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The role of public prosecution in the protection of human rights and public interests outside the criminal law field

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**“The relation between the activity of the prosecution in protection
of human rights in and outside of the criminal law field”**

by Peter Polt, Hungary

The relation between the activity of the prosecution in protection of human rights in and outside of the criminal law field

The conclusions of 6th Conference of the Prosecutors General of Europe contain some important findings on the prosecutor's competencies outside the criminal field.

Some member states do not feel any need to provide extra-penal competencies to the public prosecutor and do not consider these tasks as being within the remit of the public prosecutor. At the same time, other countries consider it as an integral part of their system to grant public prosecutors competencies outside the criminal sector, giving them role in ensuring the operation of a democratic society under the rule of law and in protecting human rights.

Furthermore, where public prosecutors are provided with competencies outside the criminal sector, member states have to ensure the rule of law and within that framework, the respect of human rights and other basic principles which govern all democratic societies.^[1]

This speech is aiming at providing reasons for that the coordinated activities of the prosecutor's within and outside the criminal field have beneficial results in ensuring the rule of law.

The substantive legal basis of the prosecutor's extra-penal competences should be divided into three groups. The first group is the protection of the state's interests, the second group is the protection of public interest and the third one is the protection of human rights. In my opinion, these listed reasons are in connection with each other in most of the cases and during his intervention the prosecutor protects all of these values at the same time.

There are not only substantive and procedural law prerequisites for the coordinated prosecutorial activities regarding the penal and extra-penal sectors, but organizational conditions are also required. Having introduced the Hungarian example it can be demonstrated how the different units of the prosecution service could co-operate with each other.

It is worth noting that beside the units which have entirely been specializing in criminal law, or have been dealing with civil or administrative law cases, there are certain departments that perform activities by combining the criminal and non-criminal law.

At the Hungarian Office of the Prosecutor General there are two such units: the Division for Juvenile Cases and Youth Protection and the Department for Correctional Affairs. Obviously, these units with combined profiles can only be effective in dealing with cases that have relations within and outside the criminal sector.

From the groups of cases containing both the penal and extra-penal law tasks the juvenile cases are rising out. It should not be verified that special attention must be paid to the protection of human rights in these cases. Preparation of indictment, supervision of the legality of the investigation and accusation fall within the competence of the public prosecutor specialized in youth protection. He takes part in the trial phase of the criminal proceedings and also has duties during the execution of punishments.

Proceedings in criminal cases that have been committed by juveniles fall within his competence, including investigations may be carried out exclusively by the public prosecution service. This prosecutor deals with criminal cases where the offenders are both adolescents and adults. Furthermore, the prosecutor specialized in juvenile cases pays particular attention to combating crimes that have been committed against minors.

The tasks outlined above are in connection with the prosecutor's activities within the criminal field. But the prosecutors also have rights and obligations outside the criminal sector that could not be ignored. In case the prosecutor notes circumstances that are referring to the jeopardizing of the minor during the criminal proceedings he shall initiate children protection/protective measures. Beside the right for initiating children protection measures, he also has the rights for supervision. So, he shall supervise the measures and general orders/directions taken by the state bodies and/or local government concerning the protection of minors and adolescent, also including the individual decisions, basically from the point of view of the legality. Individual decisions are in obviously close connection with concrete criminal cases.

Furthermore, in his competence aiming at the supervision over the legality he examines whether the rights for children guaranteed by law prevail and the probation period and the procedures concerning protective measures were implemented.

Control over reformatory institutions for juveniles also belongs to the prosecution activity outside the criminal field. This activity is closely connected with the tasks carrying out in the course of criminal proceedings, since the pre-trial detention of the punishable juvenile perpetrators are executed in such penitentiary institutions. The prosecutor specialized in juvenile cases pays particular attention to examine whether the rights of the detained persons prevail.

Apart from the prosecutors specialized in juvenile cases, the prosecutors dealing with civil law cases are also obliged to protect the rights of children and adolescents. Their activity is in close connection with the duties of the public prosecutors at criminal law field. One of the most often committed offences against children is abusing a minor. This crime is committed by a person who is in charge of bringing up, looking after or caring for a minor and who gravely violates the obligations arising from such duty and thereby endangers the physical, intellectual or moral development of the minor; furthermore by the person of age who makes any attempt to persuade a minor to commit a crime or to engage in immoral conduct.

