

Suspension of criminal case investigation-Kosovo context

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ABSTRACT: One of the manners to address the progress of investigation is its suspension. Investigation duly is suspended by a special ruling rendered by a competent state prosecutor. Suspension of investigation is a procedural action that results with the cessation of conducting investigations for a particular period of time. The state prosecutor suspends investigations when it comes to conclusion that there is a fulfillment of legal requirements which determine the undertaking of such an action. In any case the ruling on suspension of investigation expresses effects which determine the postponement of deadline for conclusion of investigation, cessation of conducting investigative actions related to a concrete criminal case and non-inclusion of suspension of investigation time at determined time of investigation and time of statutory limitation of criminal prosecution. Within this scientific paper, in order to have a better picture of situations concerning suspension of investigation has been reflected the practical work of Basic Prosecution of Prishtina, Prizren and Mitrovica for the period of time 2015-2017. In this case, there have been conclusions and concrete suggestions considered to be in function of professional advancement of state prosecutor decision-making in relation to investigation of criminal cases, respectively to decision-making concerning suspension of investigation.

KEY WORDS: State prosecutor, defendant, investigation, suspension, criminal offence.

I. INTRODUCTION

Investigation constitutes the first phase of criminal proceedings. Investigation has an irreplaceable role in criminal proceedings course. This role, however, is linked to the purpose of legislator granted to this stage of criminal procedure. Consequently, the goal of investigation is related with the necessity to provide evidence and other necessary data based on which the state prosecutor shall decide on filing an indictment or dismissal of investigation. The state prosecutor suspends investigation by rendering a special ruling by means of which addresses this matter. The state prosecutor suspends the investigation whenever comes to conclusion by gathered evidence that: a) the defendant after commission of a criminal offence suffers from any disorder or temporary mental disability or other serious illness; b) the defendant escaped outside the country; or c) there are other circumstances which temporarily impede the successful prosecution of the defendant. Within this scientific paper related to suspension of investigation has been presented the practical activity of three of the seven Kosovo Basic Prosecutions, and that of the Basic Prosecution Office of Prishtina, Prizren and Mitrovica for the period of time 2015-2017. In this case have been presented data related to the number of cases involved to investigation, of those for which the suspension of the investigation was granted, as well as have been specified data concerning suspension of investigation cases, observing in terms of circumstances which had determine the necessity to undertake such an action. In this case, there have been conclusions and concrete suggestions considered to be in function of professional advancement of state prosecutor decision-making in relation to ruling on suspension of investigation. During the preparation of this scientific paper I have used the legal, comparative, analytical and statistical methods.

II. MEANING (NOTION) AND SEVERAL CONSEQUENCES RELATED TO SUSPENSION OF INVESTIGATION

Investigation is the first phase of criminal proceedings serving as a premise for its further conducting (Hajdari, 2013). It includes in itself the goal to gather evidence and other necessary information to decide on filing an indictment or dismissal of investigation (Primorac, 2012), respectively the goal to collect evidence whose provision at the main trial would be impossible or difficult (Hajdari, 2013). The initiated investigation duly follows the course of its continuous conduct towards its conclusion, but nevertheless, in process of conducting investigation may appear also factual circumstances based on which should be authorized its suspension (Petrić, 1986). Therefore, one of decision-making manners in course of conducting investigation is also its suspension. In fact, the suspension of investigation means temporary stoppage of conducting investigations.

Consequently, until suspension of investigation it may come when for its further conducting and criminal proceedings entirely appear concrete procedural obstacles. Suspension of investigation, as well as any other undertaken action in criminal proceedings causes certain consequences. As a matter of fact suspension of investigation consequences are mainly manifested in:

1. Postponement of deadline for conclusion of investigation.-Upon rendering the ruling for suspension of investigation, it automatically comes to postponement of deadline for conclusion of investigation. In other words this implies that as long as there has been suspension of investigation applicable there shall be postponement of a legal deadline for conclusion of investigation concerning a concrete criminal case.
2. Cessation of undertaking investigative actions concerning a concrete criminal case.-Upon rendering the ruling for suspension of investigation the state prosecutor, duly, is obliged to terminate the conduct of investigative actions referring to a concrete case. In fact, the state prosecutor upon rendering the ruling for suspension of investigation is obliged to authorize the dismissal of investigative actions by means of which the state police is in charge.
3. Failure to include the time of suspension of investigation in determined time of investigation and the time of statutory limitation of criminal prosecution.-“Upon rendering the ruling for suspension of investigation, the duration of suspension (which includes the time from date of issuance of this ruling until it is authorized the continuation of investigation) does not count at all in the term of the investigation and statutory limitation time of a criminal offence”. These effects cease at the moment causes which have determined the suspension of investigation and is authorized the recommencement of this criminal proceedings phase.

