were forced to do that by the police or that the police has told them which person to identify. Following

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<sup>98</sup> Articles 171-175 and Article 313 of the CPC.

these claims, the court may decide not to accept the recognition and one of the main evidences can be lost. Thus, the presence of the prosecutor in parallel with the video and audio recording will narrow the possibilities for abuse of the recognition procedures and will bring more objectivity.

### **1.1.3.6. Conducting an experiment<sup>99</sup>**

The prosecutor can order conducting an experiment as an investigative activity when it is necessary to be ascertained whether a fact did occur or could have occurred in a certain way.

The experiment is an investigative activity that usually happens in the later stage of the investigation. Before ordering an experiment the prosecutor should first gather all the evidence one of the case, have a clear understanding of the situation and asses the need for an expert that will contribute to the relevant conclusions.

The CPC prescribes rules on how the experiment should be conducted and prescribes a ruling from the proceeding authority. The ruling should contain summary information on the object of the experiment including the day, time and venue where the actions will take place. Also, the prosecutor, as a proceeding authority during investigations, should adopt appropriate measures to conduct actions, including ordering the taking of photographs and video recordings, and to prevent any risks to the personal or public security.

The experiment is usually conducted by the JPO and might be assisted by an expert. Since it is an activity that requires considerable organizational and logistical support, it is advisable that the prosecutor is present during the experiment to observe the regularity of the procedure, to provide further direction on its implementation, to obtain clarification from the JPO and the expert, to propose alternative theories about the occurrence of the events, and therefore to actively contribute to the ascertainment of the facts.

### **1.1.3.7. Collection of documents<sup>100</sup>**

The prosecutor can order collection of documents which represent facts, persons or items through pictures, filming, recording or any other means. Documents which constitute material evidence must be collected,

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<sup>99</sup> Articles 176 – 177 of the CPC.

<sup>100</sup> Articles 191-197 of the CPC.

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despite the person producing or keeping them.

Whenever possible, originals of the documents must be obtained. However, in cases where the originals are destroyed, lost or otherwise unusable, copies should be obtained.

The order of the prosecutor for collection of documents should have some guidelines regarding the nature of documents that need to be obtained (e.g. documents related to certain public procurement procedures), the location where the documents are believed to be kept (e.g. documents located at the State Audit Office) or the type of documents required (e.g. pictures, video, audio, written, etc.). When ordering collection of audio files, if necessary, the prosecutor can order their transcription as well. It is recommendable that the prosecutor first hears the audio files and then orders their transcription in order to avoid unnecessary use of resources.

When there are reasonable grounds to believe that someone is concealing a document that represents material evidence or represents items belonging to the criminal offence, then the prosecutor must obtain a search warrant.

Also, sequestration order might be required if the document is located in a computer or is kept by a service provider; represents correspondence that has been sent by or to the defendant even under another name or through another person; is a bank document; is classified as secret or is located at the offices of the intelligence services, etc.

All other documents can be directly collected by the judicial police. However, documents which constitute anonymous notifications shall be neither acquired nor used, except for cases where they constitute material evidence or are created by the defendant.

In cases where the prosecutor needs to evaluate the defendant's or victim's personality when the fact being examined is to be assessed in relation to their conduct or moral qualities, the prosecutor can ask for collection of criminal record certificates and final court decisions. Such documents may also be obtained to assess the reliability of a witness.

The prosecutor can also order collection of the minutes of evidence from other criminal proceedings, if they concern pre-trial admission of evidence or evidence administered during the trial; collection of the minutes of evidence taken in a civil trial for which a final decision has been issued; collection of records of unrepeatable actions and collection of the final decisions.

### 1.1.3.8. Obtaining computer data<sup>101</sup>

Computer data can be obtained, searched and sequestered.

The CPC provides the possibility for **accelerated preservation of certain computer data**, including data traffic whenever there are sufficient reasons to believe that the data might get lost, damaged or changed. Cases involving computer data or data traffic require specific knowledge, and the prosecutor should consult an IT expert or a JPO that has a background in cybercrime on questions regarding the type of information that can be extracted from the data, what the challenges that might occur in the process of obtaining the data are and what type of additional analyses will be needed regarding the computer data. The prosecutor should be aware of all the possibilities of remote access to computer data and the possibilities for remote activities towards the data. If such possibility exists, the prosecutor should undertake all the necessary preservation measures.<sup>102</sup>

**Obtaining of computer data** is regulated in the CPC with specific reference to IT related criminal cases in which the need for disclosure or handling of computer data stored in a computer system or in another means of storage arises. Also, disclosure of information on subscribers and on the services provided by the service providers can be requested.

In order to obtain computer data and service providers' data, the public prosecutor files a request to the court. In the request the prosecutor should name the natural or legal person that keeps or supervises the computer data, the contact and location details, the type, the amount or the content of computer data requested, the manner in which the requested data is to be handed over, to whom the data must be handed over and the deadline for handing them over. When obtaining data from service providers, the prosecutor should keep in mind that the legal framework might provide for time limits within which service providers are obliged to keep the data.<sup>103</sup>

When there are grounded reasons to conclude that delays may seriously impair the investigations, the prosecutor issues a reasoned decision ordering disclosure of the computer data and immediately notifies the court, which then evaluates the prosecutor's decision.

When it comes to searches and sequestration of computer data,

101 Article 191/a, Article 202/a paragraph 2, Article 208/a, Article 299/a of the CPC.

102 For example, preservation of e-mails can be requested from the service providers.

103 Article 101 of the Law No. 9918/2008 on Electronic Communications in the Republic of Albania provides that the undertakings of public electronic communications services and networks shall be obliged to preserve and administer, for a 2 year period, the data files of their subscribers.

the proceeding authorities have more possibilities. They can search the computer systems, take data from the computer system, perform activities that will prevent further modifications, etc. In cases where the prosecutor suspects that the computer data can be hidden, modified or destroyed, search or sequestration is the right choice for the investigative activity.

The CPC regulates the **search of IT or telematics systems** too, with the purpose of obtaining data, information, IT programs or their traces that are in an IT or telematics system and that are material evidence of the criminal offence or are related to the criminal offence.

There are many challenges regarding the search of computer data. One of them is the search of cloud accounts used by the suspect. Normally, this implies strategic planning of the search of the suspect's premises should be done. Also, the prosecutor should consider the working habits of the suspect and the possibility of finding open computers or laptops connected to the internet during the search of premises that enable the JPO to gather data at the moment when the suspect has open access to the cloud accounts. Thus, apart from requesting search of premises, the prosecutor should at the same time request search of the IT system used by the suspect.<sup>104</sup>

The search of the IT or telematics systems is conducted on the basis of a search warrant issued by a court upon a request from the prosecutor. The request should contain the type of search that is requested, location of the IT or telematics systems to be searched, reasons for permitting the search, exhibits or things that are expected to be found, the way how the search will be conducted and by whom. The prosecutor should propose appropriate technical measures, which ensure the preservation of the original data and do not allow their modification.

In cases of *flagrante delicto* or pursuit of an escaping person or when a detention order an arrest decision or a sentence of imprisonment must be executed, judicial police shall take all technical measures aimed at ensuring the preservation of the original computer data and preventing their loss, damage, and alteration and shall carry out all further searches of computer data, when there are reasonable grounds to believe that they contain information, software or traces of the criminal offence. In this case, the judicial police should immediately send to the prosecutor the minutes of the acts carried out, with details of the place where the search was conducted and the relevant

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104 During searches, the JPO should always seek for notes that might contain user names and passwords for cloud or other accounts used by the person whose house or premises are being searched.

reasons for it. In this event, the prosecutor should carefully assess the minutes and validate the actions with reasoned decision if the pre-requisites are met.

When conducting search of IT or telematics systems, the prosecutor should keep in mind the log files and metadata that the systems creates. These log files or metadata may provide very useful information, e.g. who accessed the system, when, how long the user was logged, what has happened in the system while the user was logged in, etc.

The **sequestration of computer data or systems** can be done in cases of proceedings against crimes concerning information technology. The request of the prosecutor to the court should contain the request for establishing the right to access as well as the request for searching and for taking computer data from the computer system as well as the prohibition to perform further actions or the securing of the computer data or system.

In executing the court decision on sequestration of computer data or systems, the prosecutor or the judicial police officer authorized by the prosecutor shall adopt a number of measures prescribed by the code, including the summoning of an expert who is competent in the field of computer systems or protection of computer data.

Having in mind the rising trend on the use of IT technologies for crime purposes, it is advisable that the prosecutors adopt a broader approach of what is considered IT related crime or crimes concerning information technology. For example, the cases where the crime itself is not about IT or computers but is connected to the misuse of IT systems for the purpose of facilitating and enabling the crime or where substantial evidence is located on computers or other IT systems, should be considered as IT related crime cases.

### **1.1.3.9. Immediate on-site verifications<sup>105</sup>**

Immediate on-site verification is usually the first investigative activity that the police officers undertake when a crime has been committed and when the existence of facts needs to be verified on the basis of immediate observations. The prosecutor may decide to participate personally on the immediate on-site verifications. Judicial police officers and agents take measures so that traces and items pertaining to the criminal offence are recorded and preserved and the crime scene and items are not altered. In cases when there is a risk that traces and items might be altered or got lost

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105 Articles 300-302 of the CPC.

and the prosecutor may not intervene urgently, judicial police officers shall conduct the indispensable investigative actions.

If the judicial police sequesters the material evidence and items connected to the criminal offence, special vigilance should be exercised so that – within the strict deadlines prescribed by the law - the police inform the prosecutor (not later than forty eight hours) and the latter validates the sequestration by reasoned decision, if the conditions exist, or decides the return of the sequestered items (in the next forty eight hours).

As noted above, the participation of the prosecutor in the on-site verification is not mandatory and in most cases not necessary. Thus, prosecutors should decide in which immediate on-site verifications they will participate depending on the severity of the reported crime, involved persons, affected goods and number of victims. It is recommendable that prosecutors participate in immediate on-site verifications whenever (i) a fatal consequence has occurred, (ii) when large-scale property damage has occurred, (iii) in cases where an object of major importance for the economy or life has been destroyed, (iv) in cases of explosion, fire, flood or other generally dangerous action with serious consequences, (v) in cases of severe traffic, air or train accidents where there are human casualties or a large number of seriously injured persons, (vi) severe traffic accidents involving a vehicle of a diplomatic or consular mission, police vehicle or army vehicle, (vii) in cases of serious criminal offenses involving an official person, state officials, foreign diplomatic or consular representatives or a media celebrity, (viii) in cases that are very likely to trigger huge public interest and in (ix) all other cases where the public prosecutor will assess that his/her presence during the immediate on-site verifications is necessary.

If the prosecutor decides to participate on the immediate on-site verifications, he/she should decide which persons should be present and what roles they will have. The prosecutor can give orders to one of the JPO to take the lead role in the immediate on-site verifications and this person shall be responsible for managing the process. Also, the prosecutor can assign a JPO that will be keeping the minutes for the activities, can order video or photo coverage of the process, can decide to include an expert that can help in the immediate on-spot verifications, etc. The prosecutor's role will be mainly to observe and direct the process, give suggestions about activities that need to be taken and provide legal advice in cases when needed.<sup>106</sup>

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<sup>106</sup> When participating in immediate on-site verifications, the officer in charge should:

The CPC prescribes the obligation to keep minutes for the immediate on-site verifications (inspections) but doesn't prescribe the content of the minutes. The minutes should reflect all the relevant facts concerning this investigative activity. Accordingly, it is advisable that the minutes contain at least the following information:

- ⊙ Information about the name of the state body that performs the inspection, the place where the action is performed, the day and hour when the action was started and completed, the names and surnames of the persons present and in what capacity they are present and the event based on which the action is taken;
- ⊙ Essential data for the course and the content of the actions that were undertaken including details about the sequestration of items or records should be enclosed to the minutes or information about the place where they are stored should be provided;
- ⊙ Data that are important given the nature of the action that is undertaken or that are important for determining the authenticity of individual objects (description, measure and size of objects or traces, marking on the objects, etc.) should be noted in the minutes and if sketches, drawings, plans, photographs, notes on electronic, mechanical or other devices for audio or audiovisual recording and shorthand notes were made, that should also be noted in the minutes and the supporting materials should be attached to the minutes.

Depending on the event, the minutes should also have a narrative information for the following:

- ⊙ date and time when the police was initially informed and arrived at the crime scene, date and time when the prosecutor was informed and if the prosecutor decided to participate in the immediate on-site

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- take care that the condition of the environment is not changed or relocated so that the traces of the perpetrator and the crime itself are not lost;
  - make sure that what is seen at the crime scene is precisely noted and described;
  - make sure that the general characteristics of the environment are noticed and described first, then the peculiarities of the environment, then the general features of the content and the special features of the content;
  - make sure that the place, position, direction, shape, color, dimensions and physical characteristics of each observed item are clearly described;
  - make sure that the ambient and climatic conditions that existed at the time of the inspection are noted and described and
  - make sure that the actions taken will enable properly preservation and storage of all traces and objects in a way that they will not be damaged or destroyed.

For the above mentioned list, see *Rulebook on performing police tasks* - Official gazette of North Macedonia 114/06, 6/09, 145/12, 41/14 and 117/14.

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verification, date and time of the arrival of the prosecutor, as well as date and time of the completion of the inspection;

- ⊙ the location where the event took place, the distance from the reference points (such as bridge, overpass, gas station, shop, electric and other poles, etc.), side (north, east, west, southwest, etc.), direction and other data for concretization of the scene should be noted;
- ⊙ initial reports of the responsible police officers and information they gathered at the crime scene from persons of interest;
- ⊙ the measures that were in place for safety, precautions and preservation of evidence and securing the scene;
- ⊙ the data about the identification of all individuals present at the scene (suspect(s), victim(s), witness(es), police officer(s)) and information whether the suspect(s) and witness(es) are separated or were able to freely communicate;
- ⊙ information whether medical assistance is provided;
- ⊙ information about entry / exit points of the crime scene, the lighting conditions, the climatic conditions and the ambient temperature at the scene;
- ⊙ information about the position of the victim, and if the victim or the suspect was moved, information where they were, where they have been moved to and for what reasons they were moved, should be included;
- ⊙ description of the victim;
- ⊙ information about the actions taken, such as photographing, recording, sketching, collected evidence, samples taken;
- ⊙ noting where each part, each piece of evidence is located, where blood samples were taken, body hair, hair, fingerprints, clothing, weapons found, bullets, bullet casings, cigarette butts, soil and other evidence was found;
- ⊙ the manner of preservation of the traces taken which can serve as evidence (packaging, transport and storage);
- ⊙ submitted requests and performed forensic research, tests, diagrams, statements taken;

- ⊙ precise identification of the evidence, noting the missing items and the places where they were taken from, the brand name, brand, color and model of the item, serial number of the item, characteristic signs, scratches and other marks for individualization of the object, the value of the object, the condition of the object;
- ⊙ injuries to the victim or suspect and other data depending on the specific event.

If the prosecutor participates in the immediate on-spot verifications it is advisable that he/she takes notes of the most relevant circumstances. Upon receiving the minutes from the JPO, the prosecutor can ask for correction of facts or circumstances that differ from the ones that the prosecutor took note of.

During immediate on-site verifications the prosecutor can order the police to undertake other investigative activities like conducting examinations of persons or places, gathering information from witnesses, requesting body and house searches, conducting recognitions, sequestrations, etc., depending on the factual situation and possibilities in the concrete case.

### **1.1.3.10. Examinations<sup>107</sup>**

The prosecutor can order examination of persons, places and items when it is necessary to discover the traces and other material effects of a criminal offence. Examinations as an investigative activity are usually carried out in the earliest phases of the investigation, right after there is an information that a crime has occurred, but the traces and the material effects of the criminal offence are not yet fully discovered. Of course, examinations can be ordered at any stage of the investigation if such a need exists.

The prosecutor can order examinations of persons, examinations of corpses and examinations of places and items.

There are two main examinations of persons: a general examination of person and an examination when taking of biological samples or conducting of medical procedure is needed.

When ordering examination of persons, the prosecutor should consider whether a consent of the person to be examined exists, since different procedural requirements apply. If a person that should be examined gives a consent for the examination, than the examination is done on the basis of

107 Articles 198-201/b of the CPC.

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a prosecutor's ruling. However, if the person does not give consent for the examination, then the prosecutor should submit a request to the court for conducting examination on the person. The same rules apply in cases when taking biological samples or conducting a medical procedure is needed. The prosecutor should send a request to the court for obtaining a court order for taking biological samples or conducting a medical procedure when a person refuses to give its consent. If the person gives a consent, then the prosecutor can seek taking of biological samples to the effect of establishing the DNA profile or conducting a medical procedure.<sup>108</sup> The prosecutor should make sure that the consent is given in written form.<sup>109</sup> The prosecutors should also give instructions so that the examination is conducted in an appropriate location, observing the personal dignity and integrity of the person being examined.

The examination of corpses as well as exhumation can be ordered by the prosecutor. When the prosecutor orders examination of corpses, the prosecutor should at the same time assign a forensic doctor that will be carrying out the examination.

