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NORMATIVE–LEGAL ANALYSIS OF THE PROTOCOL OF COOPERATION BETWEEN THE PPO AND THE MoI OF THE REPUBLIC OF NORTH MACEDONIA

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ABSTRACT

Introduction: *This paper provides a legal analysis of the provisions contained in the recently adopted Protocol of Cooperation between the Ministry of Interior (MoI) and the Public Prosecutor's Office of the Republic of North Macedonia (PPO) within the framework of criminal procedure.*

Methods: *The paper conducts a comprehensive legal analysis of legislation within the relevant legal field and also the Protocol's provisions, while also examining specific internal legal acts established between the two institutions.*

Results: *The analysis demonstrated that the Protocol contains certain ambiguities in the legislative text that need to be more precisely defined.*

Discussion: *By adopting the new Protocol, and considering the challenges faced in the past two years, both institutions have undertaken a substantial step towards overcoming divergences in their joint actions, with the overarching aim of ensuring that justice in the Republic of North Macedonia is administered at the highest possible standard.*

Keywords: Protocol, cooperation, criminal procedure, institutions

INTRODUCTION

Republic of North Macedonia, in its strategic orientations, is committed to integration into European institutions, a process that entails comprehensive reforms in all spheres of social functioning, as well as the establishment of clear rules and high standards in the work of state institutions. The acceptance of European values within the justice system requires the adoption of new postulates, among which the protection and full respect of the human rights of victims, suspects, and defendants occupy a central position.

These reform processes, however, represent a complex and long-standing challenge for the state, which has been undergoing a difficult transitional period of transformation from one social order to another. This transformation necessitates the abandonment of the principles upon which the former common state was based and the adoption of new values, with particular emphasis on the consistent observance of the corpus of human rights and freedoms.

A significant segment of the reform efforts concerns the judicial system. In the past decade, North Macedonia has adopted new laws reflecting European standards, introduced changes in the competences of investigative agencies, and ensured harmonization with the practices and recommendations of European courts as well as with the provisions of international conventions. These reforms constitute crucial steps towards ensuring transparency and accountability—values regarded as essential preconditions for the successful implementation of justice reforms. A transparent criminal procedure, in which material traces and evidence are promptly and objectively presented to the public, where testimonies leave no room for ambiguity, and where procedural errors are minimized, represents a guarantee for the delivery of fair and independent judicial decisions.

An essential step in this process is the precise definition of the legal framework within which the investigative authorities operate, particularly in terms of their competences and mutual relations. With the adoption of the new Criminal Procedure Code (2010), substantial changes were introduced: the Public Prosecutor assumed a central role in the entire preliminary procedure, including the pre-investigation procedure, with broad powers and extended jurisdiction. On the other hand, the Ministry of the Interior (police) retained autonomy in investigating reported criminal offences and gained greater freedom for proactive engagement in cases, but under reinforced supervision by the Public Prosecutor.

The involvement of the Public Prosecutor in the initial stages of investigation, however, raised a number of questions that the Criminal Procedure Code could not fully address, particularly those concerning the modalities of cooperation and communication between the Public Prosecutor's Office and the police. Recognizing these challenges, the two institutions established joint working groups, whose efforts culminated in the adoption of the Protocol on Cooperation, first issued in 2023 and subsequently revised and reissued in January 2025.

The purpose of this paper is to analyze the provisions of this Protocol, to identify potential shortcomings and ambiguities in its text, and to propose solutions that could further enhance and strengthen the cooperation between the Public Prosecutor's Office and the police.

1. The role of the Public Prosecutor in Criminal Proceedings

Under the term Public Prosecutor, the Protocol refers to: the Public Prosecutor of the Republic of North Macedonia, the Higher Public Prosecutor, the Basic Public Prosecutor for the Prosecution of Organized Crime and Corruption, and the Basic Public Prosecutor (Protocol on Cooperation, 2025, p.3).

The Public Prosecutor is an authority whose rights and obligations in criminal proceedings are grounded in the principles of accusatorial procedure and official duty.

The principle of accusatorial procedure implies that criminal proceedings may be initiated and conducted only on the basis of an indictment submitted by an authorized prosecutor, meaning that the competent body (the prosecution service) is the one that decides whether proceedings will be initiated against a particular person for a committed criminal offence.

The principle of official duty, on the other hand, establishes the obligation of the competent authorities to act *ex officio* in cases where a criminal offence subject to mandatory prosecution has been committed. This means that criminal proceedings are initiated and conducted regardless of the will of the injured party or other persons, from the moment the competent authorities become aware of the commission of a criminal offence subject to prosecution *ex officio*.