From what was mentioned above it may easily come to conclusion that “suspension of investigation presents a special situation concerning investigation and criminal proceedings in general (Hajdari, 2016), producing concrete consequences to criminal proceedings, parties and perhaps to some other authorities in criminal proceedings.

III. DETERMINING CRITERIA FOR SUSPENSION OF INVESTIGATION

Contemporary states by their procedural legislation (codes or laws) have established clear criteria, the completion of which determines the suspension of investigation. Related to such criteria, respective laws of almost all countries of the world have marked a high degree of their compliance (Pavišić, Vučković, Veić, Radolović, 1998). Such criteria concerning this issue contain the Criminal Procedure Code of the Republic of Kosovo. Hence, investigation under article 157, paragraph 1 of this Code may be suspended if:

1. The defendant after commission of a criminal offence suffers from a disorder or temporary mental disability or any other serious illness.-The existence of this case determines the suspension of investigation based on the fact that the defendant becomes incapable of facing the trial. “Incapacity to face the trial it may be as a result of illness or temporary mental disorder (Sahiti, Murati, Elshani, 2014), or other illness that may have to do with the physical health of a person, such as paralysis, heart disease, and so on. Mental disability and incapacity to face the trial of defendant can only be verified through psychiatric expertise. Likewise, incapacity to face the trial resulting from physical illness is required to be verified through relevant medical expertise.
2. The defendant escaped the country.-The existence of this cause for suspension of investigation is related to the impossibility of his/her examination, which task is required to be fulfilled before investigation is completed. “The defendant is on the run when he leaves his residence and does not reside in a certain address but wanders through the country without announcing his/her residence, or going abroad and therefore it may concluded that the defendant intends to avoid criminal proceedings (Sahiti, Murati, Elshani, 2014).” Suspension of investigation because the defendant is on the run is a circumstance of optional character and until such decision-making may come only after unsuccessful attempts have been made to search and locate his address.
3. There are other circumstances which temporarily impede the successful prosecution of the defendant.- The existence of this cause concerning suspension of investigation is linked to the presence of various circumstances, whose occurrence make continuation of investigation impossible. These obstacles are of factual character and refer to the state of war, earthquake, flood, etc.

Hence, the presence of any of these circumstances (one or more taken together) creates an opportunity for the state prosecutor to render the ruling for suspension of investigation. Of course, for each of these circumstances, when claimed to exist, it is required to be verifiable through relevant evidence or well known for all those living in that region.

IV. COMPETENT AUTHORITY FOR SUSPENSION OF INVESTIGATION

Under article 101, paragraph 1 of Criminal Procedure Code investigation is conducted by the state prosecutor against a particular person for whom there is a reasonable doubt that has committed a criminal offence (Simbert, 2013). The logical course of this legal determination, and based on article 157, paragraph 1 of this Code the authority to suspend investigation belongs to the competent state prosecutor. He/she suspends investigation by a special ruling, whose issuance is determined by ascertainment of fulfilling requirements stipulated by law. (This form of suspending investigation is not referred by Kosovo legislator), or by writing down this fact on the record of investigation. In this case comes up to a temporary stoppage related to performance of investigation normal course.

The competent state prosecutor decides for suspension of investigation in a discretionary manner. This implies that such decision-making cannot be influenced by anyone outside and is not required any consent or coordination to any other criminal procedure body.

In ruling for suspension of investigation the state prosecutor should in particular specify the time and reasons determining the suspension of investigation, and possibly the time of resumption of the investigation. In fact, the matter of suspending investigation rightly was not limited in time.

Consequently, in the moment considered to be fulfilled any of causes based on which may be authorized the suspension of investigation arises the obligation of competent state prosecutor to render the ruling which address the decision-making concerning to this matter, or take such a note on the record of investigation. This matter is required to be addressed in the shortest possible time after finding the fulfillment of relevant conditions for suspension of investigation. Whereas, the time of suspending investigation produces the abovementioned effects automatically, whose existence should be taken care of by the competent state prosecutor.

Of course, the legislator has left room for eventual fulfillment of legal criteria of suspending investigation, the state prosecutor to be informed also by another subject of criminal proceedings.

V. PROCEDURE FOR SUSPENSION OF INVESTIGATION

Criminal Procedure Code of the Republic of Kosovo, in no single provision of its own, deals with the procedure that should be conducted for suspension of investigation. The causes of this situation should be sought in decision-making autonomy granted by Kosovo legislator for the state prosecutor within exercising its authorizations concerning criminal prosecution, as well as in clear specification of criteria, the fulfillment of which leaves no other alternative to the state prosecutor except to suspend the investigation.