The examinations of places and items can be done on the bases of a ruling issued by the prosecutor that should be provided to the defendant, when present, and to the one possessing the place where the examination is to be performed or the item to be examined.

In cases where the criminal offence has left no traces or material effects or when those have been destroyed, lost, altered or moved, the prosecutor can order the judicial police to describe their state and, where possible, verify the state they were in prior to the changes, and also take measures to ascertain the method, time and causes for the changes that might have possibly occurred. The prosecutor may order photography or video recording or any other technical act to be performed in order to document the process of examinations.

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108 For example if a biological sample for DNA needs to be taken from one person who refuses to give a consent, than the prosecutor must send request to the court in order to obtain court order for taking of biological samples. Same rules apply if a medical procedure needs to be conducted (e.g. extraction of packages suspected of containing drugs from the stomach of the person). In case the person gives consent, there is no need for court order and the examinations, taking of biological samples or conducting medical procedure can be done on the basis of a ruling made by the prosecutor.

109 Article 201/a paragraph 3 of the CPC.

### 1.1.3.11. Searches<sup>110</sup>

Searches are conducted when there are reasonable grounds to believe that someone is concealing material evidence of the criminal offence or items belonging to the criminal offence.

Prior to conducting the search the prosecutor or the judicial police upon authorization of the prosecutor may seek the handover. Here it should be noted that the hand over should be requested only if a search warrant is already issued: this way, in case of refusal, the search warrant can be executed immediately.

Searches should be conducted in situations when the existence of evidence is suspected but not verified, so the search is a tool that will enable verification of the fact whether the evidence exist and the type of evidence in question. In situations where it is known what type of evidence is sought for and where the evidence is located, obtaining this evidence on bases of sequestration order is the right approach.

Searches are conducted on basis of a search warrant issued by a court.<sup>111</sup> There are two main types of search warrants: body search warrants that allow searches on people and place or house search warrants that allow searches on places and houses. The prosecutor should submit a request to the court for the issuance of a search warrant. The request of the prosecutor should contain (i) the type of search that is requested, (ii) the person to be searched and his/her personal data, (iii) location or residence being searched, (iv) exhibits or things that are expected to be found, (v) reasons for permitting the search, as well as (vi) the authority to perform the search.<sup>112</sup> Items that are expected to be found during the search should be clearly indicated, since their indication in the decision authorizing the search is one of the conditions for their seizure.

Prosecutors may also state in the request for the issuance of the search warrant the names of the judicial police officers in charge of the execution of the warrant.

The defense lawyer of the person under investigation has the right to attend the searches, without prior notice.

The prosecutor, when proceeding to carry out a search notifies the

110 Articles 202-207, Article 298 of the CPC.

111 Exceptions are regulated in Article 298 of the CPC.

112 The law does not prescribe the content of the search request for by the prosecutor, but the content can be determined on the basis of the content of the decision of the court authorizing the search.

defendant to be present together with his retained lawyer. If the defendant does not have a lawyer, the prosecutor appoints a lawyer *ex officio*. If the defendant and his defense lawyer have been duly notified, but are not present without any reasonable cause, the prosecutor should appoint a lawyer *ex officio*. This fact is reflected in the relevant minutes.

Prior to the searches being conducted the prosecutor should request from the JPO operational information about the location and the person that are being searched. Unpredicted situations can always happen<sup>113</sup>, so discussing the challenges that might occur during the search can contribute to a better outcome. During the execution of the search warrants, the prosecutor should be informed about all dilemmas that the JPO have on how to act during the search and should stand ready to provide guidance. Guidance should also be provided by the prosecutor regarding the seizure of certain types of evidence found during the search, like notebooks and other private objects of the defendant that might be useful for the case (e.g. very expensive jewelry, art work etc.).

The prosecutor should keep in mind that if several searches are needed in one case (e.g. searches at multiple locations; searches of multiple persons; several different types of searches etc.), then it is advisable that the searches are conducted simultaneously. Also, some investigative activities (e.g. questioning of witnesses, interceptions etc.) can be done in parallel with the searches.

### **1.1.3.12. Sequestrations<sup>114</sup>**

Sequestrations are investigative activities aiming to preserve the material evidence and items related to the criminal offence, when they are needed for evidencing the facts. For sequestrations to take place, the items and their location should be known.

The CPC clearly distinguishes the situations when a court decision is required from the ones when a decision of the prosecutor is sufficient, and provides a detailed regulation of the institute.

The prosecutor, when proceeding to carrying out a sequestration notifies the defendant to be present together with his retained lawyer. If

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113 For example, the location that is being searched can be safeguarded by dogs; special electronic access might be needed for entering a location; the person that is being searched may have some medical issues like disability or chronic illness that might influence the search, etc.

114 Article 208 – 220 of the CPC

the defendant does not have a lawyer, the prosecutor appoints a lawyer *ex officio*. If the defendant and his defense lawyer have been duly notified, but are not present without any reasonable cause, the prosecutor should appoint a lawyer *ex officio*. This fact is reflected in the relevant minutes.

The items subject to sequestration need to be properly recorded and described in a way that will enable their distinction from the other items that might be part of the case file. For example, if bank records have been sequestered, they need to be properly identified by information like the name of the bank, the holder of the bank records, the type of bank records, the period covered with the bank records etc.

It should be noted that apart from sequestrations, objects found during searches are seized as well. Thus, the prosecutor should take appropriate measures for arranging the case file in a way that he/she can easily determine how the evidence was gathered. Following the previous example, bank records can be found during home search of the defendant, so there should be a clear distinction which evidence is gathered by which investigative activity.

With specific reference to the **sequestration of correspondence**<sup>115</sup>, the prosecutor should also note the name of the judicial police officer that will be responsible for the sequestration, mentioning the obligation not to open or access the content of the correspondence prior to delivering them to the prosecutor.

### 1.1.3.13. **Interceptions**<sup>116</sup>

Interception of communications provides relevant information about persons' intentions, activities and connections. However, interception of communications severely affects the right of privacy of individuals and should be used as a measure of last resort for obtaining relevant information about criminal activities of special relevance.

The legal framework in Albania knows two main types of interceptions: interceptions made for purposes of criminal investigations and preventive interceptions. The preventive interceptions are regulated by a separate law and the results of the preventive interceptions cannot be used as evidence in criminal proceedings.

115 Article 209 of the CPC

116 Articles 221-226 of the CPC.

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Interceptions during a criminal procedure are done on the basis of orders issued by the court or by the prosecutor. The CPC prescribes detailed procedural rules on what type of interceptions are allowed and what conditions should be met for interceptions to be allowed.

Upon request of the prosecutor the interceptions are authorized by the court based on a grounded decision, as long as (i) it is indispensable to continue with the initiated investigation, (ii) where a reasonable doubt exists against the person and (iii) based on evidence that he/she has committed a criminal offence.

The prosecutor in the request should specify:

- ⊙ the type of interception to be authorized;
- ⊙ the supporting information for enabling the interception like telephone numbers, fax numbers, computers and location of a private place, the name of the person whose conversations are requested to be intercepted;
- ⊙ the status of the person against whom the interceptions are requested (a suspect for a criminal offence; a person who is believed of receiving or transmitting communications to the suspected person; a person who takes part in transactions with the suspect or a person whose surveillance may lead to the discovery of the location or the suspect's identity);
- ⊙ the method and time limit for the execution of the interceptions, which cannot exceed fifteen days<sup>117</sup>;
- ⊙ the criminal offence in question;
- ⊙ grounds and evidence that show existence of a reasonable doubt that the suspect has committed the criminal offence;
- ⊙ grounds that show that interceptions are indispensable for continuing with the initiated investigation.

When requesting secret photographic or video interception or interception of conversations in private locations, the prosecutor could indicate the name of a judicial police officer or a qualified specialist and request an authorization for them to access to these locations secretly.

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<sup>117</sup> Such time limit can be extended by the court for a period of 15 days, upon the reasoned request of the prosecutor, whenever it is necessary, provided that conditions for the initial authorization of the interceptions still exist and the outcome of the interception dictates the need for extending the time period.

Interceptions are authorized directly by the prosecutor in two cases.

When there are reasonable grounds to believe that the delay may bring a serious damage to the investigations, in situations where the interceptions are indispensable for continuing with the initiated investigation and a reasonable doubt exists against the person based on evidence that he has committed a criminal offence, the prosecutor shall establish the interception, by a reasoned act. However, in this case the prosecutor must inform the court immediately, but not later than twenty-four hours of the decision taken, since the court decides upon validation of the prosecutor's decision. When the validation is not done within the due time limit, the interception cannot continue, and its outcome cannot be used.

For intentional criminal offences, punishable by not less than three years imprisonment, in the maximum term, a secret photographic, film or video recording of persons in public places or the use of tools for tracing of the location are authorized by the prosecutor. In the decision the prosecutor should specify:

- ⊙ the crime in question;
- ⊙ the status of the person against who the interceptions are authorized;
- ⊙ the type of interception that is authorized;
- ⊙ a method and time limit for the execution of the interceptions;
- ⊙ the grounds and evidence that show existence of a reasonable doubt that the suspect has committed the criminal offence, and
- ⊙ the grounds that show that interceptions are indispensable for continuing with the initiated investigation.

Prosecutors should be aware of the technical possibilities that exist for conducting interceptions. If, for example, there are no technical possibilities for intercepting communications done by means of a computer, then the prosecutor should consider other forms of interceptions if applicable. Also, in order to decide which form of interception to order, the prosecutor should be aware of the expected output. The output of the interception of communications of a person or of a telephone number, by means of telephone, fax, computer or any other mean is the content of the conversations held in person or through the telephone number that is under interception as well as the metadata created by each communication (date, time, call duration and location).

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The output of the secret interception by technical means of conversations in a private place is usually audio files that contain all the sounds, including conversations that have occurred at the private place in question. The output of the interception by audio and video in private places is video files supported by audio files representing a recording of the events that occurred at the private places in question. The output of the recording of incoming and outgoing telephone numbers is only a list of telephone numbers that communicated with the person or the telephone number under interception, not including the content of the conversations. The output of the secret photographic, film or video recording of persons in public places is video and audio supported recording of events that have occurred in public places.

The output of the interceptions may not be used when they take place beyond the circumstances prescribed by law or if the procedural requirements have not been met.

### **1.1.3.14. Simulated actions<sup>118</sup>**

This investigative activity aims at providing evidence about the involvement of certain persons in criminal activities and can lead to the disclosing of material evidence and other items connected to the criminal offence.

These actions are carried out with the authorization and under the supervision of the prosecutor. Before authorizing these actions, the prosecutor should call a coordination meeting with the JPO to discuss the plan for the activities, the location where the activities are initially planned to start and the people involved in the activity, including police officers from the state police that might provide operational support (e.g. regulate the traffic and the flow of people to the place where the activity should be conducted), the communication protocols, the definition of alternative scenarios for action, the information flow as well as the content of the final report that the prosecutor expects to receive. The prosecutor should emphasize the procedural requirements and the limits of the police actions for the activity to be legally valid, and averting the risk of abetting a person to commit a crime, which he/she would not have committed, if police had not intervened.

After carrying out such actions, the judicial police must submit to the prosecutor all the collected evidence and a summary report. The summary report should contain all of the information relevant for the case.

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118 Article 294/a of the CPC.

### 1.1.3.15. Infiltration in criminal groups<sup>119</sup>

Another undercover investigative activity that the judicial police can undertake under guidance and upon authorization of the prosecutor is the infiltration in criminal groups. This investigative activity is one of the most dangerous and risky activities and should be used only in situations where no other means of dismantling the criminal group and investigating the crimes are available. This investigative activity aims at disclosing the members of the criminal group and the *modus operandi* of the group and could lead to the disclosure of a great amount of material evidence and items connected to the crime.

The prosecutor and the JPO should agree on security protocols during the activity as well as on a general plan of activities and the initial time period of the infiltration. In addition, they should discuss activities and alternative scenarios for actions in crises situations (e.g.: how to react if the identity of the JPO is exposed, whether to allow the JPO to trade some irrelevant information from the investigation to the criminal group and play double agent, etc.), what type of illegal activities may need to be done by the JPO during the activity as well as the information flow and the manner, frequency and the form in which the prosecutor will be informed during the activity.

The prosecutor should also point out the procedural requirements to the JPO and the limits of their actions in order for the activity to be legally valid by explaining that the infiltrated judicial police employee should not provoke a criminal act that would not have been otherwise committed without his/her intervention.

Even though the CPC does not regulate this specific aspect, in cases of increased danger over the safety and life of the JPO, upon receiving such information and after making sure that the infiltrated JPO is in a safe place, the prosecutor should decide whether to terminate the infiltration prior to the expiration of the time period specified in the decision for authorization.

The infiltrated judicial police employee may be questioned as a witness. If the testimony received from infiltrated persons is essential to resolving the case, the testimony shall be taken by observing the rules on the preservation of anonymity of the informant. When the latter are not summoned as witnesses, information provided by them cannot be used.

It should be noted that this undercover activity can be combined with other investigative activities like interceptions by audio and video in

<sup>119</sup> Article 294/b of the CPC.

private places, where the prosecutor might designate the infiltrated JPO to carry out and record the interception. The procedural requirements for conducting other investigative activities must be met in any case, regardless of the fact that they will be performed together with the infiltration.

### **1.1.3.16. Controlled delivery<sup>120</sup>**

Controlled delivery shall be authorized by the prosecutor directing the preliminary investigations, upon request of competent authorities. Therefore, for the prosecutor to authorize controlled delivery, a written information and request from the competent authorities (state police, customs, foreign authorities) must exist.

The prosecutor sets the conditions for the controlled delivery and issues a reasoned act authorizing and ordering the controlled delivery, that should contain the name of the suspect or defendant, if known, the evidence proving the illegal nature of the items that need to enter, transit or exit the territory of the State and the way their control or supervision shall be carried out. Also, it is recommendable that the prosecutor's order contains the legal grounds for the authorization of the controlled delivery. Where appropriate, the prosecutor's order shall be attached to the act authorizing the full or partial replacement of illegal items and the place where the received samples are placed.

Controlled delivery shall be executed by the judicial police, under the supervision and control of the prosecutor.

## **1.2. Further developing an investigation**

After the initial investigative activities have been conducted, the prosecutor must first analyze the information and evidence in order to determine its relevance to the investigation and decide whether additional investigative activities are needed. The prosecutor should assess evidence and intelligence continuously to determine their impact on the investigation and to plan the future investigative activities. Additional planning in the investigation is needed when (i) new, unpredicted developments happen during the investigation; (ii) when the investigative activities have not covered all the aspects of the case; (iii) when the scope of the investigation has proven to be bigger than expected; and in (iv) any other case when

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120 Article 294/c of the CPC.

there's a need to check certain circumstances, to verify certain information or to gather certain evidence.

The following paragraphs analyze some of the tools at prosecutors' disposal to achieve the said goals.

### **1.2.1. Engaging an expert<sup>121</sup>**

Oftentimes criminal investigations require specific knowledge for determining relevant facts and conducting relevant conclusions. In cases like this, prosecutors are entitled to ask assistance from an expert. An expert examination shall be allowed where it is necessary to carry out research or acquire information or evaluations which require special technical, scientific or cultural knowledge.

During investigations an expert can be assigned on the bases of ruling from the prosecutor or from the judicial police. Unlike other investigative activities, the judicial police can assign an expert upon its own initiative.<sup>122</sup>

The ruling of the prosecutor or the judicial police for expert examination should be reasoned and should contain the following elements:

- ⊙ appointment of the expert, providing the personal and contact information of the expert and his/her area of expertise;
- ⊙ a summarized presentation of the case, underlining the circumstances on which the expert should provide an opinion;
- ⊙ the day, time and venue designed for the appearance of the expert, and
- ⊙ the time period in which it is expected that the expert will provide his/her opinion.

Before deciding to appoint an expert, the prosecutor and the judicial police should be clear about the facts and the circumstances for which the expertise is required, should be precise in elaborating the examination questions and should make sure that the expertise will bring added value to the investigation.

<sup>121</sup> Article s178 – 186, Article 294 paragraph 3, Article 314 of the CPC.

<sup>122</sup> Article 294 paragraph 3 of the CPC.

### 1.2.2. Precautionary measures<sup>123</sup>

The main purpose of the precautionary measures is to enable effective and efficient conducting of the investigation, eliminating the obstacles that might influence the outcome and the overall effects of the investigation. The legal framework in Albania distinguishes two main types of precautionary measures, namely personal precautionary measures and property precautionary measures

Since the precautionary measures influence the rights and freedoms of the people, they are subject to strict procedural requirements the prosecutors should always be aware of and abide by.<sup>124</sup>

When deciding if precautionary measures will be requested or implemented as well as their nature, the prosecutors must avoid any type of interference or influence. Sometimes the police arrest a person without a prosecutor's authorization and put pressure on the prosecutor for detention to be requested, even in cases where no grounds for detention exist. The prosecutor must make sure that his/her decision is based only on the facts and evidence that are included in the prosecutor's file and must note every activity of the police that is done contrary to the prosecutor's order .

