

ABOUT THE PLACEMENT OF PROSECUTION AND INVESTIGATION IN THE STRUCTURE OF THE JUDICIARY AND ITS ADMINISTRATION

*Daniela Dokovska*⁶⁷

According to the data from a survey conducted by the Center for the Study of Democracy about 700,000 crimes are committed annually in Bulgaria. Most of those constitute latent crime. This substantial aggregate of latent crime is due mainly to the lack of trust in institutions and in the first place among them – the police. These are citizens who have become victims of crimes but have not called the police, because they do not rely on the police. This substantial aggregate of latent crime is not directly relevant to the activities of the bodies of the judiciary.

It has been a great error to spread in public for years now the theory that the investigation is an obstacle to the efficiency of the criminal procedure. The fact that in our country exist bodies of investigation which have characteristics different from those of the investigating bodies in other countries is no hindrance to the criminal proceedings. This is an incorrect statement, having probably some political rather than legal context. The existence of the figure of investigator in Bulgaria is not an obstacle to the process, on the contrary – in many cases it is an advantage. There are even less reasons for reproaching the investigators at a time when only 5% of the cases are being investigated by them. The fact that the bodies of investigation have been demonized in this country is a matter of politics.

Now, when there is a debate on whether the prosecution and the investigation belong to the judiciary, it is important not to allow any mistakes and confusion in respect of institutions such as the investigating magistrate, the investigator as regulated by the Bulgarian law, and the investigating judge. These institutions have nothing in common. The Bulgarian Constitution does not provide for the existence of investigating judges in the criminal procedure because such a figure presumes a competition in the pre-trial proceedings between the prosecutor and the defendant of the indicted. In our country, however, the prosecutor by virtue of the Constitution directs the activities of the investigating body. The investigating bodies work for the prosecutor, so that he would be able to prove his theory in court, if he finds reasons to place charges with a bill of indictment. No comparison can be made between the investigator, such as he exists in our system, and the investigating judge, who exists in Germany, or the judge on liberties, who exists in France and many other countries. The latter is a judge, not an investigating body, and participates in the trial, not in the pre-trial phase.

Many things can be said on these issues, but the serious problem that persists concerns the structure of the judiciary. It is clear that the prosecution has its extremely important role both in the pre-trial phase – the prosecutor as the head of the investigation – and in the trial phase, where the prosecutor is the person who raises and maintains the charges before the court.

It is clear that the prosecution and the investigation have their common tasks, which are quite different from the tasks and the functions of the court. In this

⁶⁷ Ms. Daniela Dokovska is a lawyer at *Dokovska, Atanassov and Partners*. She has a law degree from the Law Faculty of Sofia University *St. Kliment Ohridski* and is also lecturer on Criminal Procedure at the same university. Ms. Dokovska is a member of the Supreme Bar Council as well as numerous associations and organizations. She is the author of publications on criminal procedure, criminal law and criminology.

sense the existence of a common Supreme Judicial Council of judges, prosecutors and investigators gives rise to many problems. The existence of such common Supreme Judicial Council compromises the independence of the court, at least for two reasons:

- **First**, it does not seem appropriate for public prosecutors to elect judges and chairs of the courts.
- **Second**, it looks extremely illogical when there is a trial about the responsibility of the state and the prosecution is referred to as the body which caused the damages, these damages to be paid from the budget of the judiciary, i.e. of the court as well.

It is possible to point out more negative aspects resulting from the existence of the Supreme Judicial Council in its present form. The Council itself and its overall activities seem to give rise to strong negative attitudes in society.

In this respect the idea of the judges from the Supreme Court of Cassation, which was announced in the media, deserves serious attention. It refers to the formation of a Supreme and really Judicial Council, which should administer the judges, and a separate council, which could be the staff body of the prosecutors and investigators. This seems to make more sense and could be more efficient. I believe that if the politicians want to approach these problems with due responsibility, they should give up their political quota in the Supreme Judicial Council. Who needs this quota? Let the judges elect judges, let the prosecutors and investigators elect prosecutors and investigators. What is the reason for such intervention in the selection of staff? This can only politicize the system and lead to some form of political influence on it.