Despite of the fact that Kosovo legislator explicitly did not address the procedure which should have preceded the fact of suspension of investigation, nevertheless based on context of legal solutions addressing to this matter, it may come to conclusion that to the state prosecutor in its practical activities shall be imposed the fact of undertaking such actions until it renders the ruling for suspension of investigation. "This implies that nevertheless in the largest number of cases it conducts a concrete procedure and only based on its persuasion created after verification of circumstances which determine the suspension of investigation and its application is oriented in his decision-making for suspension of investigation (Markus, 2006).

Consequently, although is a state prosecutor duty that during the whole duration of investigation to take care if in relation to the case being subject of investigation exist or in meantime have been appeared conditions determining the suspension of investigation, the legislator did not exclude the possibility that concerning their existence, initiative to may come even by other criminal-procedural participants for example by the defendant and its defense counsel. In these cases, the initiative may come through submission of any information letter or specific request these acts duly should be subject of a concrete review and assessment by the state prosecutor. In this reviewing and assessing process orienting the decision-making for suspension of investigation, the state prosecutor may come to a situation to undertake concrete actions being in function of proving the fact of fulfilling such requirements for instance to provide the expert's opinion on the defendant's psychological condition.

Finally, it should be emphasized the fact that as any other decision-making in criminal proceedings as well as the one related to suspension of investigation should have its support in uncontested evidence, evidence for securing and verification of which is required to be applicable a special procedure. This is the only acting approach which may bring a guarantee to the state prosecutor concerning the legality and objectivity of decision rendered, whichever it is, and in this case of the one who influences the suspension of investigation.

VI. OBLIGATIONS RESULTING FROM DECISION-MAKING FOR SUSPENSION OF INVESTIGATION

By suspension of investigation shall be established certain obligations for the state prosecutor (Initiation, suspension and discontinuation..). When it comes to obligations referring to this matter the legislator mentions them concretely within respective provisions of article 157 of the Criminal Procedure Code. Within these obligations are included the following:

- a) Collecting evidence concerning criminal offence and criminal liability of defendant.- This obligation is of general character, such which reflects the extent to any evidence which refers to a concrete case and which may be provided and proves the existence of criminal offence and circumstances under which it was committed as well as criminal liability of defendant, such as: enforcement of controls, witness examination, providing opinions and findings of relevant experts, etc. This obligation reflects on avoidance of situations which could result with the loss of real possibilities to provide concrete evidence of course if relevant investigative actions are not conducted in appropriate time.
- b) Informing pre-trial judge.-This information must be done immediately upon rendering the ruling for suspension of investigation. In this case also information must contain reasons based on which investigation has been suspended. Information made to pre-trial judge is linked with his/her role in pre-trial procedure as a guarantor of legality of actions exercised by prosecution body.
- c) Resumption of investigation after avoidance of obstacles which caused suspension.- This obligation is of a concrete character. It keeps the state prosecutor attached to liability granted by law to guarantee in any concrete case effective, complete and objective investigation of a criminal case. Therefore, in order to achieve this, the state prosecutor has the burden to resume investigation immediately upon avoidance of obstacles which have determined the suspension of this criminal proceedings phase. Thus, the investigation suspended due to escape from country of defendant should be resumed immediately after he/she has arrived in the country, regardless of the way in which this obstacle has been avoided.
- d) Note on the record of investigation of time and reasons of suspending investigation and time for resumption of investigation.-This obligation is a logical course of whole procedural activities, which requires to keep notes concerning any conducted action. In this case, obligation has to do in the first place with the note on record of investigation of time and reasons of suspending investigation. This obligation is linked with the need to suspend the passage of investigation term and statutory limitation time of criminal prosecution, in situations when conducting investigations in its normal course is impossible. Whereas, the issue of noting on the record the time of resumption of investigation is an obligation that should be fulfilled only then when obstacle which has determined the suspension of investigation has been passed. This implies that this data cannot be recorded at the time when investigation was suspended because the avoidance of such obstacles is not a matter that *a priori* can be foreseen. The purpose of this evidence is linked with the need to commence the duration of investigation course and the time of statutory limitation deadline of criminal prosecution in order to materialize in practice the tendency for procedural criminal efficiency and human rights in criminal proceedings.

Although, the law does not specify it decisively, I consider these obligations must find their materialization also in ruling by means of which is proclaimed the fact of suspending investigation. It is worth emphasizing the fact that despite its advantages, this acting manner is not applicable in practice in most of the cases.

