

Preface

The Prosecutor's offices on the territory of Bosnia and Herzegovina (Prosecutor's Office BiH, Prosecutor's Offices of the two entities and the District of Brcko) are independent according to the Law of Prosecutor's and are authorities of their own on the level of BiH and the entities. They were founded with the aim to achieve an effective jurisdiction of the State of BiH, the two entities and the District of Brcko, which at the same time on the territory have to guarantee the human rights and a legislation according to the constitution.

The prosecutor on court appears with a double of functions. At first as an authority of the state he is responsible to uncover and to prosecute offenders of criminal acts, but during the criminal procedure on court he appears as one of the parties. In his role as a party in the proceedings he has at his disposal the same power of authority as the opposite site what is the defendant or the suspect. This is in reconciliation with the principle of equal arms for both parties in criminal procedures.

The role of prosecutors and his obligations are bound to his preference to bring a charge. This intends that a procedure could only be initiated and enforced on demand of a prosecutor. If the prosecutor is obliged to follow a crime in case that there is any evidence of a criminal act, he proceeds on the principles of lawfulness. But he is not authorized to appraise the expedience of a prosecution except for cases where that is according to the law, for instance if does exist an immunity of witnesses or the case deals with the prosecution against a foreign state and so on.

A prosecutor of BiH fulfills his function according to the legal directives of BiH which correspond to the Recommendation Rec(2000)19 on the Role of Public Prosecution in the Criminal Justice System, adopted by the Committee of Ministers of the Council of Europe on October, 6th 2000. The document advised our countries to base its legislation and legal practice concerning the prosecution on definable principles.

In BiH does exist an prosecutorial office for disciplinary actions against offences of judges and prosecutors. This office is an independent body within the High Judicial and Prosecutorial Council.

Independence

A prosecutor fulfills his function independent but on the base of the constitution and the law. In the same way he assesses the facts by keeping the independence of dispensation with regard to the institutional and individual aspect.

A prosecutor should not have an injurious and unworthy cross connection to the legislature or the executive power as if they influence the daily work of prosecutors or their institution respectively.

A prosecutor is not allowed to be a member of a political party, to take part in political gatherings or manifestations and to support political parties or its campaigns.

A prosecutor has not to comment cases of his prosecution, neither in the public nor in a personal surrounding,

A prosecutor will declare his prejudice in all precedents in which the public could bring forward arguments against his impartiality or he himself assesses so.

A prosecutor keeps away from membership of teams or organizations or public discussions which in the eyes of the public could obstruct its confidence in his impartiality.

Comment

In BiH intervention of politicians on prosecutor's daily work is not quite unusual. This is reflected in their widespread comments, not rarely from the side of political parties without reliable assessments on the job of the prosecutor or his institution but in favor of an individual prosecutor.

On the other hand does exist a corporate body named „High Judicial and Prosecutorial Council“ which elects and appoints as well the judges as the prosecutors. In that body members of the lawmaking power and of the executive power are represented.

Likewise prosecutor's offices are financed by state's budget. Therefore it is not possible to talk of prosecutor's absolute independence from jurisdiction and executive power.

Besides that within several comments of the High Representative of the EU as well repeatedly in reports of the United Nations as of the Council of Europe, the criticism is striking that the legal system of BiH isn't quite independent of intervention of nationalistic political parties and that as the biggest inadequacy in BiH, a real rule of law and a sufficient independence of prosecutors so far do not exist.

Accountability

The prosecutor fulfills his function professional, conscientious, with sense of responsibility and powerful. Prosecutorial activities take priority over all other of his duties.

The prosecutor tries to improve his knowledge, judicial proficiency and experience by polishing it on seminars, conferences and last but not least on the annual training in the Center of Education for Judges and prosecutors

The prosecutors should fulfill their function in a effective and lawful manner with the aim to carry out their duties or cases respectively within an appropriate period, to observe the human rights and to regard the other judicial party as evenly matched.

Comment

The prosecutors in general seem to have a lack of practice on court and their success in their daily work suffers of insufficient well balanced teamwork on the state's level. This provokes distrust and unsureness of the public on the legal administrative body as a whole. Like as in a lot of countries it also is necessary in BiH to improve the determination to carry out criminal cases within an appropriate period.

Ethics

With the aim to strengthen the trust in the judicial system the prosecutor's part is to promote a high standard of professional behavior.

The prosecutor should in duty and off duty always show a behavior what improve the confidence of the public in the impartiality of the institution during the lawsuit.

A body or a single authority for ethic issues attached to the administration of justice so far does not exist, but it could be a small advice for the future to establish something like that.