In addition, when deciding if precautionary measures will be requested or implemented, the prosecutor should not only consider if the conditions for their authorization exist but also the impact – in terms of investigative outputs - that the measures will have on the investigation.

**Personal precautionary measures** should be sought only when such need exist, having in mind the proportionality of the measure to the seriousness of the facts and to the sanction foreseen for the concrete criminal offence. Before deciding to request and implement personal precautionary measures, the prosecutor should be aware of the effects that each personal precautionary measure will produce and should always choose a measure that is most adequate for achieving the investigative goals. For example, if the main purpose of the personal precautionary measure is to address the risk

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123 Article 227 et seq. of the CPC.

124 For example, for the application of personal precautionary measures, the following conditions must exist: (i) reasonable suspicion that a person committed a crime, based on evidence; (ii) no reasons for impunity or extinction of the criminal offence or the penalty; (iii) important reasons that put in danger the obtainment or the authenticity of evidence, based on factual circumstances that must be expressly set out in the reasoning of the decision; (iv) the defendant has fled or there is a risk that he might do so and when, by reason of the particular circumstances of the fact and of the defendant's character; (v) risk of commission of serious criminal offences similar to the one he is being prosecuted for.

of flight, the prosecutor may request the issuance of order for prohibition to expatriate, but in case where the defendant has already fled the country, the prosecutor should ask precautionary detention in prison since the court decision is a legal ground for issuing an international arrest warrant.

**Property precautionary measures** should be requested every time the legal conditions are met. The reasoning behind this is that the property precautionary measures will ensure that the perpetrator will not keep the proceeds of crime, any other kind of property that can be confiscated and in general items related to the criminal offence that may aggravate or prolong its consequences or facilitate the commission of other criminal offences. Moreover, the importance of confiscation and the need for adopting and implementing further measures to improve the confiscation is underlined in the EU progress report for Albania for 2019. Thus, the property precautionary measures are of great importance and should be used more often. However, it should be noted that in order to implement property precautionary measures, the prosecutor should first detect all the objects (items, properties, proceeds etc.) that can be subject to precautionary measures, which has shown to be the hardest part in the investigation. Asset recovery remains one of the black spots in investigations all over the world and different states adopted different measures to support asset recovery.<sup>125</sup>

### **1.2.3. Request for international legal assistance<sup>126</sup>**

According to the Albanian CPC the prosecutor can seek international legal assistance to collect evidence located abroad through rogatory letters. In the rogatory letter the prosecutor should indicate the legal grounds that bound the requested state to act. These legal grounds can be found in bilateral and multilateral international agreements that Albania has signed and ratified. The most important multilateral agreement that provides legal grounds for mutual legal assistance and is ratified by 50 countries<sup>127</sup> is the European Convention for Mutual Legal Assistance in Criminal Matters with its additional protocols. Of no less importance are the UN Convention against illicit Traffic in Narcotic Drugs and Psychotropic Substances, the Council of Europe Convention on Laundering, Search, Seizure and Confiscation

125 The creation of Asset Recovery Offices is as effective way of tracing assets, since it enables better communication between the authorities of different countries, provides centralized approach in asset tracking and asset recovery and centralized data, provides specialized knowledge etc.

126 Article 509 et seq. of the CPC.

127 [https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/030/signatures?p\\_auth=DIRsD5IS](https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/030/signatures?p_auth=DIRsD5IS)

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of the proceeds from Crime, the UN Convention against Corruption, the UN Convention against Transnational Organized Crime, the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the proceeds from Crime and on the Financing of Terrorism, the Council of Europe Criminal Law Convention on Corruption, the Council of Europe Convention on the Prevention of Terrorism etc.

The rogatory letter of the prosecutor should have the following content:

- ⊙ name of the issuing authority (name of the prosecution office);
- ⊙ date and place of issuance of the rogatory letter;
- ⊙ case reference number;
- ⊙ name of the country from where the evidence is requested;
- ⊙ the legal bases for requesting the legal assistance;
- ⊙ short description of the facts in the case, providing sufficient information that will ensure the foreign authorities that a certain level of reasonable doubt about the existence of a crime and involvement of the suspect persons exists and that can enable them to conduct the requested activities. The short description of the facts of the case should contain description of the events that have occurred and description of the facts that derive from the evidence, the persons involved and their relation to the crime or the suspect persons and all other details that the prosecutor considers necessary to be included in the rogatory letter;
- ⊙ a legal qualification of the crime in question and a copy of the legal provisions of the Criminal code of Albania that apply to the crime in question and support the legal qualification of the crime;
- ⊙ the main purpose for the rogatory letter: a request for conducting specific investigative activity or a request for gathering specific type of evidence, precisely specifying the type of evidence that is required to be obtained or the investigative activities that the prosecutor requests to be performed (e.g.: questioning of persons, conducting searches, confiscation of proceeds of crime<sup>128</sup>, etc.);

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128 There are publicly available manuals on how to seek international legal assistance for purposes of confiscation of proceeds of crime: see for example [https://www.unodc.org/res/cld/bibliography/manual-on-international-cooperation-for-the-purposes-of-confiscation-of-proceeds-of-crime\\_html/Confiscation\\_Manual\\_Ebook\\_E.pdf](https://www.unodc.org/res/cld/bibliography/manual-on-international-cooperation-for-the-purposes-of-confiscation-of-proceeds-of-crime_html/Confiscation_Manual_Ebook_E.pdf)

- request for meeting special conditions regarding certain procedural requirements under Albanian legislation (e.g.: special request that if the questioning of the defendant is conducted by the police, a mandatory presence of defense lawyer must be provided<sup>129</sup>);
- additional information that might be of importance (e.g. request to treat the rogatory letter with urgency, stating the reasons for the urgency – detention case, expiration of status of limitations etc.; request to treat the rogatory letter with confidentiality, etc.);
- name of the prosecutor in charge and contact details.

The rogatory letter is addressed to the competent foreign authorities and sent to the Ministry of Justice of Albania, which takes the measures to deliver the letter to the prosecution. In cases of urgency, the proceeding authority may order the direct delivery of the rogatory letter, informing the Ministry of Justice.<sup>130</sup>

The prosecutor should keep in mind that the procedure for providing international legal assistance can be lengthy, depending on the scope of the request and the availability and responsiveness of the foreign competent authorities. Thus, the prosecutors should undertake measures to speed up the procedure. Albania has its contact points in the European Judicial Network in criminal matters and the EUROJUST. The European Judicial Network in criminal matters (EJN) is a network of national contact points for the facilitation of judicial cooperation in criminal matters, whereas EUROJUST is an Agency of the European Union for Criminal Justice Cooperation that has a cooperation agreement with Albania. The prosecutor that has sent the rogatory letter to the Ministry of justice but still has not received any information for its execution can turn to the contact points that Albania has in EJN and EUROJUST and ask information about the status of the execution of the rogatory letter. Since the contact point can establish direct contacts with the foreign competent authorities, the procedure for providing the international legal assistance is accelerated.

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129 Article 296 paragraph 1 of the CPC.

130 Bilateral agreements between Albania and other countries should be taken into consideration as well. The bilateral agreement between Albania and North Macedonia for international legal assistance in civil and criminal matters provides a possibility for the competent authorities in both countries in urgent cases to send the rogatory letters and the information to the other side through INTERPOL: see Article 4 paragraph 3 of the Agreement between the North Macedonian and Albanian Government for legal assistance in civil and criminal matters, 15 January 1998.

### 1.3. Finalizing an investigation

After all the necessary investigative activities have been conducted, all the necessary and available evidence gathered and all the relevant circumstances clarified, the prosecutor should organize and plan a system for review of the gathered material and evidence and select review methods and processes. The prosecutor should also identify the resources required to complete the review of the evidence and should evaluate the investigation from a holistic perspective. It is advisable that the prosecutor **records all the critical decisions made in the course of the investigation** for accountability purposes.

The final decision of the prosecutor depends on the circumstances in each case. The prosecutor can make the following final prosecutorial decisions: (i) suspend the investigation, (ii) dismiss the charge or the case, (iii) ask direct trial, (iv) request a penalty order, (v) ask verification of the agreement on the admission of guilt and setting of punishment and (vi) send the case to trial.

#### 1.3.1. Suspension of the case<sup>131</sup>

The suspension of the case is done when the defendant is unknown, or when the defendant suffers from a serious illness which prevents further investigations, after all possible actions have been carried out.

The suspension of the case is ordered on the basis of a reasoned decision issued by the prosecutor, in which the prosecutor should describe the investigative activities that were undertaken, the result of the investigative activities and explain the existence of the legal grounds for suspension of the investigation.

The reasoned decision shall be notified to the victim or the person who has lodged the criminal report, who have a right to appeal before the judge of preliminary hearing. Where the complaint is accepted, the court shall decide on resuming the investigation and the prosecutor should resume the investigation, following the court's instructions.

In all other cases, the prosecutor is the one that, if grounds exist, decides on resuming the investigation. In this regard, the proactive role of the prosecutor is at stake, Specifically, in cases when the defendant is unknown, the prosecutor should proactively seek information about existence of evidence that might lead to the identification of the suspect. The

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131 Article 326 of the CPC

investigative activities that might help in identification of the defendant, as pointed out in the chapter for organization of work in cases of unknown perpetrator, include questioning of witnesses, reviewing material evidence, searching video surveillance records, forensic examinations, examination of existent data bases and comparison with the evidence from the case, searching of online resources and electronic data, financial analyses etc.

In cases where the defendant suffers from a serious illness which prevents further investigations, the prosecutor can issue written request to the medical institution that verified the existence of the illness of the defendant, asking explanation about the nature of the disease in terms of its duration and its permanence. Depending on the answer from the medical institution, the prosecutor can send periodically requests to the medical institution to gather information about the current health state of the defendant or can request the medical institution to inform the prosecutor for any changes regarding the health condition of the suspect.

It should be noted that the decision to suspend the investigation is of temporary character. If the prosecutor receives additional information that might lead to notion that the circumstances have changed and there are no longer reasons for suspension of the case, the prosecutor should undertake additional investigative activities and resume the investigation.

The suspension of the case does not have any effect on the expiration of the statutory limitations for the criminal offence prescribed in the Criminal Code. Therefore, the prosecutor should make periodically checks regarding existence of grounds for resuming the investigation before the statutory limitation expires.

### **1.3.2. Dismissal of the charge or the case<sup>132</sup>**

The dismissal of the charge or the case depends on the type of criminal activity in question. The dismissal of the case in criminal contraventions is done by the prosecutor and the dismissal of the case in crimes is done by the court, but in both cases the legal grounds for dismissal are the same. Thus, a case can be dismissed when:

- ⊙ it is clear that the fact does not exist;
- ⊙ the fact is not provided for by law as a criminal offence;

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132 Articles 328 -330 of the CPC.

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- ⊙ the victim has not lodged a complaint or waives it, in cases where the proceedings are initiated on his request;
- ⊙ the person cannot be taken as defendant or he may not be punished;
- ⊙ there exists a reason that extinguishes the criminal offence or for which the criminal proceedings should not be initiated or continued;
- ⊙ it is proven that the defendant has not committed the offence, or it is not proven that the defendant has committed the offence;
- ⊙ the defendant has been adjudicated by a final court decision for the same act;
- ⊙ the defendant dies;
- ⊙ in other cases, provided for by the law.

When deciding to dismiss the charge or the case, the prosecutor should keep in mind the obligation for charging the complainant with expenses and damages.<sup>133</sup>

### **1.3.3. Request for direct trial<sup>134</sup>**

Direct trial is a possibility envisioned for situations where the defendant is arrested in flagrante delicto and is being investigated for the commission of a criminal offence which is tried by a single judge. The conditions set by the CPC for the direct trial are cumulative and must be met in order for the legal provisions for direct trial to apply.

Here it should be observed that if further investigation is needed, the prosecutor should decide to continue the investigation. The prosecutor must be sure that he/she is able to prove the case before asking direct trial, since if it fails to prove the case, the case will be adjudicated by a final court decision and the defendant cannot be investigated and tried for the same act.

### **1.3.4. Request for penalty order<sup>135</sup>**

In criminal contravention cases, where the prosecutor deems that a prison sentence shall not apply, within three months from the registration of the name of the person to whom the criminal offence is attributed, a reasoned penalty order determining the punishment and requesting its approval by

<sup>133</sup> Article 330 of the CPC.

<sup>134</sup> Articles 400-402 of the CPC.

<sup>135</sup> Articles 406/a – 406/ç of the CPC.

the court can be issued.

The law provides rules that the prosecutor must respect when proposing the punishment. Thus, in the penalty order, the prosecutor shall determine a fine as the main punishment, but may also impose one or more supplementary punishments. Depending on the economic status of the defendant, the prosecutor may order that the fine shall be paid in instalments, by determining the time limits to pay them. A punishment by fine may not exceed half of the maximum provided for this type of punishment by the Criminal Code.

At the end of the investigations, a request for approval of the penalty order shall be deposited with the secretary office of the court, together with the acts of the preliminary investigation file. The request for approval of the penalty order shall be notified to the defendant.

The request for approval of the penalty order should contain:

- ⊙ name of the issuing authority (name of the prosecution office);
- ⊙ number of the prosecutor's case;
- ⊙ personal data of the defendant;
- ⊙ submission of the fact and the legal qualification of the criminal offence;
- ⊙ sources of evidence and facts to which they refer to;
- ⊙ request for approval of penalty order
- ⊙ amount of the fine, modalities of its execution and type of the supplementary punishment established;
- ⊙ date and signature of the prosecutor.

Prior to filing the request for approval of a penalty order the prosecutor should make sure that no grounds of dismissal of the charge or of the case exist and that the defendant is not accused of a criminal offence for which the law does not allow the application of the penalty. Also, the prosecutor must make sure that the punishment that he/she asked is appropriate and that the preliminary investigative acts that are attached to the request for approval are sufficient for resolving the case.

### 1.3.5. Request for verification of the agreement of admission of guilt and setting of punishment<sup>136</sup>

Plea bargaining can be done during the criminal procedure, from the registration of the name of the person to whom the criminal offence is attributed to, until the beginning of judicial review.

The process of plea bargaining has two main aspects, namely reaching an agreement upon the conditions of admission of guilt and reaching an agreement upon the punishment that should be imposed. It should be recalled that partial admission of charges is inadmissible and that the agreement should contain admission of guilt of all charges against the defendant.

The plea-bargaining process starts with a **proposition for reaching an agreement**. The proposition can be made by the prosecutor, the defendant or his special representative. In case when the proposition is given by the defendant or his special representative orally, it is advisable that the prosecutor drafts a note for the proposition. In cases where the prosecutor decided to propose an agreement, the prosecutor should draft a note, stating the reasons for his/her decision to enter into the plea bargaining process with the defendant. At this stage the prosecutor should have a clear understanding about the role of the defendant, in the sense of whether the defendant can be considered a justice collaborator and whether that status will be granted to the defendant, since the provisions which limit the agreement to criminal offences for which the law provides for a maximum punishment of not more than 7 years of imprisonment do not apply in the case of the justice collaborator<sup>137</sup>.

In some cases where the legal conditions for a bargain are formally met, the prosecutor should nevertheless consider whether an agreement in the concrete case would serve the purpose of justice or would instead be perceived as a preferential treatment for the defendant, thus harming the reputation of the prosecution office. Such cases may include cases in which the victims are severely traumatized; cases in which the criminal event caused anxiety and disgust in the public; corruption-related cases; cases where significant damage was done and it is unlikely that the damage can be repaired by the defendant; cases involving minors etc.

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136 Article 406/d – 406/f of the CPC

137 The status of justice collaborator is gained on the basis of an agreement between the defendant and the prosecutor, under the conditions set in Article 37/a of the CPC.

At this stage the prosecutor should also examine (i) if grounds for non-initiation of the proceedings or dismissal of the charge or the case exist, (ii) whether the evidence in the prosecutor's file are sufficient and prove that the defendant has committed the criminal offence and (iii) whether the legal qualification of the criminal offence and the circumstances of its commission correspond to the evidence in the prosecutor's file.

After the proposal for reaching an agreement is in place, the second phase of the plea-bargaining process consists in the **negotiations for reaching an agreement**. During negotiations the presence of the defense lawyer of the defendant is mandatory. For the negotiations the prosecutor should keep notes, specifying the proposals put forward by the prosecutor, by the defendant and his lawyer and the proposals on which final agreement was reached. The prosecutor should make sure that (i) the defendant is not feeling pressured to reach an agreement with the prosecutor, (ii) that his/her participation in the negotiations is a result of his/her own free will, (iii) that the defendant understands the agreement and its content and the consequences of the approval of the agreement and (iv) consents to the approval of the agreement and its execution. Clarifying these aspects before an agreement is sent to court is important, since the defendant will be asked on these circumstances by the court and the court can refuse the agreement if it is proven that the will of the defendant is flawed. When the court refuses to approve the agreement, the filing of a new request is not allowed, so the prosecutor's efforts of reaching an agreement will be in vain. When negotiating the punishment of the defendant, the prosecutor should make sure that the agreed punishment is appropriate in relation to the committed offence and the character of the defendant.