In Macedonian legislation, the Public Prosecutor is defined as: *“a single and independent state authority which prosecutes perpetrators of criminal offences and other punishable acts established by law, and performs other duties determined by law”* (Law on the Public Prosecutor’s Office, 2007).

From a procedural perspective, the Public Prosecutor constitutes a party in criminal proceedings, but not in the classical sense of a party representing solely its own interests. Rather, it simultaneously functions as a state authority entrusted with safeguarding the collection and evaluation of evidence, both against and in favor of the defendant.

In defining the position and role of the Public Prosecutor in criminal proceedings, Article 39 is of particular importance. It stipulates that: *“The fundamental right and duty of the Public Prosecutor is to prosecute perpetrators of criminal offences subject to mandatory prosecution”* (Criminal Procedure Code, 2010).

This provision reflects the guiding role that the Public Prosecutor is expected to exercise during the investigation, namely by directing the competent authorities—primarily the police—in detecting and investigating criminal offences, through the issuance of orders or instructions in relation to specific cases.

In connection with the above, it is important to highlight a recurring situation that arises in the practice of joint action between the police and the Public Prosecutor in our territorial jurisdiction – the territorial area of jurisdiction of the Sector of internal affairs Bitola, which we believe also occurs in other parts of the Republic of North Macedonia, particularly in the investigation of reported offences in economic crime.

Namely, the manner of reporting criminal offences related especially in the field of economic crime, in practice most often occurs through anonymous submissions or hearsay information, which generally means that the police initially dispose of scarce data regarding the committed offence. The allegations contained in such reports frequently leave police officers uncertain as to whether the report contains elements indicating the existence of a criminal offence at all. Consequently, it is a common practice for the police to forward to the Public Prosecutor, reports with bases for suspicion of having committed alleged criminal offences without undertaking the necessary operational verifications in report.

Upon receiving such notifications, the Public Prosecutor is then placed in the position of issuing instructions for additional checks to be carried out by the police, with the aim of obtaining a clearer picture of the allegations. However, this process of communication often, results in considerable loss of time, to the detriment of the overall quality of joint work in the case. These kinds of reports, in which the facts are not operationally verified by the police have a big probability to be false and that could lead to an unnecessary expenditure of the limited resources available to both the Public Prosecutor’s Office and the Ministry of the Interior and the job may be characterized as a “hunt for shadows.”

In this context, it is important to emphasize that the intention of the law – Criminal procedure code, should not be understood as positioning the police as a “subordinate” body to the Public Prosecutor, whose sole task is to inform and then await further instructions. On the contrary, the police should retain a proactive role in the investigation, striving to provide the Public Prosecutor with reliable and comprehensive information and evidence.

Recognizing the existence of these problems, the authors of the Protocol in Article 7 stipulate that: *“in cases of reports of criminal-legal events, the organizational unit of the Ministry shall verify the contents of the report in order to establish whether there are grounds for suspicion that a criminal offence subject to mandatory prosecution has been committed”* (Protocol on Cooperation, 2025).

As an example of overcoming such difficulties, reference may be made to the practice established between the Basic Public Prosecutor’s Office in Bitola and Sector of internal affairs - Bitola. This practice involves the holding of regular working meetings between the

leadership of both institutions, which resulted in the adoption of *Recommendations and Guidelines for the Action of the Public Prosecutor towards the Judicial Police* in 2023, later incorporated and further developed within the Protocol on Cooperation.

To complete the overview of the role of the Public Prosecutor in criminal proceedings, it is necessary to highlight the provisions of the Criminal Procedure Code (CPC), which effectively placed the Prosecutor at the helm of the entire preliminary procedure: both the pre-investigative and investigative phases. This is most clearly reflected in the obligation of the police to mandatorily inform the Public Prosecutor about received criminal reports or information indicating grounds of suspicion of a criminal offence subject to mandatory prosecution (Article 282 ,CPC), as well as the duty of the police to comply with the orders and instructions issued by the Public Prosecutor (Article 282, paragraph 2, CPC).

The Protocol on Cooperation further strengthens the leading role of the Public Prosecutor through the provisions of Article 11, which foresee that the resolution of contentious or urgent situations in the investigation is to be decided exclusively through the issuance of instructions by the Public Prosecutor. Additionally, as the head of the proceedings, the Public Prosecutor may request that the Ministry of the Interior assign police officers for a limited period to meet the needs of a particular pre-investigative or investigative procedure (Article 13, Protocol of cooperation).