During the investigations of such cases it often turns out that the perpetrators are either one of the child's parents or both of them or another person who exercises the parental rights. In these cases the prosecutor acting in the criminal case shall inform without delay the prosecutor in the field of civil law entitled to initiate court procedure in order to terminate the parental rights.

Same procedure shall be applied by the prosecutor when the parent commits other crimes against the minor, including crimes against life and health or sexual abuse.

The so-called flat-mafia cases also affect important human rights and in these cases the successful proceedings require co-operation between prosecutors acting within and outside the criminal field.

The subject-matter of the flat-mafia cases are basically criminal offences where the acquisition of flat being in the victim's/legal entity's property or possession is carried out illegally, particularly by violence or threat, by using the victim's incapacity for defense and for manifestation of his will; by misleading or breach of the official duties or exceeding his authority, by giving unlawful gain or the promise thereof.

The victims of these crimes often are old and lonely people who can easily be misled or forced by violence to conduct against their wills.

In most of the cases the perpetrators perform activity that can be qualified as fraud, duress or blackmail under the Criminal Code. As a consequence of their criminal acts damage and pecuniary injury, that has been caused to the victims, is consisting of losing their properties without compensation.

In that criminal proceedings the prosecutor shall inform the prosecutor acting in the civil law sector on the launching of investigation and all the conclusive decisions rendered in the course of criminal proceedings. Pursuant to the information have been become known during the criminal proceedings the prosecutor in the field of civil law shall initiate a court procedure complying with the requirements provided by the law in order to regain the proprietary rights lost by the victim. This civil claim shall be enforced by establishing the invalidity of the contract and deleting the registration from the real estate register. It should be emphasized that the prosecutor usually initiates court proceedings if the victims lost their properties because of their disadvantaged and defenseless situation and assumable they would be not able to enforce their rights.

Probably, the most extensive co-operation between professional fields of the prosecution activity is manifested in the environmental cases. It is generally admitted fact that the crimes against the environment are affecting human rights, including the rights to life and health and to healthy environment.

Substantial law basis for the complex prosecutorial intervention is provided by the acts relating to environment. These acts give possibilities to apply the different forms of responsibilities, including criminal, administrative, disciplinary and civil law, separately and in parallel as well as.

The structure of the prosecution service constitutes an appropriate systematized background for the application of the varied forms of responsibilities just mentioned, furthermore it can be ensured that prosecutors having adequate expertise act in all branches of the professional activity. At the Hungarian Office of the Prosecutor General a separate unit for environmental protection was established to perform extra-penal law tasks.

The prosecution service's competence relating to environmental protection provided by extra-penal law is rather extensive:

- In the event of endangerment or impairment to the environment and to the values of the nature and nature preservation area, the prosecutor is also entitled to file a lawsuit to impose a ban on the activity or to elicit compensation for the damage caused by the activity endangering and impairing the environment.
- Acting in his legal oversight capacity the public prosecutor shall participate in ensuring the legality of the procedures and decisions of the environmental protection authorities.

Experiences gained by conducting procedures in environmental cases show us that prosecutors in both fields equally launch proceedings in the other branch of the professional activity by providing appropriate information.

Prosecutors in the field of criminal law are obliged to inform the prosecutors having duties outside the criminal sector on the denunciations, investigations and accusations in cases of damaging of the environment, including natural environment and unlawful disposal of waste hazardous to the environment. Public prosecutors of both fields consult not only about individual cases but also matters of principle on permanent basis.

Following the notes of the penal law sector, the prosecutor's offices file about 50-60 lawsuits to the courts relating to environmental and nature protection annually. Most of the lawsuits filed by the prosecutor's offices aimed at imposing bans on the activities of economic organizations that have polluted the water, soil or air. The significant part of the lawsuits covered the compensations for destroying protected living organisms.

It should be noted that as a result of this close co-operation the prosecution service is able to comprehend and promote the environmental protection of many levels.

- The first level is to protect the environmental components by means of administrative law and to facilitate the payment of compensation for damages.
- The second level is to call to account the persons, including legal entities, who are responsible for damage to the environment.

Same complex prosecutorial approach is also needed in the field of consumer protection. Consumer interests are protected by means of criminal and administrative law. This establishes the co-operation between prosecutors having duties within and outside the criminal field by itself. Furthermore, the prosecutor in the civil law sector plays a role of outstanding importance in this area.