After negotiations are finished, the **agreement is concluded** in writing. The CPC requires that the agreement contains some elements under penalty of invalidity.<sup>138</sup> Although not included among them, it is advisable that the agreement contains also the personal data of the defendant and the defense counsel and other personal information needed for their identification, and the fact that the defendant has been represented by his/her defense counsel throughout the entire procedure.

The prosecutor, after signing the agreement, shall notify the victim or his/her heirs, whose identity and place of residence is in the acts of the proceedings, by sending copies thereof. The agreement is sent to the court for approval together with all acts of the preliminary investigation.

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138 Article 406/d paragraph 3 of the CPC.

Having in mind the importance as well as the sensitivity of the plea-bargaining process, it would be useful if a General Instruction is adopted by the General Prosecutor. The General Instruction for plea-bargaining could include rules on how the process of proposing and negotiations will be organized and recorded, establishing rules where the negotiations will take place<sup>139</sup>, what measures will be in place in order to ensure uniform practice of the prosecutors, situations where it is not recommendable to reach agreement, situations in which it is encouraged an agreement to be reached, etc.

### **1.3.6. Request for sending the case to trial<sup>140</sup>**

Applying the prosecution test to a case prior to it being forwarded to trial is an important prosecutorial duty which entails carefully reviewing all the evidence and facts, assessing whether possibilities for other final prosecutorial decisions exist, and determining whether the procedural requirements for sending the case to trial are met. When the prosecutor decides that no other final prosecutorial decision can be applied and the procedural requirements are met, the prosecutor shall request to send the case to trial.

The request of the prosecutor to send the case to trial shall contain:

- ⊙ the personal data of the defendant and the victim, when possible, as well as any other element useful to identify them;
- ⊙ description of the criminal act and the legal qualification of the criminal offense;
- ⊙ sources of evidence and the facts they refer to;
- ⊙ the request that the preliminary hearing judge decides to send the case to trial;
- ⊙ the date and the signature of the prosecutor.

All acts and evidence contained in the investigation file shall be attached to the prosecutor's request, including acts conducted before the judge of preliminary investigations, as well as material evidence, unless

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<sup>139</sup> The office of the public prosecutor is most suitable place for negotiations. However, other locations, if considered appropriate, can be suggested as well (e.g. detention facility or prison where the defendant is serving sentence, the safe house where the collaborator of justice is residing etc.)

<sup>140</sup> Articles 331-332/gj of the CPC.

they are stored elsewhere. The prosecutor should take a proactive role in the proposition of the acts that the trial file must contain, since the court will conduct hearing of the parties in order to determine the acts that the trial file must contain. The prosecutor should make sure that all relevant evidence that the prosecutor needs in order to prove the case is included in the trial file.

During the preliminary hearing, the conditions for sending the case to trial will be assessed. The parties may submit agreements on the conditions for plea bargaining and the determination of the sentence, and the request for pre-trial admission of evidence. The above-mentioned opportunities are very important since they enable the proactive approach of the prosecutor even after the prosecutor has finished the investigation and has requested the case to be sent to trial. Thus, the prosecutor should use these opportunities whenever such possibility exists.

## **2. Handling specific situations**

In order to fully and effectively exercise its leadership role, the prosecutor should be aware of the legal possibilities that exist and the challenges that might arise during the investigation. In handling the obstacles, the prosecutor should adopt an out of the box approach, always obeying the procedural requirements, but finding solutions that might not be clearly stated in the law. Thus, the leadership role of the prosecutor understands a proactive and innovative approach of the prosecutor.

### **2.1. Pre-trial admission of evidence<sup>141</sup>**

During investigations the prosecutor may come to know that some of the evidences cannot be presented before the court or their presentation is hindered by certain difficulties. In cases like this the prosecutor should take all the necessary measures in order to preserve the evidence.

In order to address similar situations, the prosecutor may seek pre-trial admission of evidence.

### **2.2. Conducting financial investigations**

Financial investigations are an essential tool of a modern and effective response to criminal threats including transnational offences and financing

141 Article 316 – 322 of the CPC

of terrorism. They can help to provide evidence of criminal activities, map out entire criminal networks including in their transnational ramifications as well as detect and trace the proceeds of crime. Apart from their proactive value, the financial investigation bear preventive added value as well, since they can provide knowledge on crime patterns. In many cases, financial investigations are necessary to develop evidence against sophisticated, high-level criminals with a view to dismantling transnational and organized crime networks. The financial investigations assist the criminal investigations by identifying motives, associations and links to people and places; identifying the use of other services such as phones, transport and amenities relevant to the case; locating or identifying suspects, witnesses or victims; providing information on a suspect's movements (proactive, covert use of financial information); providing information to address the issue of prolific and priority offenders where no previous method has been successful; tracing persons including missing ones, etc.<sup>142</sup>

The goal of the financial investigation is different from the goal of the criminal investigation. While the goal of the latter is to detect a criminal offence and the perpetrator and collect evidence, the goal of the financial investigation is to discover the proceeds from the crime, identifying the property that can be confiscated and providing sufficient information upon which this property can be temporarily secured in order to enable future final confiscation.<sup>143</sup> Since in certain criminal offences the proceeds of crime are an element of the crime, the financial investigation represent a specific investigative tool to prove the existence of such element. Therefore, financial investigations are part of an investigation and are conducted in parallel with the criminal investigations. In some cases, financial investigations can lead to disclosure of an existence of a separate crime (e.g. money laundering).

It is advisable to conduct financial investigations at the early stage of the criminal investigation of profit generating crimes. The success of the financial investigations depends on several factors, such as the involvement of investigators specialized in financial investigations and experts in financial or forensic accounting; the close cooperation and information sharing among the financial investigators and the police officers responsible for criminal investigation; the proper organization, management and analysis of the

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142 The importance of the financial investigations and their benefits is very precisely outlined by the EU Commission [https://ec.europa.eu/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/financial-investigation\\_en](https://ec.europa.eu/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/financial-investigation_en)

143 Financial Investigations and Confiscation of Proceeds from Crime, Training Manual for Law Enforcement and Judiciary, COE, August 2006 - <https://rm.coe.int/16806ef391>

information and evidence; the proactive use of the investigative activities, etc.

There are publicly available guidelines on conducting financial investigations.<sup>144</sup>

One of the main challenges faced by the investigators is the processing and management of big amount of data normally produced by the financial investigations. It is therefore indispensable for prosecutors and officers engaged in this type of activity to establish a system of standardized checks as part of the financial investigations, a system for management of the gathered materials and evidence and a system for recording of the findings.

For the same reasons, prosecutors should adopt a system for archiving and recording purposes. Some examples of such systems were given in this Handbook in the chapter on organization of work in complex cases.

Prosecutors and judicial police officers can create a checklist identifying all the necessary checks to be carried out in the course of the financial investigations including the ones pertaining to the suspected person and those related to the persons that have close relationships with the suspect (family members, including minors, close associates, intimate partners, etc.).<sup>145</sup> The list of checks differs in each legal system and can contain bank account checks, other bank details check (ownership of deposits, safe deposit boxes, etc.), request for fast money transfer, details about ownership and management role in companies, beneficial ownership status (can be requested from the banks as well), ownership of vehicles and other transport means (helicopters, planes, sealing boats, etc.), land and real-estate ownership, tax reports, information from customs (imports and exports of goods), information from securities depositories, insurances (ex: life insurances), investment funds, etc. If public officials are under investigation, official reports for asset disclosure reported to the state agencies should also be requested.

An example of a checklist is included in Annex VII of this Handbook.

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144 [https://www.fatf-gafi.org/media/fatf/documents/reports/Operational%20Issues\\_Financial%20investigations%20Guidance.pdf](https://www.fatf-gafi.org/media/fatf/documents/reports/Operational%20Issues_Financial%20investigations%20Guidance.pdf)  
<https://rm.coe.int/16806ef391>

145 In identifying the persons who will be included in the financial investigations a close cooperation with the JPO that are responsible for the criminal investigation is needed since they can gather information from the field and provide relevant intelligence.

Analyses of the financial data should focus on tracing unusual and suspicious activities such as lifestyle, monthly spending, incomes, cash deposits, etc. Forensic accounting should pay special attention to cash payments, summary review of incomes and outflows from/to individuals and legal entities, salary, regular incomes, other employment incomes (severance pay, food, transportation, etc.), fees, capital incomes and outflows (dividends, founding deposits, securities, sales contracts, rent, etc.), donations, regular expenses, deposits and bank transfers, loans and other financial transactions. The analysis of the financial information should be cross-checked with the other information on assets and belongings gathered within the financial investigation. The findings of the financial investigation should be sorted out in a clear and concise way, containing an overview of the results with a description of the current assets of the persons under investigation and any suspicious activities like unverified belongings. Therefore, in order to keep track of this amount of information and data, it is necessary that prosecutors adopt a system for recording of the findings of the financial investigation. Example of such a system is a creation of a financial profile of the subject, where the operational and financial information of the person are presented.<sup>146</sup>

### 2.3. Corruption cases

Investigating corruption cases is a puzzle that is still not solved successfully. There are many success stories but the majority of corruption cases end with impunity. Regardless of investigation and prosecution difficulties, the extensive and expanded consequences and damages of corrupt activities make the fight against corruption one of the top priorities worldwide.

In Albanian society, like other societies in Western Balkans, corruption is not accepted by citizens—they voiced great concern about it—yet bribery appears to be tolerated as a tool for getting things done and receiving better treatment<sup>147</sup>. Since corruption is often beneficial for

<sup>146</sup> The financial profiles should be adapted to the country specifics. For example, having in mind the use of cash in Western Balkans and the traditions that exist, the financial profile should, whenever possible, contain information about the suspected cash incomes and cash savings of the subject and the ownership of gold and other valuables.

<sup>147</sup> [https://www.unodc.org/documents/data-and-analysis/statistics/corruption/Western\\_balkans\\_corruption\\_report\\_2011\\_web.pdf](https://www.unodc.org/documents/data-and-analysis/statistics/corruption/Western_balkans_corruption_report_2011_web.pdf)  
[https://www.unodc.org/documents/southeasterneurope/corruption/Albania\\_corruption\\_report\\_2011\\_web\\_small.pdf](https://www.unodc.org/documents/southeasterneurope/corruption/Albania_corruption_report_2011_web_small.pdf)  
<https://idsos.org.mk/wp-content/uploads/2019/12/Corruption-in-the-Western-Balkans-2019->

both the perpetrator and the victim, people feel reluctant to report and the availability of witnesses is limited. In similar situations, prosecutors are often forced to resort to the gathering of physical evidence, the conduct of financial investigations and the use of special investigative techniques like interceptions and simulated actions.

Against the above-mentioned circumstances, creating a strategy for investigating corruption cases is an essential preparatory activity for the prosecutors. Prosecutors should keep in mind that the suspects in corruption cases are often very resourceful, have access to information, people and power centers and are profit driven. Thus, when designing the strategy for the investigation the prosecutor should consider all the obstacles that he/she may encounter during the investigation, taking into consideration the suspect's personality and suspect's dedication in hindering the investigation. Destroying material evidence, deleting of e-mails and other electronic correspondence, threatening and influencing witnesses and other types of obstructions are well known practices in corruption cases. Therefore, the main goal of the prosecutor should be designing an investigation in which the prosecutor will always be ahead and will be able to outsmart the opponent, by deciding which investigative activities they will use and in what order the investigative activities will be undertaken.

As a matter of example, said strategy may foresee gathering in the first place information from key witnesses such as people that work in the suspect's office, accountants of the office where the suspect works, bank employees in cases where cash money deposits are in question, former intimate partners of the suspect that might have relevant information and motives to testify, etc.. In order to keep the secrecy of the investigation, the prosecutor should make sure that the witnesses are warned accordingly.

Conducting simultaneous coordinated activities is another example of investigation strategy. Specifically, activities would be arranged in such a way that while the JPO are gathering the material evidence or executing search warrants or sequestration orders, the prosecutor or other JPO at the same time are gathering information from main witnesses in the case.

In corruption cases, a prosecutor should keep in mind that information about requested investigative activities could leak from court employees in charge of processing those requests. Thus, requesting of a search warrant, sequestrations or interception should be done after appropriate preventive measures are in place. For example, prior to the prosecutor requesting the

mentioned investigative activities, he/she can request from the JPO to monitor the property that is about to be searched for any unusual activities<sup>148</sup> or can order accelerated preservation of certain computer data.

More often than not, successful investigation of corruption cases depends on whether the prosecutor will be able to find the proceeds of corruption. Thus, opening a financial investigation at the early stage of the criminal investigation is necessary.

Prosecutors should keep in mind the existence of national and international supervisory bodies that can provide help and assistance in investigating corruption cases. For example, in cases concerning mismanagement of EU funds the prosecutor can establish contact with official persons of the European Anti-Fraud Office (OLAF)<sup>149</sup>. At a national level, in cases of suspicious financial activity the prosecutor can contact the FIU and see if that activity was reported to the FIU and if the necessary checks were made. Also, the prosecutor can ask the FIU to carry out additional checks and to gather intelligence in cases of alleged money laundering.<sup>150</sup> The communication with the FIU is indeed crucial in money laundering cases since the prosecutor can receive all relevant intelligence at the very early stages of the investigation and have enough time to plan and draft rogatory letters to verify the information obtained from the FIU.

### 2.4. Joint Investigation Teams

Joint investigation teams are teams in which representatives from different national or foreign agencies participate with the aim to conduct criminal investigation for criminal offences that require diversified levels and types of expertise or that affect all participating agencies.

**National joint investigation teams** are set up by the prosecutors who can freely decide upon involvement of representatives of different state

148 E.g. taking out boxes, where documents might be, from the location that is about to be searched; grater or diminished movement of persons at the location that is about to be searched, etc.

149 The European Anti-Fraud Office (OLAF) is the only EU body mandated to detect, investigate and stop fraud with EU funds.

150 The Albanian FIU is a member of EGMONT Group, which is a united body of 165 Financial Intelligence Units that provides a platform for the secure exchange of expertise and financial intelligence to combat money laundering and terrorist financing. Thus the FIU can obtain information about bank accounts ownership, beneficial ownership of companies and other relevant information located abroad in very prompt manner. However, prosecutors should be aware of the fact that the information gathered thru the FIU is only intelligence, and that in order to obtain evidence relevant for the criminal investigation, letters of rogatory need to be sent.

agencies in complex cases that require relevant expertise and/or special investigative support.<sup>151</sup> The current legal framework establishes that the joint investigative activities must be undertaken only by the representatives of the judicial police. Yet, in support of the judicial police officers the prosecutor can decide to involve police officers from the state police or other employees from state agencies that might provide administrative or technical support to the team members. The prosecutor should decide the roles of the team members, including a team leader, a communication coordinator, leaders of sub-teams or any other role that the prosecutor deems necessary.

The **decision of the prosecutor to establish a national joint investigation team** should be done in writing, containing the case file number, short information about the ongoing investigation, stating the suspect's name and crimes that he/she is charged with, the need for involvement of different state agencies, the names of the agencies involved, the names of the people that will be part of the team with the roles designated to them and a short explanation on the reasons for establishing the national joint investigation team. The decision should be signed by the prosecutor. The heads of the state agencies whose employees are involved in the joint investigation team should be informed about the involvement of their employees and the time their employees need to dedicate to the investigation. Before taking a decision to set up a national joint investigation team, it is advisable for the prosecutor to hold a meeting with representatives from all state agencies to be involved and discuss all relevant issues, including the appointment of team members, communication protocols, media coverage of the events, investigative activities, etc.

With regard to **international joint investigation teams**, even though the current legal framework does not explicitly recognize them as a special form of cooperation in the field of international cooperation in criminal matters, it does not exclude their establishment either. Moreover, Albania has ratified several international instruments that enable Albanian authorities to participate in joint investigation teams. In addition, the SPO has an International Cooperation and Joint Investigation Section and an International Cooperation and Joint Investigation Liaison coordinator.<sup>152</sup> For crimes that fall under the competence of the SPO, this section can assign members to joint investigation bodies established on the basis of an international agreement or on the basis of a stipulation concerning an

<sup>151</sup> Article 26 and Article 4 of the Law No. 25/2019.

<sup>152</sup> Article 17, Article 22 and Article 23 of the Law No. 95/2016.

individual case, for the purpose of investigation, criminal prosecution or representation before the court in the Republic of Albania or in one or more other states. Concerning joint investigations within the territory of the Republic of Albania, the International Cooperation and Joint Investigations Department within the SPO oversees the application of domestic regulations and the respect of the sovereignty of the Republic of Albania.

When an international joint investigation team needs to be set up, the prosecutor should send a rogatory letter to the competent foreign authority and request an agreement in this respect. If the foreign authority agrees, an agreement for the setting up of a JIT should be signed. In absence of procedural rules regulating the JITs, the Albanian competent authorities should carefully address all relevant issues, starting from organizational questions like coverage of expenses, translation, handling of documents, etc., to procedural questions like rules for undertaking the investigative activities on the territory of the other state, admissibility of evidence, decision to prosecute, etc.

Albanian national authorities should keep in mind the possibilities of seeking financial support for the JITs which normally generate high expenses. In cases where one EU member country is involved, EU agencies like EURJOUST can provide financial support to the JIT. Also, IPA projects on fighting serious and organized crime in Western Balkans can provide financial support if there is no EU member state involved.