As an innovation introduced by the Protocol on Cooperation, Article 5 provides for a classification of criminal cases, whereby offences are divided into three categories:

- **Criminal offences under regular jurisdiction** – cases within the competence of the Basic Public Prosecutor’s Offices and Prosecutor’s Offices with extended jurisdiction;
- **Criminal offences under specialized jurisdiction** – cases under the competence of the Basic Public Prosecutor’s Office for the Prosecution of Organized Crime and Corruption;
- **Complex criminal cases** – cases involving criminal offences under either regular or specialized jurisdiction, which, due to their manner of commission or consequences, attract considerable public attention, as well as criminal offences committed by three or more persons, those involving perpetrators connected to other states, or cases in which multiple criminal offences are interconnected.

This categorization of criminal offences was introduced in order to distinguish between urgent and regular reporting by the police to the Public Prosecutor. Specifically, for the first category of offences, it is considered that no urgency in action is required; thus, the police proceed in a regular manner, conducting necessary checks, gathering relevant information, and thereafter forwarding a notification to the Public Prosecutor in written form. The second and third categories of offences, however, are regarded as more serious forms of criminal activity, deserving special attention and often requiring urgent action. For this reason, the police are obliged, upon receiving information on such offences, to immediately notify the Public Prosecutor, orally (Article 6, Protocol of cooperation). Complex criminal cases are deemed to be those for which the Criminal Code of the Republic of North Macedonia prescribes a prison sentence of at least four years. As a specific subcategory, the authors of the Protocol also identify offences that may attract public attention or interest.

It should be emphasized that the formulation “*public attention or interest*” is particularly noteworthy, as it is simultaneously of general and broad character, leaving room for discretionary interpretation. It would therefore be advisable for future professional discussions to establish a more precise position on which criminal offences may fall within this category, and, if possible, to attempt their exhaustive enumeration. This would facilitate the obligations of police officers concerning the timely reporting of such offences.

2. The Role of the Police in Criminal Proceedings

The Criminal Procedure Code generally treats the police (here understood in accordance with the definition set forth in the provisions of the Law on Police) as an auxiliary body of the Public Prosecutor's Office yet with an important and irreplaceable role, particularly in the detection and investigation of criminal offences.

In this section, it is useful to briefly elaborate on the CPC provisions concerning the shared competences of the PPO and the police, viewed from the perspective of the PPO's leading role. For this purpose, we rely on the *Commentary on the Criminal Procedure Code* (Kalajdziev et al, 2018).

The authors of the Commentary emphasize that under the CPC, the PPO is the head of the proceedings, with the authority to intervene at any stage of the investigation. The extent of such involvement, however, rests solely with the Public Prosecutor, who decides to what degree and in what scope responsibilities will be entrusted to the police in a particular case. In other words, it is at the discretion of the Prosecutor whether the police will be given “free rein” or will receive general or specific guidelines and instructions (Kalajdziev et al., 2018).

Logically, the involvement of the PPO is expected in cases of more serious criminal offences, whereas in so-called “regular” offences (such as thefts, assaults, etc.) the police act autonomously, with limited engagement of the PPO. Importantly, we underline that the intention of the CPC is not to diminish the role of the police but, on the contrary, to enhance their initiative and autonomy, while strengthening their professional competence in regular proceedings. In practice, the police are expected to evolve into a type of “extended arm” of the PPO, by developing their own standard operating procedures and achieving specialization within their domain. Here, we primarily refer to the units of the criminal police, as they maintain the closest operational contact with the PPO.

The issue of police autonomy is also emphasized in the Protocol, whose Article 7 clearly stipulates that the organizational units of the Ministry of the Interior independently from the Public Prosecutor verify the contents of reports to establish whether there are grounds for suspicion that a criminal offence subject to mandatory prosecution has been committed. Along with informing the PPO, the police are to submit all evidence, information, and findings obtained during the verification process. Thus, the police retain independence in their actions, and the results of their verification are presumed to be objective and impartial.

From the foregoing, it can be concluded unambiguously that the foundation for effective cooperation between the PPO and the MoI lies in the quality of information collected by the police. Furthermore, Article 7 of the Protocol provides for the immediate notification (presumably oral) of the PPO when the police, upon completing their checks, obtain information indicating that there are grounds for suspicion that the alleged criminal act has been committed by a police officer. With this provision, the authors of the Protocol specifically single out such cases, as they require specialized competence - namely, criminal prosecution of police officers falls within the remit of a special department of the Public Prosecutor's Office for the Prosecution of Organized Crime and Corruption. Additionally, early involvement of the PPO in such cases is crucial in order to eliminate any potential future claims of bias or partiality in police handling of the matter.