For example, nationwide co-operation has been realized in cases where on behalf of a foundation so-called life-annuity contracts were concluded with old people. With these contracts the parties concerned were damaged and following the misleading many criminal proceedings were initiated. After having received the relevant information, the prosecutor having duties in the field of civil law filed plea for nullity of the mentioned life-annuity contract referring to the provisions of Act on Consumer Protection in parallel with the investigation was in progress and made motion to the civil law court to oblige the foundation to reimburse all the amounts with interest that have been paid by the private individuals.

However, not the above-mentioned cases are the most known before the public. The prosecutors in the area of civil law are provided with competences relating to legal supervision over operation of non-profit organizations, foundations and associations, in particular. Prosecutor's offices regularly initiate *ex-officio* analysis/inquire both at national and local levels to fulfill this obligation prescribed by law; or carry out inquires upon requests submitted by authorities or other bodies on this subject.

By these inquires, in the operation of these associations infringements of law can often be revealed which are referring to commitments of criminal acts. In such cases the prosecutor conducting the inquire shall inform the prosecutor in the field of criminal law on his findings; and in the possession of adequate information he shall make a motion that is aiming at launching of a criminal proceedings.

Factualities referring to criminal offences are typically revealed by these inquires, particularly violation of accounting discipline or fraud. In the operation of these organizations, failure of accounting obligation, fictitious invoice for verifying the using or settlement of supports/subsidies, unauthorized using of expressed support/subsidies and donations for executive officer or persons that are in the interest thereof, are the most frequently experienced acts that are entailing the initiation of criminal proceedings.

Public opinion reacts upon these kinds of infringements of law extremely sensible and often links them to the concept of corruption and thinks that principles of rule of law were seriously violated. It can also occur that prevailing of and dealing with these kinds of cases in a complex way has a consequence that could influence the public life.

The following case serves as a good example:

In 2005 one of the local prosecution offices carried out a routine legal oversight inquiry at a foundation in the country. According to the findings of the scrutiny the foundation was regularly shared in budgetary supports and also received occasional supports from several economic

organizations, foundations and as well as associations. The extra-penal prosecutorial inquiry has revealed many contraventions in the operation of the foundation concerned.

It was ascertained that no board of trustees' decisions were made on the using of the particular supports, no documents were prepared so the use of the incoming money for the foundation's purposes could not have been controlled.

It also turned out that particular member of the board of trustees took up money from the foundation's account several times without certificates and one part of the events to be supported were not held at all.

The prosecutor in case reckoned that at least the suspicion of commitment of violating accounting discipline can be ascertained therefore he has taken over the files to the prosecutors in penal law sector. I would like to note that it could happen since the prosecutor had also adequate knowledge in relation to the area of criminal law in contrast with other supervising authorities' members.

A criminal proceedings has been arisen from this case of having the greatest effect in the last years and became the most known criminal offence in the media. The executive officer of the foundations and other persons involved in the activity of the foundation were well-known politicians who have committed their acts by using their relations. It was turned out that they established half a dozen of fictitious organizations to submit different applications to obtain money. However, one part of the money was concealed afterwards. It could be ascertained that they also allocated supports to the candidates of parliamentary elections.

The perpetrators also reduced EU sources and concealed the incoming money.

Some high ranking politicians, including the prime minister, should have been heard as witnesses during the investigation.

At last, the prosecution service filed indictments against 16 people because of fraud resulting in particularly considerable damage, committed by continuous unlawful series of acts, in a pattern of business operation, in a criminal organization and owing to the infringement of the European Community's financial interests.

Without the successful and effective co-operation of the different areas of the prosecutorial activity the criminal offence would not have been revealed and could not have brought charges against the perpetrators.

As far I am concerned, all the examples mentioned afore confirm the opinion according to which the prosecution service's extra-penal competence is an efficient possibility in ensuring the proper operation of the democratic society and the rule of law, furthermore in protecting the human rights.

In this context I would like to call your attention to some concrete advantages and principles.

As for the tangible benefits of the co-operation between prosecutors within and outside the criminal law area and its integrated placement within the structure of the prosecution service, we should mention the followings:

- dealing with cases in a proper, complex way
- ensuring the proper flow(s) of information
- faster administration/handling of cases
- reducing bureaucracy
- avoiding contradictory/conflicting decisions

These benefits could prevail when the following principles are respected:

- it should make the prosecutor's intervention possible when the public interest justifies it,
- when complex protection of the rights of disadvantaged social groups and of persons who are assumable unable to enforce their interests, is needed
- in the prosecutor's activity prevails the principle of the separation of powers