### **3. Improving cooperation with the JPO**

The prosecutors and the JPO in Albania face the same problem – great amount of workload and not enough available resources.<sup>153</sup> Thus, improving the cooperation between each other to be more efficient and use the available resources more efficiently is the way to optimize the current capacities while maintaining and possibly increasing the standards of quality of delivery and professionalism in discharging their respective functions. Inevitably, issues of cooperation are connected to the expectations that both sides have.

A clear understanding of the roles that the JPO and the prosecutors have in the course of the investigations is essential for straightening their cooperation. In criminal investigations the JPO and the prosecutors have one common goal: efficient and effective fight against the crime. However,

<sup>153</sup> 2019 OSCE PiA Report, quoted *supra*, note 3, p. 25

their roles are different. The JPO are the driving force of the investigations. They are often the first to know about the occurrence of criminal events, they do the field work, gather information, intelligence and evidence and make sure that criminal events are recorder, investigated and processed. The prosecutors on the other hand are the ones responsible for ensuring procedural justice for the processed criminal events, guiding and directing the investigation, making sure that impunity is avoided. This is the main reason why the law entrusts the prosecutors with the leadership role in the investigations. In exercising this role the prosecutors should make sure that the JPO clearly understand why certain requirements are posed by the prosecutors, what can undermine the work done in the course of the investigation, what is the final outcome in one case, etc. Consequently proper and frequent communication between both parties is of utmost importance. Prosecutors should be perceived as mentors that will guide the work of the JPO in order to ensure better success rate in the criminal proceedings.

### 3.1. Case reporting

The quality of case reporting appears to be one of the biggest concerns of the prosecutors. Often the reports of the JPO lack the elements prescribed in the CPC and there are cases when the activities that are reported do not even constitute a criminal offence.<sup>154</sup> There are two main reports the JPO submit to the prosecutors: initial reports and final (explanatory) reports.

In most of the cases the police informs the prosecutor about the existence of a criminal offence by filing a **notice or initial criminal report**. The initial criminal report should contain the essential elements of the alleged offence, the sources of evidence, personal data, address and any other information which serves to identify the person whom the act is attributed to, the victim and those who are able to clarify the circumstances of the act.<sup>155</sup> At this stage of the proceedings it is very difficult for the prosecutor to directly influence the content of the report since the report itself is the act that initiates the further cooperation between the prosecutor and the JPO. Also, since a decision for registering the case has not yet been made, the prosecutor cannot formally ask the police to undertake specific investigative activities. However, the prosecutor could schedule a meeting with the JPO that filed the report in order to indicate the problematic parts of the document, its content, and to ask clarifications based on the available information.

<sup>154</sup> 2019 OSCE PiA Report, quoted *supra*, note 3, p.34-35.

<sup>155</sup> Article 293 of the CPC.

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For the prosecutor to be able to reach a decision, the prosecutor should keep a note of the meeting held with the JPO, including the clarifications that were requested and the answers that were provided. During the meeting the prosecutor should very clearly lay out the questions and dilemmas that prevent him to decide on registering a case and his/her expectation on the content of the report. The prosecutor can ask for the clarifications to be provided in writing within the first 10 days of receiving the report, in order to be able to meet the legal deadline of 15 days for registering a case.

The final report that the JPO file with the prosecutor is the **explanatory report**, which is sent to the prosecutor along with the gathered evidence after carrying out the necessary investigative actions.<sup>156</sup> The explanatory report should contain the JPO suggestions on the conclusion of the investigations and his/her final findings. Thus, the explanatory report has significant impact on the further work of the prosecutors.

Unlike the initial report, the prosecutors can influence the quality of the final report, since during the investigation the prosecutors have contacts and communicate with the JPO. In addition, **prosecutors can add to the investigative order(s) a final part**, in which they should describe the expected content of the final report, including the materials to be attached and how the evidence should be laid out.

The explanatory report should be drafted in a way that enables the prosecutor to easily check the findings, review the evidence and make conclusions. The explanatory report should contain:

- ⊙ the name and personal details of the suspect and the method used for his/her identification;
- ⊙ description of the criminal events given into correlation with the criminal offence that is suspected (this description is best to be done in chronological order, explaining the events that happened, people involved etc. and how this fits in the elements of the suspected crime);
- ⊙ the legal qualification of the criminal offence;
- ⊙ explanation of the investigative activities that were undertaken, including the outcome of each investigative activity, explaining which evidence was gathered through which investigative activity;
- ⊙ analysis of the evidence, stating its correlation with the criminal offence;

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<sup>156</sup> Article 327 of the CPC.

- ⊙ JPO's opinion on the existence of the crime, the criminal liability of the suspect and JPO's suggestion for the prosecutor's future activity and decision;
- ⊙ any information that the JPO believes necessary to share with the prosecutor.

A proper layout of evidence enables the prosecutor to better review the results of the investigation. The evidence can be laid out according to the order in which the investigative activities were undertaken and the evidence was gathered, or in chronological order, or in any other way requested by the prosecutor.

It is advisable that upon conclusion of the investigative activities a meeting between the prosecutor and the JPO takes place. During the meeting the prosecutor would be verbally informed about the outcome of the investigation and could provide feedback regarding the content of the explanatory report.

If for security and confidentiality reasons the case file is kept in the prosecution office, the prosecutor can order that the JPO prepare the explanatory report in the prosecutor's office.

### **3.2. Communication with the JPOs**

Proper communication is a key tool for efficient and effective investigation. The prosecutors should establish immediate communication with the JPO and foster a culture of trust and teamwork.

In order to improve the communication, prosecutors should establish patterns and protocols for communication and inform the JPO accordingly. For instance, prosecutors could assign two days of the week for investigations and remain available to the JPO for consultation. Prosecutors should schedule mandatory weekly or bi-weekly meetings with the JPO in order to supervise the execution of the investigative activities and exchange ideas about possible future activities. The meetings with the JPO can be scheduled using official e-mails and other tools enabling tracking of the prosecutor's initiatives and proactivity during the investigation.

Meetings are very important communication tools, since the prosecutor can establish personal contact with the JPO and get to know his/her team, obtain and provide feedback during the conversation, immediately

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clear all misunderstandings, and adapt expectations. Since the JPO have normally more field experience in conducting investigations, prosecutors should always be open to consider suggestions and ideas from the police officers, to praise useful ideas and initiatives and to point out all good practices of the JPO. The creation of a constructive feedback process has a positive impact on the proactivity of the JPO and the general sense of trust and teamwork.

The JPO actively participate in the investigation and they are interested to hear about the final outcome of their work. Thus, prosecutors should adopt a practice of informing JPO about all stages of the criminal procedure, the decisions taken and the reasoning behind them if different from the suggestions given by the JPO, and the decision of the court.

Establishing protocols for communication during the investigation is important to ensure a proper flow of information, prevent leakage and protect the integrity of the investigation. The question of protocol for communication has been addressed in the preceding sections. Here it should be observed that communication protocols for immediate communication between prosecutors and JPO should provide clear information on how the communication will be conducted (meetings, e-mails, telephone, messages etc.), the frequency of the communication, the participants in the communication, the communication flow (who communicates with who in what situations), the communication language (use of codes in communication) and any other communication aspect that might be necessary.

### **3.3. Increasing the effectiveness of the JPO**

The effectiveness of the JPO in the investigation is as much the result of their work ethic and dedication as of their motivation. Thus, the prosecutors should undertake organizational and working measures that have a motivational impact on the JPO.

Prosecutors should create a friendly, yet professional working environment by making themselves available for the JPO and by creating a teamwork culture, where every contribution of the team members is acknowledged and appreciated. Prosecutors should be an example and inspiration for the JPO, by showing high respect for the integrity of all persons involved in the criminal proceedings, high dedication and commitment to the work, by implementing positive communication strategies and by upholding moral and ethical values that will make them persons that everyone wants to work with.

The big picture in the investigations should always be visible for the JPO to make the fight against crime always a meaningful and worthwhile goal to achieve. Therefore, even when directing the investigation, prosecutors should welcome all ideas, making sure the JPO have enough autonomy to make decisions and undertake investigative activities on their own initiative, and encourage their creativity.

Depending on the type of investigation, setting small goals that are achievable weekly or in a short time, will help to maintain motivation and dedication and the sense that things are moving on.

One of the most successful tools to increase the effectiveness of the JPO is to implement a merit system of assessing the work of the JPO by creating a recognition ritual which acknowledges the positive ideas and practices of the JPO. For example, JPO that have shown proactivity could be given the possibility of joining the prosecutor in the court sessions. JPO that have failed in performing the assigned tasks could be removed from the investigation and their tasks assigned to another JPO. This way the prosecutor will encourage friendly competition among the JPO and show appreciation of the contribution each JPO is providing to the investigation.

JPO should feel they can trust the prosecutors. One of the key elements for building trust is transparency, so the prosecutor should be transparent towards the JPO, sharing with them the difficulties he/she faces in the investigation and whenever possible, involving the JPO in making decisions that will have significant impact on the investigation. In addition, welcoming feedback from the JPO will increase the quality of the work of the prosecutor and build a stronger and trustworthy relationships.

# PART III

## ANNEXES

The following Annexes provide practical instruments and tools on specific topics and actions to be undertaken. Some of the Annexes are custom made software solutions that correspond to the Albanian legislation and are suitable for use by the practitioners. Others provide guidelines and ideas on how to address specific issues. The Annexes include explanatory notes which provide practical guidance on their scope and proper use.

## **Annex I** General Instruction for the Judicial Police

The General instruction for the Judicial police can tackle and provide rules on most emerging issues and practical difficulties that occur in the course of the investigations.

### **Relevant legal framework for adoption of General Instruction for the Judicial police**

It is advisable for the General Prosecutor to adopt the General Instruction for the Judicial Police, in order to guarantee uniformity of the most important activities done by the judicial police. In that case, the following provisions apply: paragraph 1 of Article 3; paragraph 2-dh and 2-g of Article 38; paragraph 1, 2, 3-a and paragraph 4 of Article 46 of Law no.97/2016 on the Organization and Functioning of the Prosecution Office in the Republic of Albania; paragraph 1-dh of Article 3; paragraph 2 of Article 5, paragraph 1 and 6 of Article 7; Article 8; paragraph 1 and 3 of Article 21; paragraph 3 and 4 of Article 22; paragraph 4 of Article 33 of Law no. 25/2019 on the Organization and Functioning of the Judicial Police and Article 103; Article 104 and Article 279 paragraph 1 and 3 of the Criminal Procedure Code.

When it comes to the Special Prosecutor, the Special Prosecutor can issue General Instruction regulating the same issues taking into account Article 5, paragraph 2-a, 2-e and 2- ë of Article 15 of Law no. 95/2016 on the Organization and Functioning of the Institutions for Combating Corruption and Organized Crime, as well as paragraph 1-dh of Article 3; paragraph 2 of Article 5, paragraph 1 and 6 of Article 7; Article 8; paragraph 1 and 3 of Article 21; paragraph 3 and 4 of Article 22; paragraph 4 of Article 33 of Law no. 25/2019 on the Organization and Functioning of the Judicial Police and Article 103; Article 104 and Article 279 paragraph 1 and 3 of the Criminal Procedure Code.

### **Content of the General instruction**

The General Instruction should deal with all open questions regarding the cooperation between the JPO and the prosecutors, like double subordination of the JPO and chain of command during investigations, transfer and command of the JPO, communication protocols, exchange of best practices, police reporting, etc. Tips regarding the police reporting are

included in Annex II and can be regulated in a separate General Instruction or as a part of the General Instruction for the Judicial Police.

### 1. General provisions

The purpose of the General Instruction for Judicial Police is to foster a culture of common purpose, to unify the activities of the judicial police and establish clear hierarchy during the investigations, enabling better communication and better cooperation between the judicial police and prosecutors.

The objectives that the General Instruction for the Judicial Police should aim to achieve are:

- Increase the level of cooperation between the JPO and the prosecutor
- Increase the level of maintaining the secrecy of investigations
- Enhance the culture of common purpose and common approach in investigations
- Ensure greater consistency in investigations

### 2. Chain of command

The question of chain of command during investigations brings lot of challenges in everyday practice, so it is essential that the General Instruction deals with this issue. The law clearly stipulates that during investigations the JPO are responsible towards the prosecutors<sup>157</sup>. However, the reality is that the JPO of services conduct other activities apart from the investigations and have subordination to the chief in the police as well. Thus, the general instruction should contain clear **rules how to overcome the overlapping of tasks of the JPO during investigations.**

One option is that after the report has been accepted by the prosecutor and proceeding is registered, the prosecutor will inform the chief of the police department where the JPO is stationed, of the need to involve the said JPO in the investigation. The notification should contain the personal details of the JPO, the number of the case proceeding that the JPO will be involved in and the anticipated time of involvement of the JPO (for example 3 months with part time activity, one-month full involvement, etc.). It is

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157 Article 7 of the Law on Organization and Functioning of the Judicial Police

essential that the police chief of the JPO is informed which JPO that has filed initial report is involved in investigations. Also information regarding the investigation in which the JPO is involved should be provided to the police chief of the JPO, containing the name of the prosecution office, the number of the proceeding and the name of the competent prosecutor. It should be noted that the police chief should keep a track record of all the JPO that have filed initial reports in order to be able to follow their further involvement in the investigations.

It can be useful to include rules on assigning new tasks of JPO that are already involved in investigations. For example: the police chiefs should request written opinion from the Head of the prosecution office prior to engaging in other administrative or police activities the JPO that is already involved in more than 5 investigations, outlining the need of their involvement and the time envisioned for the activity, providing at the same time case numbers of the proceedings that the JPO is involved in. The Head of the prosecution office, after gathering information from the prosecutors in which investigations the JPO is involved in, will write an opinion about their availability. The chief of the police is obliged to adapt the assignments of the JPO, taking into consideration the opinion of the Head of the prosecution office.

Additionally, **rules on what the JPO can report to the police chief regarding the investigations** should be established. Consequently, JPO should report the case number of the proceeding in which they are involved and the general information on the subject of the investigation (ex: the type of criminal offence, reported criminal event, etc.). Information regarding the investigative activities ordered by the prosecutors, gathered evidence, facts from the evidence and other facts and information from the case should not be disclosed by the JPO to their police chief. If the prosecutor finds that this information can be shared with the police chiefs, then the prosecutor could send written information containing these details. Also, police chiefs of the JPO should be given the possibility to ask additional information from the prosecutor regarding concrete investigations on basis of reasoned written request. The prosecutor can provide the needed information unless it might hinder the investigation.

The question of making copies of documents by the police should also be addressed. Some suggestions were already given in the Handbook, but further measures to prevent creation of files that will contain the same documents as the prosecutor's file are welcomed. For example, apart

from the rules for disseminating the information within the police, rules on keeping track of who can access the information and when should be established.<sup>158</sup>

It is necessary to establish (i) **reporting rules** on the JPO's involvement and effective time spent for the investigations as well as (ii) reporting rules on the quality of the work of the JPO during investigations. This would require that procedures are introduced to monitor the time JPO devoted to investigations and to evaluate the results of their work thereof.

Activity tracking<sup>159</sup> of the JPO includes calculation of the time needed by the JPO to complete the investigative activity. Also, the prosecutors should on a monthly basis report to the Head of the prosecution office the statistics regarding the JPO activities. The Head of the prosecution office after gathering the statistics, can send a monthly report to the police chief. This report should contain an overall conclusion about the amount of time that the JPO has dedicated to the investigations, outlining the number of investigations the JPO is involved in.

As for the quality of work, the prosecutors should on an yearly basis<sup>160</sup> inform the Head of the prosecution office regarding the overall quality of the JPO work, assessing the work of each JPO independently, outlining JPO's strong and weak points. The prosecutors should include their opinion on whether the time the JPO has spent for certain investigative activities can be considered effective or the prosecutor believes that the activity could have been conducted more promptly. Special attention should be paid to the quality of the reports done by the JPO, taking into consideration the requirements for quality reporting set in the CPC and the General Instruction on reporting.

The reporting on the JPO involvement and quality of work should be standardized. Templates and models of assessment should be included in annex(s) to the General Instruction.

### **3. Mobility during investigations**

Another issue that often happens and bothers practitioners is the

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158 The need-to-know principle should be applied regarding all documents that concern one criminal case, regardless of the fact that they may not lead to criminal investigation.

159 The handbook contains suggestions for the activity tracking of the JPO during investigation. Templates for activity tracking can be found in Annex V as well.

160 Article 29 paragraph 2 of the Law on Organization and Functioning of the Judicial Police

common transfer and command of the JPOs.<sup>161</sup> Since the existent legal framework provides little rules on this, it is advisable that the General Instruction deals with this matter as well.

The main purpose will be to provide information to the prosecution office in cases where transfer or command of JPO happens. Since the Law<sup>162</sup> distinguishes two stages of the transfer and command procedures, there are two options to deal with this issue.

The first one is to address the stage of proposing transfer and command, while the second one is to address the stage of deciding upon the transfer or command of the JPO.