VII. SEVERAL DATA CONCERNING THE SUSPENSION OF INVESTIGATION IN KOSOVO DURING THE PERIOD OF TIME 2015-2017

In order to come to sustainable conclusions and providing concrete and useful recommendations serving to state prosecutor institution, other relevant institutions and the society in general, in cases related to investigative activities, it was necessary to research and study practical activity of this state authority concerning its approach in cases when by his/her decision-making suspended investigations in Kosovo during the period of time including the last three years (2015 – 2017). Presentation and elaboration of this data will include the activity of three of the seven basic prosecutions currently operating in Kosovo. This due to the fact concerning Basic Prosecutions work there are no published data that would entirely serve to structure and goal of this scientific paper (Hajdari, 2018). Conducted researched prove that such data have not been reflected and published at all in reports which are published by Kosovo Prosecutorial Council (<http://kpk-rks.org/raporte/213/raport-pune-2017/213>). These data are not reflected either in criminal records of Kosovo prosecutions. Therefore, presentation and elaboration of data concerning suspension of investigation was made on basis of data provided through special letters which in response to submitted requests specifically to this matter were sent to me by the Basic Prosecution of Prishtina, Prizren and Mitrovica.

Table 1. The number of generally investigated cases and suspended investigations

Years	The number of generally investigated cases	Number of suspended investigations
2015 - 2017	34192	53

Note. Tabular statements of cases investigated and suspended.

Table 2. Circumstances under which investigations have been suspended

Years	Appearance of disorder and mental incapacity or other serious illness after commission of a criminal offence	Escape from the country	Existence of other circumstances which temporarily obstruct criminal prosecution
2015 - 2017	21	32	0

Note. Tabular statements of the ways in which the investigations were suspended

According to data included in these two tables during the period of time 2015-2017 in Basic Prosecution of Prishtina, Prizren and Mitrovica have been rendered 34192 rulings for conducting investigations, of which investigations were suspended in 53 cases. In this regard, abovementioned prosecutions had suspended investigations based on these grounds: for appearance of disorder and mental incapacity or other serious illness after commission of a criminal offence in 21 cases, of which four (4) cases for juveniles; escape from country in 32 cases, of which in three (3) cases for juveniles defendant; whereas for existence of other circumstances which temporarily obstruct criminal prosecution there has been no case of suspension of investigation.

Indicated data prove that Basic Prosecution of Prishtina has rendered the largest number of rulings for suspension of investigation during the researching period. This prosecution has suspended investigations in 27 cases. This situation was expectable because the level of burden with prosecution cases of this prosecution is significantly higher than other basic prosecutions, based on the fact that Basic Prosecution of Pristina extends its activity to a territory where nearly half of the population of Kosovo inhabits. This situation is also reflected by the heterogeneity of the population living in this region as well as the numerous (socio-economic and infrastructural) problems faced by its citizens, which extend their influence to the level of crime presence in society.

The second place concerning the number of suspended investigations takes the Basic Prosecution of Prizren with a total of 16 cases. This is also explained by the fact that this prosecution, after the Basic Prosecution of Pristina has the largest burden of cases within the prosecutorial system of Kosovo, and that the Prizren Region is extremely overcrowded and faces many social and infrastructure problems, which also reflect in manifestation of criminal phenomena in society.

The last one concerning the number of suspended investigations is the Basic Prosecution of Mitrovica. This prosecution has suspended investigations in 10 cases. This is explained by the fact that in a part of the Mitrovica Region (northern part) there is still no full functionality of the prosecutorial system. There, for political reasons, in 2017 the appointments of the first prosecutors were made after Kosovo's declaration of independence (2008), so that crime-related issues, to a relatively large extent, were out of the reach of the Kosovo State Prosecutor.

These data, due to the lack of statistical reports which should be published and the lack of data concerning this issue in criminal prosecution files, should be taken with many reservations. Despite this fact, however, I consider that a reliable overview reflect also data I referred in two tables above.

In handling cases included to investigation the work of these Prosecutions has been accompanied by numerous problems. Among them should be mentioned also those referring to overload with court cases, the lack of proper professionalism external interventions, political intervention etc., bearing this in mind it is necessary to organize proper training programs (especially recently appointed new prosecutors), to increase the number of state prosecutors, but also to have continued advancement of legal solutions securing independence and impartiality in the work of prosecutors.

VIII. CONCLUSION

Investigation constitutes the first phase of criminal proceedings serving as a premise for its further conducting. It encompasses the purpose of gathering the evidence and other necessary information to decide on filing the indictment or dismissal of proceedings, respectively the goal to gather evidence whose secure at the main trial would be impossible or difficult.