The Protocol further highlights cooperation between the police and the PPO by allowing police officers working on a specific criminal case to directly seek guidance and clarifications from the Prosecutor, who is obliged to provide the necessary instructions or orders within the shortest possible time after receiving the report. This arrangement encourages and strengthens direct communication between the responsible Public Prosecutor and the investigator handling the case. Such direct interaction is indispensable for the proper

implementation of both the provisions and the spirit of the CPC, which requires a dynamic and trust-based relationship between the two central actors in any pre-investigative or investigative procedure.

In this context, we consider there to be a notable shortcoming in the provisions of the Protocol concerning the assignment of responsibility for notifying the PPO. The MoI is a large organizational structure, consisting of numerous units operating at both the national and regional levels. In practice, it is often the case that multiple units become involved in the same criminal event, which may lead to a lack of coordination regarding which unit is responsible for notifying the PPO about undertaken measures. This has produced situations where the PPO is simultaneously informed of the same case by several units (for example, a shift supervisor, a line inspector, and a duty inspector). Or conversely, existed situations where, due to poor coordination, the PPO is notified at all—or only belatedly—even in cases requiring urgent reporting.

Unfortunately, such situations are not rare. In the past, certain measures have been undertaken within the police structure to address this problem (e.g., orders issued by the Chief of Police Department), yet the generality of legal provisions remains, creating uncertainty among police officers. This vagueness is also present in the Protocol itself, since Article 7 does not specify the exact organizational unit of the MoI responsible for reporting to the PPO.

An attempt to provide greater clarity was made through the *Guidelines for the Work of the Judicial Police within the Bitola Regional Police Department* issued by the PPO Bitola in 2023. These Guidelines recommend that the officer designated for communication between the PPO and the Regional Police Department should be a police inspector who was present at the crime scene and thus has the most direct knowledge of the measures undertaken. We consider this recommendation to be a solid starting point for the further refinement of roles in investigative proceedings, as it reduces unnecessary communication between the PPO and third-party actors.

Finally, in relation to the role of the police in criminal proceedings, it is important to address the increasing involvement of the public in such processes. In recent years, it has become increasingly common for police officers to be filmed while carrying out official duties (such as searches), with these recordings subsequently being disseminated on social media, inevitably drawing public attention. We argue that such publication constitutes a breach of one of the fundamental principles of criminal procedure—confidentiality (as also stipulated in Article 19 of the Protocol). The materials recorded typically contain sensitive information (e.g., the identities of police officers). In this way, details of the investigation may be prematurely revealed to the public, potentially undermining subsequent procedural steps. We wish to stress that we do not advocate for any arbitrary conduct or abuse of authority by the police; rather, all irregularities must be addressed through proper institutional procedures. This is the only means of safeguarding the legitimacy of the investigative process.

CONCLUSION

The judicial system of the Republic of North Macedonia is currently undergoing a process of reorganization that is expected to be implemented in the near future. The participants in criminal proceedings are confronted with substantial reforms, the successful realization of which should demonstrate to the international community that the Republic of North Macedonia is a state governed by the rule of law, where the state itself acts as guarantor of the constitutionally protected rights and freedoms of its citizens.

The Public Prosecutor’s Office and the police are direct participants in these changes. In recent years, both institutions have made efforts to improve their functioning and to enhance their joint actions. Amendments to the legislation governing criminal procedure were aimed at increasing the objectivity of all actors involved in the process. Neither the Public Prosecutor’s Office nor the police can independently bear the full burden of criminal proceedings. On the contrary, a coordinated and cooperative approach is required. The greater the trust between these two institutions, the higher the quality and sustainability of the ultimate outcome of their work—the indictment.

Within this constellation of relations, the Protocol on Cooperation was adopted as a by-law, with the aim of overcoming certain difficulties that arise in practice, particularly regarding the obligation to notify the Public Prosecutor of a committed criminal offence. However, cooperation cannot be confined solely to the adoption of a single document; it must be continuously developed and strengthened. No document can definitively resolve all open issues. Therefore, we consider it necessary for joint working groups, composed of representatives of both institutions, to function on a permanent basis and to carry out their tasks in *bona fide*. Ultimately, mutual trust and a shared commitment to justice on both sides remain the key factors for the successful conduct of criminal investigations.

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