Accordingly, prior to proposing and deciding upon the transfer or command the General Prosecutor or the respective state institution should gather information on (i) whether the JPO has already filed initial reports for crimes, (ii) the name of the prosecution offices where the JPO has filed the reports, (iii) whether the JPO is involved in ongoing investigations and (iv) the name of the prosecution offices where the investigations involving the JPO are being conducted.

In both cases, after obtaining the initial information, a written opinion should be requested from the prosecutor that leads the investigation in which the JPO is involved or in which the initial report is filed by the JPO.<sup>163</sup> The opinion of the prosecutor should refer to the impact of the JPO's transfer or command on the investigation. In this light the prosecutor, with a written reasoned act, may ask for the transfer or the command to be postponed at a further, suitable time (e.g.: until completing the necessary activities). The written act of the prosecutor should contain the personal details of the JPO, general information about the investigation the JPO is involved in, explanation on why the said JPO is indispensable for the investigation and the time frame when the JPO's involvement in the investigation is expected to end. The proposing authority<sup>164</sup> or the deciding authority<sup>165</sup> on the transfer or command should take into consideration the opinion of the prosecutor.

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161 Enhancing cooperation and coordination between Prosecutors and Judicial Police in Albania, OSCE, Tirana 2019 <https://www.osce.org/files/f/documents/3/f/442660.pdf>

162 Article 21 and Article 22 of the Law on Organization and Functioning of the Judicial Police

163 Asking the opinion about cases where only the initial report is filed can be of importance in complex cases, where the police undertook numerous activities prior to filing the initial report and great amount of evidence was gathered

164 The General Prosecutor or the respective state institution

165 Judicial Police Commission

#### 4. Communication protocols

The General Instruction should contain rules that will regulate the communication protocol between the JPO and the prosecution office. However, having in mind that the communication is a topic that needs to be regulated in detail in order to prevent information leaking, it might be more practical to consider adopting a separate General Instruction for Communication.

The communication protocol should provide answers to the questions:

- **who** needs to know (defining the possible recipients of the information)
- **what** information do they need (defining what can be sent to the recipients – e.g.: investigation order, sequestration order, other acts, information about the outcome of the criminal proceedings, etc.)
- the **why** behind the information (explaining the rationale behind a particular initiative or purpose it is supposed to achieve – e.g.: by the delivered information it is expected to conduct investigative activities, to resolve organizational issues, to be informed, etc.)
- **when** do they need to know it (define the possibilities when the information will be delivered), and
- **how** will it be delivered to them.

In this light, the General Instruction should contain **rules on how the information is received in the prosecution office**, making a distinction when the information is received for the first time and when a follow up information is in question. The rules should define who receives the information, what information the recipient needs to know and why. In designing these rules, it should be kept in mind that the rules should follow the **need-to-know principle**, ensuring that only persons that need to access certain types of information, will access only that information. This implies layering of the information<sup>166</sup> that is being sent, so templates for communication and sharing of information can be prescribed as an Annex to the General Instruction.

For example, the content of the police report is not an information that should be accessed by the administrative employees in the police and the PPO that send/receive the report. The need-to-know principle means

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<sup>166</sup> The layering of the information means separating information into layers such that only one layer of information can be viewed at a time.

that the administrative employees should access only the information from the document that enables them to properly do their work. Thus, a template for filing police report should be drafted. The template can require that the content of the report is separated from the first page(s) where only a general information should be included.<sup>167</sup> All details regarding the event that is being reported, the activities undertaken, the evidence gathered etc., should be given in the other pages. The administrative employees in the police and the PPO should access only the information given in the first page(s). A possibility to enclose the content of the report in an envelope, leaving only the first page(s) visible can be prescribed.

Also, rules regarding submitting of other types of information that is sent to the PPO in written form, should also be prescribed. The rules should contain requirements for validity of the information sent to the prosecutor's office (ex: stamp, signature, possibility for sending copies etc.).

Further on the Instruction should also provide rules regarding the communication during the investigation and how information is sent by the prosecution office. For example, when it comes to sending the investigation order to the JPO there can be several possibilities<sup>168</sup>:

- ⊙ The prosecutor can send the investigation order to the JPO through the prosecution office, in a closed envelope, followed by a letter for submission of the investigation order. The letter should contain only basic information like the name of the JPO to whom the investigation order should be delivered; the number of the case in the PPO; basic details about the criminal event and suspect(s); or other information that doesn't harm the investigation. The prosecutor should also note that the content of the investigation order should be known to the JPO only
- ⊙ The prosecutor can hand over the investigation order to the JPO directly in person, ensuring nobody but the JPO is informed on the content of the investigation order
- ⊙ The prosecutor can send the investigation order in the regular way, by sending the order through the prosecution office in an open

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167 For example an outline of the type of report (whether it is an initial police report, follow up police report or final explanatory police report) and other details needed in order to register the report in the case management system (name of the suspect person(s); the criminal offence that is being reported; name of the victims or damaged persons; etc.)

168 Multiple option choices are preferable solution since the current practice of sending the cases through official channels, enables uncontrolled number of people to come in contact with case files and endangers the secrecy of the investigations. Rather than that, the General Instruction should envision different ways of delivering the information in course of the investigations.

envelope, not limiting the scope of the persons who may be informed on the content of the investigation order

**Rules regarding the keeping of the case files** can be envisioned as well. The prosecutor can decide to keep the case files in his/her office and communicate with the JPO only the investigation order and the investigative activities that need to be undertaken. In cases like this the prosecutor, after being informed that the JPO has conducted all requested investigative activities and all necessary checks, should invite the JPO in the prosecutor's office in order for the JPO to prepare the explanatory report. Likewise the prosecutor may also choose to send the case files to the JPO together with the investigation order. In this case the sending of the case files can be done in the same manner as the sending of the investigation order, underlining the fact whether any other person apart from the JPO has the right to access the information from the case file.

Rules on where the evidence gathered during the investigation will be kept should be included in the Instruction. The basic rule should be that the evidence is kept together with the case file. Exception of this rule can be provided, depending on the type of evidence gathered or the sensitivity and confidentiality of the evidence.

When designing the communication protocol, the general instruction should envision only general rules and multiple options, leaving the prosecutors with discretionary powers to choose the most appropriate option depending on the circumstances of each case.<sup>169</sup> However this doesn't undermine the possibility of including a set of rules with respect to mandatory activities (e.g.: rules on when the prosecutor is obliged to keep the case files in it's office or when the prosecutor is obliged to send acts directly to the JPO ensuring that only the JPO has access to them). This may be the case when dealing for example with cases of high public interest, abuse of police authorization, etc.

### **5. Capacity building within the investigation**

There are two main aspects that can contribute to capacity building within investigations, that won't require trainings but will be based on

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169 By providing discretionary power to the prosecutor to decide on the manner in which the order and supporting materials will be sent to the competent JPO, the prosecutor will be given the possibility to decide which materials will be given to the JPO and which not, enabling the prosecutor to have control over the secrecy of the investigation and hold responsibility for each case independently without hiding behind the General Instruction.

exchange of experiences among participants in the investigations.

The first one is the creation of a publication of **best initiatives and practices of the police officers, that is already mentioned in the Handbook**. In addition to the suggestions given in the Handbook, the general instruction can envision rules on reporting of best practices and initiatives and publishing of electronic publications, like the time period for issuing these publications – quarterly, biannually, annually and the internal procedure for reporting on the best practices within the prosecution office.

**Joint teams** that consist of JPO of sections and JPO of services can also contribute to exchange of experiences and capacity building within an investigation. Thus, the General Instruction can envision rules on when such a mixed team is preferable to be formed<sup>170</sup>, providing the prosecutors with guidance on situations when these teams can bring an added value to the investigation. The General Instruction should enumerate the possibilities for such teams, leaving the prosecutor with discretionary power to decide on establishing them.

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170 For example in situations where field activities need to be carried out (e.g.: execution of search warrants, sequestration orders); during questionings of suspects and witnesses, whereby the JPO of services can contribute with the intelligence from the field while the JPO of section can make sure all legal requirements are met, etc.

## **Annex II** General Instruction for Police Reporting

Police reports during the investigations have different uses: (i) they help with the identification of criminals<sup>171</sup>; (ii) serve as an investigative record<sup>172</sup>; (iii) help in court preparation<sup>173</sup> etc. As explained in the handbook, the general instruction for police reporting should contain two main parts: one for initial police reporting and one for final police reporting.

### **Relevant legal framework for adoption of General Instruction for Police Reporting**

The General Instruction for Police Reporting if issued by the General Prosecutor, are of mandatory nature for the JPO<sup>174</sup>. In the case when the GP adopts General Instruction on Police Reporting, the following provisions apply: Article 148 of the Constitution of the Republic of Albania, paragraph 1 of Article 3; paragraph 2-dh and 2-g of Article 38; paragraph 1, 2, 3 and paragraph 4 of Article 46 of the Law on the Organization and Functioning of the Prosecution Office in the Republic of Albania; paragraph 6 of Article 7 of the Law on organization and functioning of the Judicial police; paragraph 4 of Article 281 and Article 293 of the Law on Criminal Procedure Code of the Republic of Albania.

If the General Instruction for Police Reporting is issued by the Head of the prosecution office, the following provisions apply: Article 148 of the Constitution of the Republic of Albania; paragraph 1-a, 1-b, 1-e and 1-gj of Article 42; paragraph 4 of Article 46 of the Law on the Organisation and Functioning of the Prosecution Office in the Republic of Albania; paragraph 4 of Article 281 and Article 293 of the Law on Criminal Procedure Code of the Republic of Albania.

If the General Instruction for Police Reporting is issued by the Special prosecutor, the following provisions apply: Article 148 of the Constitution of the Republic of Albania; paragraph 2-a, 2-e and 2- ë of Article 15 of the Law on the Organization and Functioning of Institutions for Combating Corruption and Organized Crime; paragraph 4 of Article 281 and Article 293 of the Law on Criminal Procedure Code of the Republic of Albania

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171 Police reports serve as a source document for opening criminal investigations, as well as a source document that provides basis for additional follow up investigative activities, assist with the identification, catching and prosecution of criminals

172 Police reports aid prosecutors, by providing records of all investigative activities undertaken and evidence gathered in the course the criminal investigation

173 Police reports can assist the JPO by refreshing their memory in case they are testifying at preliminary hearings

174 Article 7 paragraph 6 of the Law on Organization and Functioning of the Judicial Police

## Content of the General Instruction

The General Instruction for Police Reporting should lay out the purpose for its adoption and the main objectives that it aims to achieve, providing rules on initial police reporting and rules on final police reporting, tackling the questions of the content of the report, quality of the report, layout of evidence, procedure for submitting the report, etc.

### 1. General provisions

The purpose of the General Instruction for Police Reporting is to improve the quality of the police reporting in investigations, by establishing clear and concise rules on the content of the police reports, the layout of evidence and the communication means for reporting purposes.

The objectives that the General Instruction for Police Reporting should aim to achieve are:

- ⦿ Increase the level of legal literacy of the JPO
- ⦿ Ensure greater uniformity in police reporting
- ⦿ Design a procedure for filing police reports

### 2. Initial police reporting

Initial police report is the report that the police sends to the prosecution office, informing the prosecutor about the suspicion for the existence of a criminal offence. When it comes to initial police reporting the CPC provides only general rules about the content of the report, stating that the report contains the essential elements of the act and the other elements gathered until that moment, indicating the sources of evidence and the actions taken. The CPC also provides that all acts and evidence collected should be sent together with the report.<sup>175</sup> In order to successfully fulfill their obligation set up in the CPC, the JPO need clear guidelines on how to draft a police report.

In this light, the General Instruction should first **define the qualities that the report should have**. The reports must reflect the criminal event and the details of the specific criminal offence.<sup>176</sup>

Next, the General Instruction should **define the scope of the report**.

<sup>175</sup> Article 293 of the CPC

<sup>176</sup> Details regarding the quality an effective police report should have, can be found on: [https://www.csus.edu/campus-safety/police-department/\\_internal/\\_documents/rwm.pdf](https://www.csus.edu/campus-safety/police-department/_internal/_documents/rwm.pdf)

When writing a police report, the judicial police officers should always answer the questions **who, what, where, when, how, and why**.<sup>177</sup> It would be useful for the General instruction to contain an Annex with examples of the specific facts and information that can be included in the body of the report to help answer the six questions.

After providing rules on the quality of the report and the scope of the report, the General Instruction should **define the content of the report**.<sup>178</sup> In general, the report should provide information regarding the occurrence of the criminal events and information how the event constitutes a criminal offence, than the activities undertaken by the JPO and the identified persons and property linked to the criminal event. When drafting a report, after stating a fact, the JPO should point out the evidence that proves the existence of that fact.

The General Instruction should mention the **additional requirements that might influence the quality of the report**. It should be noted that in the drafting of the report proper language should be used, since it is important to have proper use of grammar and vocabulary in order to avoid misunderstandings. Also, when possible, police officer prior to sending the report police officer should proofread it.<sup>179</sup>

In addition to the report the police officers should submit all acts and evidence collected. Thus, the General Instruction should contain some **rules on the organization and layout of the evidence**. There are several different ways to organize the evidence: (i) chronologically in order of occurrence of the events; (ii) chronologically in order of collection of the evidence; (iii) depending on the source of the evidence<sup>180</sup> or (iv) depending on the facts that the evidence is supporting. It is advisable to adopt a uniform, standardized method of organization of evidence during initial reporting.

The last question regarding the initial reporting that the General Instruction should cover are the **rules and procedures for filing of the report**. At this stage it is more than obvious that the report should be submitted

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177 More details regarding what questions should be asked and how, can be found on: [https://www.csus.edu/campus-safety/police-department/\\_internal/\\_documents/rwm.pdf](https://www.csus.edu/campus-safety/police-department/_internal/_documents/rwm.pdf)

178 Some suggestions regarding the content that the report could have, can be found on: [https://www.csus.edu/campus-safety/police-department/\\_internal/\\_documents/rwm.pdf](https://www.csus.edu/campus-safety/police-department/_internal/_documents/rwm.pdf)

179 Rules regarding the proofreading of the report can be found on: [https://www.csus.edu/campus-safety/police-department/\\_internal/\\_documents/rwm.pdf](https://www.csus.edu/campus-safety/police-department/_internal/_documents/rwm.pdf)

180 Depending from where the evidence was gathered from. For example, all evidence gathered on the basis of court orders can be first in order, than the evidence gathered on basis of order from the prosecutor; than the evidence gathered from witness, etc.

to the prosecution office in writing, but further rules on the procedure for submitting written reports, as well as on the procedure for submitting verbal reports in urgent cases should be envisioned. When defining the procedure for submitting verbal reports, the questions of when this is acceptable, how the report will be recorded and how the procedure will continue<sup>181</sup> should also be addressed. It should be kept in mind that this question can be part of the General Instruction for Communication as well. This is to be taken into account in order to avoid overlapping of rules and regulating the same topic in different General Instructions.

One more thing that is of great importance to be included in the General Instruction are **rules concerning the failure of the police officers to comply with the standards set in the General Instruction**. The possibility for asking clarifications from the police officers that filed the report was mentioned in the Handbook and can be further regulated. Rules on how, when, in which timeframe and to which extent the clarifications should be asked, should be prescribed. The General Instruction can also envision a procedure on informing the Head of the prosecution office for all the cases when the initial police reports do not meet the standards and rules set in the General Instruction. The Head of the prosecution office can inform the General Prosecutor on a monthly basis about the reported breaches of the General Instruction. Disciplinary measures can also be put in place, since the failure to comply with the General Instruction can cause delays of the investigative processes.<sup>182</sup>

### 3. Final police reporting

After carrying out the necessary investigative actions, the judicial police shall send the acts to the prosecutor, together with an explanatory report on the event and evidence, as well as his/her suggestions on the conclusion of investigations.<sup>183</sup> Thus, the final police report is actually the explanatory report that the police sends to the prosecutor.

The existing legal framework does not provide rules on what the explanatory report should exactly contain. So, the General Instruction should **define the content of the explanatory report**, mentioning all the elements that the report should have. The outline of the explanatory report

181 e.g.: is the case registered at the prosecution office on the bases of the note for verbal report, or only urgent activities are conducted and the case is registered later, upon the written report

182 Paragraph 2/a from Article 33 of the law "On the organization and functioning of the judicial police"

183 Article 327 of the CPC

## PROSECUTORIAL LEADERSHIP

can be the following:

- ⊙ Personal details of the suspect person(s) (if detected), containing information regarding name, surname and alias, names of the parents, place and date of birth, ID number, address, residence, prior criminal record, citizenship, family and employment status and other relevant information
- ⊙ Details and description of the criminal events, outlining especially the date, time and place when the criminal offence took place, description of the event containing the elements of the criminal offence, the suspect's role in the event, etc.
- ⊙ Legal qualification of the crime
- ⊙ Name and details of the victims and the damaged parties
- ⊙ Details on the amount of damage
- ⊙ Description of all the investigative activities that were undertaken
- ⊙ Description of the results of the investigative activities (evidence gathered)
- ⊙ Analysis of the evidence, outlining what element of the crime is proven by a concrete evidence
- ⊙ Final findings
- ⊙ Suggestions on the conclusion of investigations and
- ⊙ Other relevant information

Since the evidence should be enclosed to the report, **rules regarding the organization of evidence** should be clearly set up. Even in cases when the case file will remain in the prosecutor's office, there should be rules who and how to organize the evidence and prepare the explanatory report. Multiple opportunities should be envisioned at this stage, leaving the possibility for the prosecutor to decide the best option for the concrete case. Apart from the rules on how to organize the evidence, the General Instruction can contain rules of material gathered during the investigation that is not needed to be included in the report (e.g.: statements of witnesses that have no relevance to the case, intelligence information, etc.).