Suspension of investigation among other things manifests the following consequences: a) postponement of deadline concerning termination of investigation; b) cessation of undertaking investigative actions in relation to a concrete criminal offence; c) non-inclusion of suspension of investigation time in specified time of investigation and time of statutory limitation of a criminal offence.

Investigation shall be suspended by the competent state prosecutor, duly by rendering a special ruling, or by writing down this fact on the record of investigation. The competent state prosecutor suspends investigations in the following cases: a) the defendant after commission of a criminal offence suffers from a disorder or mental incapacity or other serious illness; b) the defendant escaped from the country or c) there are other circumstances which temporarily obstruct successful criminal prosecution of defendant.

According to indicated data during the period of time 2015-2017 in Basic Prosecution of Prishtina, Prizren and Mitrovica have been rendered 34192 rulings for conducting investigations, of which investigations have been suspended in 53 cases. In this regard, the abovementioned prosecutions suspended investigations based on these grounds: a) for appearance of disorder and mental incapacity or other serious illness after commission of a criminal offence in 21 cases; b) of which four (4) cases for juveniles; escape from country in 32 cases, of which in three (3) cases for juveniles defendant; whereas for existence of other circumstances which temporarily obstruct criminal prosecution there has been no case of suspension of investigation.

Indicated data prove that Basic Prosecution of Prishtina has rendered the largest number of rulings for suspension of investigation. This prosecution has implemented this decision-making in 27 cases. The second place takes the Basic Prosecution of Prizren with 16 cases and at the end Basic Prosecution of Mitrovica with 10 cases. This situation has been conditioned by the level of burden with cases that had these prosecutions as well as by width of territory they have covered with their activity etc.

In handling cases included to investigation the work of these Prosecutions has been accompanied by numerous problems. Among them should be mentioned also those referring to overload with court cases, the lack of proper professionalism external interventions, political intervention etc., bearing this in mind it is necessary to organize proper training programs (especially recently appointed new prosecutors), to increase the number of state prosecutors, but also to have continued advancement of legal solutions securing independence and impartiality in the work of state prosecutors.

REFERENCES

- [1]. Criminal Records of the Basic Prosecution Office of Prishtina, Prizren and Mitrovica on suspension of investigation for the period of time 2015 - 2017.
- [2]. Hajdari A, (2013), Criminal Procedure Law, Special Part, ILIRIA College, Pristina.
- [3]. Hajdari A, (2016) Commentary, Criminal Procedure Code, FAMA College, Pristina.
- [4]. Hajdari A, (2018), State Prosecutor's Authorizations Related to Criminal Report-Kosovo Context, Canadian Social Science, Vol. 14, No. 4. Available at: <http://www.cscanada.net/index.php/css/article/view/10279>
- [5]. <http://kpk-rks.org/raporte/213/raport-pune-2017/213>.
- [6]. <http://kpk-rks.org/raporte/213/raport-pune-2017/213>.
- [7]. Initiation, suspension and discontinuation of a criminal investigation, United States Institute of Peace. Available at: <https://www.usip.org/sites/default/files/MC2/MC2-11-Ch8.pdf>
- [8]. Smibert J. (2013), Guide to the Criminal Procedure Code of Kosovo and the Criminal Procedure Code of Kosovo (2013), United States Department of Justice, United States Embassy of the United States, Pristina. Available at: http://oak-ks.org/repository/docs/Udhezues_i_Kodit_te_Procedures_Penale_976264.pdf.
- [9]. Pavišić B., Vučković M., Veić., Radolović., (1998), Law on Criminal Procedure - With Commentary, Literature and Judicial Practice, Universitet u Zagrebu, Zagreb.
- [10]. Petrić B., (1986), Komentar Zakona o Krivičnom Postupku, Prva knjiga, Službeni List SFRJ, Beograd.
- [11]. Primorac D., (2012), Istraga u Hrvatskom kaznenom zakonodavstvu de lege lata i de lege ferenda, UDK: 343.132(497.5) Priljeno: rujan 2012. Izlaganje na znanstvenom skupu, st. 56, Available at: <https://hrcak.srce.hr/file/163265>.
- [12]. Sahiti E., Murati R., Elshani Xh., (2014), Criminal Procedure Code of the Republic of Kosovo, Commentary, German Cooperation, GIZ Legal Reform Project in Kosovo, Pristina.
- [13]. Markus F.. 2006), Kosovo trial skills handbook, United States Department of Justice, Office of the Resident Legal Advisor, Prishtina.