Having in mind that at this stage of the investigations the judicial police officers have already establish a communication with the prosecutors, the rules for final police reporting should be general and should provide

enough discretionary powers to the prosecutor, in order for the prosecutor to be able to have a proactive role in the phase of preparing the explanatory report and give suggestions to the JPO.

Special attention should be paid to the **means of submitting the explanatory report**. The General Instruction can envision rules regarding the procedure for submitting the explanatory report, providing several options, from sending it to the prosecution office after all the hierarchy in the police is respected, to sending it directly to the prosecution office or directly to the prosecutor.<sup>184</sup> Rules regarding the packaging of the report and the evidence should also be provided (putting the report and the evidence in envelope; when it is necessary packaging to be done etc.) Providing multiple choices for submitting the explanatory report and the evidence will enable the prosecutor to adapt the activities in each investigation independently, tailored to the sensitivity and severity of the case. As previously mentioned, it should be kept in mind that this matter can be part of the General Instruction on Communication, thus overlapping of rules and regulating the same topic in different General Instructions should be avoided.

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184 For example, standard rules for submitting the report can be set, providing that the prosecutor can suggest other forms of submitting the report. If the prosecutor doesn't precisely specify which way the report should be submitted, then the standard rules will apply.

### **Annex III General Instruction for Internships**

The importance of internships was highlighted in the Handbook. Internships bring benefits for both, the prosecution offices and the interns. Internships offer opportunities for prosecution offices to expand capacity, tap into new ideas, innovation and enthusiasm, generate good public relations, pre-screen potential employees, diversify the workforce and provide an intern with a positive mentoring experience. For interns, internships enable the learning of workplace skills, learning about the demands of the workplace, develop work habits, identify potential career options, learn how to build relationships with professional practitioners, experience new things, gain new professional skills and get inspired.

#### **Relevant legal framework for adoption of General Instruction for Internships**

If the General Instruction for Internships is issued by the General Prosecutor, the following provisions apply: Article 148 of the Constitution of the Republic of Albania, Article 46 of the Law on the Organisation and Functioning of the Prosecution Office in the Republic of Albania, Article 33 of the Law on Status of Judges and Prosecutors.

If the General Instruction for Internships is issued by the Head of the Prosecution Office, the following provisions apply: Article 148 of the Constitution of the Republic of Albania; paragraph 1-a, 1-b and 1-j of Article 42 of the Law on the Organisation and Functioning of the Prosecution Office in the Republic of Albania; Article 33 of the Law on Status of Judges and Prosecutors.

If the General Instruction for Internships is issued by the Special Prosecutor, the following provisions apply: Article 148 of the Constitution of the Republic of Albania; paragraph 2-a and 2-e of Article 15 of the Law on the Organization and Functioning of Institutions for Combating Corruption and Organized Crime; Article 33 of the Law on Status of Judges and Prosecutors.

#### **Content of the General Instruction**

The General Instruction for Internships should lay out the purpose and the main objectives that it aims to achieve, providing rules on how the internship will be conducted, rights, duties and obligations of the interns,

duration of the internships, the relationship between the interns and the prosecutor and any other emerging issue, taking into consideration the professional internships that are mandatory for candidate magistrates and the need for introducing internships of students, recent law graduates and other professionals.

## **1. General provisions**

The purpose of the General Instruction for Internships is to regulate the internships in the prosecution offices, ensuring incorporation of the internships within the existing organizational structure of the prosecution office, enabling unification and coordination of intern's activities, respect of all procedural requirements prescribed in the law and clear overview of the rights and obligations of the interns.

The objectives that the General Instruction for Internships should aim to achieve are:

- ⊙ Providing possibility for efficient and effective internship by the candidate magistrates and the other interested professionals
- ⊙ Define the rights and obligations of the interns, as well as the administrative and professional relation between the interns and the employees in the prosecution office, guaranteeing the protection of personal data, prohibition of publication of acts and maintaining investigative secrecy
- ⊙ Design a system for evaluation of interns' work and results.

The General Instruction should make a clear distinction between (i) the professional internship of candidate magistrates and (ii) the internship of legal and other professionals.

## **2. Professional internship**

The professional internship is prescribed in the Law on the Status of Judges and Prosecutors, so having in mind the provisions from Article 33, the General instruction should deal with the following issues:

- ⊙ Prerequisites for conducting professional internships in the prosecution office (e.g. existence of a decision by the Council for determining if the prosecution office will provide professional internship for candidate magistrates and assigning of a mentor

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magistrate to each candidate magistrate)

- ⦿ Duration of the professional internship (12 months, starting in July and ending in June of the following year)
- ⦿ Rights and obligations of the candidate magistrates (e.g.: right to annual leave: 25 working days of paid annual leave, 15 of them during the month of August, at the same time as the mentor magistrate, granted by the chairperson of the prosecution office, following a consultation with the concerned mentor magistrate; obligation of keeping investigative secret, etc.)
- ⦿ How the professional internship will be exercised (e.g.: to be involved as much as possible in the aspects of everyday work of the mentor magistrate, regardless of the fact that she/he is not assuming the function of the magistrate yet, including: explanations and discussions on pending cases; participation in hearings or interviews; case management issues; file management experience; preparation and discussion of draft decisions, experience in the prosecution office administration; aspects on ethical standards and rules of conduct for magistrates; rules on keeping track of the candidate magistrate's access to files, work performance, etc.)
- ⦿ Evaluation of the candidate magistrate's professional internship (e.g.: the ethical and professional performance evaluation and the evaluation on the quality of the candidate magistrate's performance, according to the evaluation criteria and grades set out in the Law on Status of Judges and Prosecutors and the common rules issued by the Council, etc.)

### **3. Internship by legal and other professionals**

Apart from professional internships, internships for law students, recent law graduates, legal and other professionals like students in the field of sociology, criminology, investigative journalism, forensic accounting, etc., should be envisioned. When designing rules on this kind of internship it should be kept in mind that interns have to have clear understanding of their incentive to take part in the internship. The most suitable way is to design an internship program that will outline the benefits of the intern, the knowledge required for taking part in the internship program, duration of the internship, amount of time spend in the administrative support section

of the prosecution office, amount of time spent working with the prosecutor, tasks and duties expected to be performed, rights and obligations of the interns, etc.<sup>185</sup>

Accordingly, the General Instruction for Internship should contain:

- ⦿ Conditions that the candidate needs to meet in order to be admitted in the internship program (educational background and other requirements like basic knowledge of text editing software, etc.)
- ⦿ The procedure for application to the internship program
- ⦿ An outline of the internship program (the working hours for the intern, duration of the internship, type of internship – paid or not; what the internship will include, e.g.: one month work in the administrative sections of the prosecution office, at least three months work with prosecutor or JPO, etc.)
- ⦿ Rules on how the internship will be regulated (signing of internship agreement with the Head of the prosecution office that will include the start and end dates of the internship; compensation; organizational and/or reporting relationships; principal duties, tasks or responsibilities; working conditions; confidentiality; and any other expectations; creating rules on who will be responsible for the intern during the internship, who can give the intern new tasks, to whom the intern will report, who will evaluate the intern, what is going to be subject of evaluation, etc.)
- ⦿ Tasks and duties of the intern (description of tasks and duties that the intern is expected to perform, in each of the sections of the prosecution office independently, for example: (i) administrative tasks like case file arrangement, writing summons for witnesses; (ii) legal tasks like writing draft penalty orders upon request of the prosecutor, writing minutes of meetings, conducting legal research; (iii) ethical tasks like duty to report misunderstandings or other types of communication problems to the head of the prosecution office, etc.)
- ⦿ Rights and obligations of the interns (defining the general position of the intern: internship experience is for the benefit of the intern and the intern does not replace regular employees but works under close supervision of existing staff, the intern is not necessarily entitled to a job at the end of the internship and information whether the

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185 At the end of the document, an example of an Outline of the internship program is given

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intern is entitled to wages for the time spent in the internship; the right to sick leave and procedure to report sick leave; the right to annual leave and procedure to exercise this right; obligation to keep investigative secret; right to access information and case files and the extent in which the intern can exercise this right; obligation to obey prosecutor's orders and requests, etc.)

- ⦿ Benefits from the internship program (rewards that the intern will get if successfully fulfils the tasks and duties like attending a court hearing with the prosecutor; what skills the intern is expected to have at the end of the internship program; issuing certificate for successful completion of the internship program if certain conditions were met like for example the internship lasted more than 6 months, there is an overall positive opinion about the intern's interest and dedication, etc.)

### Example: Outline of Prosecution Office Internship Program

#### Objectives of the internship program

The internship program in the prosecution office is envisioned as a process of providing guidelines and training for the interns while at the same time providing support to the prosecutors and other employees in the prosecution office. The internship program is designed to provide knowledge and understanding of:

- ⦿ the procedural requirements in criminal proceedings
- ⦿ the role of the prosecutor in the justice system
- ⦿ the correct terminology and acronyms used by the prosecutors
- ⦿ the cooperation and relationship between the prosecution office and the police, etc.

The internship program is also designed to provide hands on experience in investigations and increase the level of professional skills of the interns.

## Benefits for the intern

After participating in an internship program that will enable the intern to work in the administrative section of the prosecution office during the first two months of the internship, and work with a prosecutor during the rest of the internship, upon successful completion of the internship program the intern will:

- ⦿ Develop work habits
- ⦿ Learn workplace skills and learn about the demands of the workplace
- ⦿ Learn how to build relationships with professional practitioners
- ⦿ Learn how to write legal documents and express legal opinions using correct terminology
- ⦿ Improve legal research skills
- ⦿ Improve legal reasoning
- ⦿ Improve investigative skills
- ⦿ Improve other professional skills, etc.

## Activities of the intern and resources available to the intern

- ⦿ Read case files of archived cases
- ⦿ Read filed police reports and prosecutorial decisions upon permit from the prosecutor
- ⦿ Attend meetings within the prosecution office when invited
- ⦿ Observe the work of prosecutors and JPO in the prosecution office
- ⦿ Participate in conducting administrative tasks (answering telephone calls, photocopying, writing summons and notifications, arranging and preparing case files when instructed so by an employee, etc.)
- ⦿ Participate in discussions when invited to give contribution
- ⦿ Draft prosecutorial acts and prosecutorial decisions when instructed by the prosecutor
- ⦿ Write minutes of meetings
- ⦿ Attend court hearings upon prior consultation with the prosecutor and observe the trial

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- ⦿ Conduct legal research
- ⦿ Read laws, regulations, handbooks, manuals, professional publications and other material that can support the intern's work
- ⦿ Organize and file paperwork
- ⦿ Conduct discussions with the prosecutors and the JPO on questions of interest
- ⦿ Assist JPO of sections when advised so by the prosecutor
- ⦿ Perform other tasks and activities assigned by an employee at the prosecution office or the prosecutors

### **Conditions for entering the internship program**

Internship program is open for Albanian citizens that are students in their final year of study or recent graduates of law, sociology, psychology, journalism or forensic accounting, as well as young professionals, of the said disciplines, that at the moment of application are not employed.

Interview with the candidates is done by the head of the prosecution office. The candidates must be aware that background checks and request for additional information might be in place.

### **Rights and obligations of the intern**

The internship experience is for the benefit of the intern and the intern does not replace regular employees but works under close supervision of existing staff. The intern is not necessarily entitled to a job at the end of the internship.

The intern will have a right to sick leave and annual leave, under the notion that the internship is not payed.

The intern is obliged by the secrecy of the investigation and is expected to respect all obligations prescribed in the law and in the agreement for participation in the internship program.

**Internship duration, work days/hours**

- ⦿ Start date: October 1 2020, End Date October 1 2021
- ⦿ Monday, Tuesday, Wednesday, Thursday, Friday from 10:00am to 3:00pm
- ⦿ Days and times are subject to change weekly, but the hours will amount to about 20-25 hours per week

## Annex IV Track Record Sheet

### Explanatory Note for the Track Record Sheet

There are two different track record sheets. The third sheet is the same as the second, only adapted to the timeframes for conducting investigation in the SPO. The fourth sheet is activity tracking list. Being a practical tool the Track Record Sheet is added in the USB stick included in this Handbook.

**The first sheet** is a track record sheet for verification of the reports and initiation of proceedings.

The white area in the sheet contains the basic information regarding the case identification like the date when the case was given to the prosecutor and the number of the case.

The gray area in the sheet (columns D-H) describes the first stage of the procedure – the stage in which the prosecutor decides whether to register criminal proceedings. If the prosecutor decides to register a proceeding, then in the column D he/she enters the number “1” as an indication that the decision is made. The same applies for the decision not to initiate proceedings and this fact is noted in column E. In the F column the date of the prosecutor decision is entered. When the prosecutor gives a decision, the cell where the date is entered turns green, to signalize that the case is closed, or a proceeding was registered. Column G is formula based and automatically calculates the number of days that the prosecutor needed to make the decision. If the number of days exceed 15, the cell where the number of days is being calculated turns red, as a reminder to give a decision. Column H is reserved for notes, like the number that the case has after the proceeding starts.

**The second sheet** is a track record for the activities undertaken during the criminal proceeding. In the left upper corner, the current date will be displayed.

The white area of the sheet (columns B-F) is reserved for the basic information, like the number of the case, the date of registration of the proceeding, the suspected crime<sup>186</sup> and number of suspected persons. Column F is formula based and automatically calculates the number of days

<sup>186</sup> Only the number of the Article from the Criminal Code should be entered. In this way, through filtering, statistics on specific crimes can be gathered. For example, there will be the possibility to list only the electoral crimes and by using pivot tables withdraw statistics regarding the number of proceedings, their average length, the decisions made, etc.

passed from the day the proceeding is registered to the present day. There are 3 highlighted options added: if the number of days that have passed from the day the proceeding was registered is between 90 and 180 days (between three and six months), then the cell is highlighted in yellow. If the number of days that have passed from the day the proceeding was registered is between 180-270 (six and nine months) the cell is highlighted in orange and if the number of days is between 270 and 730 (nine months to two years) the cell is highlighted light red. If the number of days exceeds 720 (two years) the cell is highlighted dark red. This is done to help prosecutors track the time limits for conducting preliminary investigations.

The blue area (columns G-M) is reserved for noting the activities during the preliminary investigation. In column G the fact whether the investigation order is issued is noted, by entering the number of issued investigative orders (1, 2, etc.). In column H the date of the investigative order is entered. In I column the fact whether arrest in flagrance has taken place is noted, by entering the number of flagrance arrests. If during the preliminary investigation additional activity is conducted this fact is noted in column J, by writing the type of additional investigative activity. In column K the date of the last activity undertaken by the prosecutor is entered. Column L is a formula-based column that automatically calculates the number of days passed from the last activity taken. In column M notes can be entered.

The light blue area (columns O-X) is reserved for the final prosecutorial decisions in the course of the preliminary investigations. The prosecutors can enter a number that shows the number of decisions given by the prosecutor that are mentioned in the light blue area or can write the type of final prosecutorial decision in the cell other types of decisions if the option is not listed in the table. Then in column V the date of the final prosecutorial decision is entered. The column W automatically calculates the length of the proceedings handled by the prosecutor.

The green area (columns Z-AL) is reserved for entering the outcome of the court decisions. This table can be filled by adding numbers of certain types of decision given or the prosecutor can enter the type of decision that is not mentioned in column AJ – other type of court decision. Then the court decision is entered together with notes, if necessary.

The yellow area (column AN-AS) is reserved for the follow-up activities in cases where the court returned the case to the prosecutor for

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further activities. In column AN a description of the follow up activity is entered, then in column AO a date of the follow up activity, than the follow up decision and the date of the follow up decision made by the prosecutor. The column AR automatically calculates the length of the proceeding handled by the prosecutor in case of follow up activities. Notes can be entered as well.

The light orange area (columns AU-CD) is reserved for the security measures in place. For each security measure there is a field to enter how many measures were requested, how many were approved and the last day of the approval (since these measures can be re-issued). Regarding house arrest, security measure of detention in prison and temporary hospitalization in psychiatric hospital, an additional field for date of expiration is added. This field should be filled by the prosecutor. There is a highlighted option that will automatically highlight the field in yellow if the date expires in the next week, orange if the date expires in the current week and in red if the date expires the next or the present day.

**The third sheet** is a track record for the SPO, since the time limits for the investigations are different. Thus, the other content, formulas and highlights are the same as the track record for all prosecution offices, except for the highlighted option for the number of days passed from the day of the proceeding is registered. For this there are 4 highlighting options added: if the number of days passed from the day the proceeding is registered is between 180 and 360 days (between six and twelve months), then the cell is highlighted in yellow. If the number of days passed from the day the proceeding is registered is between 360-450 (twelve and fifteen months) the cell is highlighted in orange, if it is between 450-730 (fifteen months and two years) the cell is highlighted light red and if it is between 730-1080 (two and three years) the cell is highlighted red. If the number of days exceeds 1080 (more than three years) the cell is highlighted dark red. This is done to help prosecutors track the time limits for conducting preliminary investigations.

**The fourth sheet** is the activity tracking list. The activity list is created for the purpose of tracking the activities of the JPOs. The document is organized in a way to lay out all the activities that the prosecutor has assigned to the judicial police officers and the time frames for their execution. The document has formulas that automatically calculate the day when the deadline for the assigned investigative activity expires and a formula that will calculate and highlight the overdue days.

The prosecutor or a person that assists the prosecutor should regularly fill in the list. In the first column the case number is entered. Then the type of investigative activity (questioning of witnesses, questioning of suspects, gathering evidence, conducting interceptions, executing sequestrations orders and search warrants, etc.) and the name of competent JPO is entered. The date when the activity is assigned should be entered as explained above. In the column where the deadline given to the JPO is entered, only the number of days that are given as a deadline should be noted (e.g.: 15, 30, 45, etc.), not using any letters. If a deadline is a month then the number 30, resembling 30 days, should be entered.

The date when the deadline expires is automatically calculated. Also the number of the overdue days is automatically calculated and if there is an overdue longer than one day, the cell will be highlighted in red. In the next column the day when the activity was finished is entered. Despite the fact that the activity has finished the number of overdue days will still be shown but the column will be highlighted in green, to signalize finished activity. In the last column the number of days needed for completing the activity assigned to the JPO is automatically calculated.

Each column has a filter and by clicking the arrow certain types of data can be selected for further analyses and statistical reports. For example, the name of the JPO can be chosen to see all the activities assigned, overdue activities (the ones in red color) and the days needed to complete the investigative activities. This will enable the prosecutor to track the work of the JPOs and prepare statistical reports for their effectiveness if such need arises.

**IMPORTANT NOTE:** For proper functioning of the activity list, several things need to be taken into account:

- ⦿ For formula purposes in the fourth sheet, in the first left field the current date is displayed, and this field should not be altered.
- ⦿ In order for the formulas to work, the layout of the date in the document must be the same as the layout of the date in the computer. E.g.: 09/27/2020 or 27/09/2020 or 09-27-2020 or 27-09-2020. IT staff can explain how the date is set on the computer and which date format should be used in the document.

## Annex V Example for investigation planning in criminal contravention cases

A criminal act under Article 121 of the Criminal Code is reported. This criminal act is envisioned in the section of criminal acts against moral and dignity. The criminal act under Article 121 is protecting someone's privacy and incriminates the intrusion into it.

The main objective of the investigation is to determine (i) if there was intrusion into someone's privacy and if so, (ii) how, when and where this was done and (iii) by whom.

The investigation planning in criminal contravention case should be done in the investigative order. More specifically, the order of the prosecutor for undertaking investigative activities should contain a request for:

- determining which aspects of the private life of the person were exposed;
- determining the *modus operandi*,
- determining if a consent of the person whose private life was exposed existed,
- the date, time and place of the events,
- the perpetrator, including information about his/her criminal background, employment status, regular incomes, legal obligations and other relevant information that will help the prosecutor to propose appropriate punishment.

Also, the investigative order should clearly define the investigative directions, determining the elements of the criminal act that need to be proven in order to have a solid case. When defining the investigative directions, the prosecutor should focus on those aspects of the crime that lack sufficient evidence. Thus the prosecutor should request undertaking of investigative activities that will enable gathering of evidence regarding the circumstances that are not well evidenced.

In the given example, the first thing to determine is whether the intrusion in someone's privacy happened and what aspect of the private life of the person was exposed. Here, the prosecutors should keep in mind that sometimes the evidence that shows the *modus operandi* can be evidence for the aspects of private life that are being/have been exposed (e.g.: picture of the person's escort, picture of a person's medical report or wiretap of a

person's private conversations).

Second very important question is determining the *modus operandi*. This criminal act can have several different *modus operandi*, including installing appliances which serve for hearing or recording words or images; hearing conversations; recording; airing words; capturing; taping; transmitting images; publication of the data. If the police report does not detail the *modus operandi*, then the order of the prosecutor for undertaking investigative activities should contain request for determining it, clearly stating all the possibilities that the law prescribes and asking clarification which one of these possibilities actually happened.

The third element for this criminal act is the absence of consent of the individual person whose private life was exposed. This fact can be determined by a statement of the person whose private life was intruded. The prosecutor can draft the questions that the JPO need to ask and must mention procedural requirements that exist in order for that statement to be legally obtained. This appears particularly relevant if the alleged victim of the crime cannot or is not able to give consent, such as minors or mentally impaired persons.

The investigation order should also address the gathered evidence, by providing for rules on how the prosecutor expects evidence to be organized and presented.

## Annex VI Investigation Planning

The investigation plan done by the prosecutor in the course of the investigations, as pointed out in the Handbook, can have the form of an investigation order. The reasoning behind this statement is that the main aspects that the investigation order should cover, are covered by the investigation plan as well.<sup>187</sup> Also, it would be beneficial for the prosecutor to keep all the notes regarding the investigation in one place. Therefore drafting the investigation order in a way that will incorporate the most important aspects of the investigation plan can prove to be of practical value. However, if the prosecutor finds that there are reasonable grounds not to include all the planning aspects in the investigation order, a separate investigation plan can be developed.

The investigation plan should include the following elements:

- ⦿ the objective and scope of the investigation
- ⦿ what evidence is required to fulfill the objective of the investigation
- ⦿ the potential sources of evidence/information
- ⦿ investigative directions: what evidence should be obtained; how is it going to be obtained; when is it going to be obtained, and who will collect the evidence
- ⦿ possible risks to the investigation
- ⦿ managing of the communication
- ⦿ expected output

Prosecutors can include the anticipated time frames required for each phase of the investigation. This helps manage the expectations of all parties involved.

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187 If more detailed planning is needed, the prosecutors could draft tactical plans, as explained in the Handbook.

## Template for an investigation plan

### Issuing authority

### Date

### Place

### Subject: Investigation plan

In reference to the report (the number and/or date of the report that provided grounds for registration of the proceeding), filed by (details regarding the one that filed the report), regarding (short description of the criminal event), the following investigation plan is issued:

*e.g. In reference to report No.123 from 08.09.2020, filed by the Central Police Department for Drug Trafficking in Tirana, regarding the reported trafficking of narcotics under Article 283/a of the CC, involving the suspects XX and YY, the following investigation plan is issued:*

### Section I

#### 1. Objective and scope of the investigation

When defining the objectives of the investigation, the prosecutor should highlight the goal that the investigation aims to achieve and what questions need to be answered by the investigation. Also, a clear description of the facts that need to be ascertained should be given.<sup>188</sup> When describing these facts, the prosecutor should have in mind the suspected crime, the legal provisions from the CC and all the *modus operandi* in which the crime can be committed.

*e.g. The main objective of the investigation is to determine facts and circumstances relevant for verification of the findings in the report that a crime under article 283/a of the Criminal Code was committed. Thus, the investigation should*

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<sup>188</sup> By describing the facts that need to be ascertained, the scope of the investigation is defined. Thus, the prosecutors should make sure that the following questions are always being answered: what happened, when, where, who participated, how was the activity done and why.

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*aim at collecting evidence regarding the reported trafficking of narcotics, providing answers regarding the manner of trafficking of narcotics, the type of narcotic in question, the scope of the criminal activities, the involved persons and the eventual proceeds of the crime. Consequently, the following facts need to be ascertained:*

- ⊙ *What happened? Which of the following activities were done: import, export, transit or trade?*
- ⊙ *When and where the trafficking of narcotic happened? How were activities undertaken; what was the modus operandi?*
- ⊙ *What type of narcotic was in question? Is the trafficking of that narcotic in contradiction with the law?*
- ⊙ *Who participated in the trafficking? What was their role and what activities they undertook?*
- ⊙ *What was the incentive of the suspect persons? What do the proceeds of crime consist of?*

### 2. Required evidence is required to fulfill the objective of the investigation

Here the prosecutor should mention all the evidence required to prove the case before the Court. Some of the evidence may already be gathered, but nevertheless the prosecutor should make a list of all necessary evidence. This can later help the prosecutor in accessing the final results of the investigation and making final checks regarding the need to undertake additional investigative activities. Also, it would be useful for the JPO to know the prosecutor's perspective for the overall need to successfully complete the investigation. This section is not of mandatory nature, but it is useful to be included.

*e.g. For ascertaining the facts, the following evidence proves to be mandatory:*

- ⊙ *Evidence regarding the date, time and place of occurrence of the events;*
- ⊙ *Evidence regarding the manner in which the trafficking was done (the modus operandi)*

- ⊙ *Evidence regarding the type of narcotic in question*
- ⊙ *Evidence regarding the persons involved in the trafficking*
- ⊙ *Evidence regarding the activities that the suspected persons undertook and the role of each of the suspects*
- ⊙ *Evidence regarding the identification of the suspected persons*
- ⊙ *Evidence regarding the other persons that were involved*
- ⊙ *Evidence regarding the proceeds of the crime*

### 3. Potential sources of evidence/information

The prosecutor can point out potential sources of evidence and information, that he/she believes that the JPO should take into consideration. Thinking on potential sources of evidence, can further develop the investigative skills of the prosecutor.

*e.g. As a potential source of evidence, the house of the suspect's grandparents located in an isolated village should be considered.*

## Section II

Investigative directions are one of the most important activities in the investigation planning, since they reflect the overall strategy that the prosecutor has for the investigation. In providing the investigative directions, the prosecutor should keep in mind the possible risks that might hinder the investigation and should design a strategy that will enable efficient and effective investigation. Thus, the prosecutor should define what evidence needs to be obtained; how is it going to be obtained (define the investigative activities<sup>189</sup>); when is it going to be obtained (define deadlines), and who will collect the evidence (define the person responsible for undertaking the investigative activities).

*e.g. During the investigation, having in mind the evidence so far gathered by the JPO, the following evidence needs to be obtained:*

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189 In choosing the appropriate investigative activity, the public prosecutors could use the Diagram for investigative activity, given in Annex VIII as a guideline

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- ◎ *Evidence regarding the type of narcotic in question*
- ◎ *Evidence regarding the activities that the suspected persons undertook and the role of each of the suspects*
- ◎ *Further evidence regarding the modus operandi, that will enable to verify the trade of narcotics like: evidence where the narcotic has ended, who were the final buyers, what was the trade price, what quantity of the narcotic was traded and how much money was payed to the suspect XX by who, how was the money payed and where the money ended*
- ◎ *Other evidence that might be proven relevant.*

*In Aiming to collect evidence, these investigative activities should be undertaken:*

1. *Expert opinion regarding the type of narcotic in question*
2. *Identification of persons of interest*
3. *Questioning of witnesses*
  - a. *The owner of the warehouse where the trade took place on grounds of who leased the warehouse from him; how he got in touch with the leaser in the first place; with whom he had in person contacts; since when the warehouse was leased; how was the rent payed; how he communicated with the leaser; does he have a telephone number of the person that leased the warehouse; can he recognize the person if shown to him, etc.*
  - b. *The neighbor of the suspect YY on grounds of how long she lives next door to YY; if and how long does she know YY; whether she has noticed any unusual activities in the YY house; since when; how often people were coming there; approximately how much people visited the house of YY daily; has she noticed changes in YY lifestyle; what changes, etc.*
4. *Searches of premises and persons:*

- a. *House and body search of the suspect XX*
- b. *House and body search of the suspect YY*
- c. *House search of the XX grandparent's house*
- d. *Search of the computers located at the warehouse*
5. *Obtaining physical and digital evidence*
6. *Questioning of the suspects*
7. *MLA request*
8. *Any other investigative activity proven necessary, upon prior consultation with the prosecutor*

*The investigative activities should be conducted in the following order:*

- ⦿ *physical and digital evidence should be obtained first, following identification of persons that might provide useful information. This investigative activity should be conducted by the JPO of services no later than 30 days from the date they receive the investigative order*
- ⦿ *the expert opinion should be provided to the JPO of services immediately, no later than 15 days from the date they receive the investigative order*
- ⦿ *all searches defined under section 3 should be conducted simultaneously. The searches should be conducted by teams of JPO of sections and JPO of services, no later than 10 days after the gathering of physical and digital evidence and identification of persons of interest*
- ⦿ *the questioning of witnesses should be done by the JPO of services no later than 15 days after the searches are done*
- ⦿ *the MLA request will be sent by the prosecutor right after issuing of the investigation order*
- ⦿ *the questioning of the suspects will be done by the prosecutor once all the evidence has been gathered.*

*Special attention should be paid to the protection of the witness's identity during investigation since risks of witness intimidation exist.*

### Section III

The benefits of defining the chain of command and the information flow, with tips on how to address these questions was elaborated in the Handbook and Annexes I and II. It is beneficial to include the baseline for communication in the investigation plan, since the prosecutor will be able to have better control over the information flow.

*e.g. Regarding the investigation the JPO should communicate with the prosecutor only. The JPO can only report to the police chief the days when the JPO will be undertaking the investigative activities assigned by the prosecutor. Details about what investigative activities were requested, the deadlines given and details regarding information that the JPO has gathered in the investigation must not be shared with the police chief.*

*The case file will be kept in the office of the prosecutor. The JPO should submit all the evidence gathered to the prosecutor directly.*

*The JPO will have biweekly mandatory meetings with the prosecutor that will be held in the office of the public prosecutor on Wednesday at 10:00 am, starting from 09.09.2020.*

### Section IV

Prosecutors can add a final part in the investigation plan, outlining the expected outcome, describing the expected content of the final report, including what materials should be attached to it and how the evidence should be laid out. A suggestion on the content of the explanatory report is given in Annex II of the Handbook.

*e.g. The explanatory report will be drafted by the JPO in the office of the prosecutor. The evidence should be laid out in chronological order.*

## **Annex VII** Checklists for results and requested checks

### **Explanatory note for the checklists**

There are two main types of checklists that are useful in conducting financial investigations. These checklists are filled out by the JPO that are conducting the financial investigations.

The first one is a **checklist for requested checks**. As explained in the handbook, during the financial investigations lots of checks need to be done, so it is useful to keep a record of all the checks that are already done. The checklist is nothing more than a simple list in which the name of the entities from where checks were requested, and the type of checks requested are entered and a note if the check is conducted or not is added. For each person for whom these checks are being done in the course of the financial investigation a separate checklist should be filled.

The second checklist is a **checklist for results**. In this checklist all the results from the financial investigation are entered. In the first column the name of all persons for whom checks were made are entered. Then a summary of all information regarding the data received is entered. For example: number of bank accounts, vehicles found, real estate, etc. It should be noted that only short information is entered. At the end related persons are mentioned, since they can be included in the financial investigation. All information from checks made for related persons should be entered in the same checklist. This checklist is just a brief overview of the outcome of the checks. The analyses and the results of the financial investigations are done in a separate document. Being a practical tool, this checklist is added in the USB stick that is included in this Handbook.

**PROSECUTORIAL LEADERSHIP**

**Case No:**

**Checklist for requests sent in the course of the financial investigation against: (name and surname of the person)**

<b>Requests of bank data (list of all banks in Albania)</b>		
E.g.:	First Investment Bank	X
1		
2		
3		
4		
5		
6		
<b>Requests for beneficial ownership status (list of banks or other institutions from where this data has been requested)</b>		
1		
2		
3		
4		
5		
6		
<b>Requests for fast money transfer (list of all banks or other financial institution that are authorized for fast money transfer like Money Gram and Western Union)</b>		
1		
2		
3		
4		
5		
6		

<b>Requests towards insurance companies (list of life insurance companies or companies for life savings)</b>		
1		
2		
3		
4		
5		
6		
<b>Requests towards investment funds (list of all investment funds)</b>		
1		
2		
3		
4		
5		
6		
<b>Other requests</b>		
1	Land and real-estate agency (State cadaster)	
2	Aviation or other agency that can verify property of airplanes, helicopters, etc.	
3	Captaincy or other authority that can verify property of boats, sail boats, etc.	
4	Ministry of interior or other agency that can verify property of vehicles, motorbikes, etc.	
5	Tax authority	
6	Customs	
7	Securities depositories	
8	Company registry	

## Annex VIII

### Diagram for choosing appropriate investigative activity

The diagram for choosing an investigative activity was initially designed using mind mapping software. The graphic diagram is added in the USB stick included in this Handbook.

The diagram mainly maps all the investigative activities that the CPC prescribes in two main categories: (i) investigative activities toward persons and (ii) investigative activities toward places and objects. From then, the diagram detects the real life situations in which, depending on the objective that should be achieved with the investigative activity and the situations that might exist, it describes the investigative activities that can be used in achieving the objective and the basic rules for their validity (who orders them and in which situations).

