

PUBLIC PROSECUTOR'S OFFICE  
OF REPUBLIC OF MACEDONIA  
Department for prosecuting crimes  
in the field of organized crime and corruption  
A nu. 28/08  
Skopje, 13.03.2008

TO  
MINISTRY OF JUSTICE OF  
REPUBLIC OF MACEDONIA

S K O P J E

SUBJECT: Questionnaire of the Consultative Council of European prosecutors  
(CCPE) in the Council of Europe  
RELATION: Your no.07-1340/3 from 03.03.2008

Regarding the Questionnaire of the Consultative Council of European prosecutors in the Council of Europe, delivered to the Public prosecutor's office of Republic of Macedonia through fax, regarding the role of the Public prosecutor in Republic of Macedonia beyond the criminal field, we inform you the following:

The Public prosecutor of Republic of Macedonia, apart from the function of prosecuting perpetrators of crimes and offenses, has authorizations in other areas. These authorizations are executed in the civil procedure, the administrative procedure and the administrative court procedure, within the function of protection of legality. This function is executed by the public prosecutors from the Public prosecutor's office of Republic of Macedonia, that are acting upon extraordinary legal remedies against final decisions, in the third – highest instance.

The legal grounds for these actions are consisted in article 38 of the Law on Public Prosecutors office (Official Gazette number 150 from 12.12.2007) according to which in the civil and other procedures, as well as in the administrative procedures, the public prosecutor undertakes legal actions for which he is authorized to make according to the law.

Before entering in force of the new Law on litigation procedure (Official Gazette number 79/05 from 21.09.2005) – on 01.01.2006, The Public Prosecutor had legal right to submit request for protection of legality against a final court decision brought in litigation procedure, for a breach of law - the material law or the procedure law. With the new Law on litigation procedure, this extraordinary legal remedy was cancelled. But in the transitional and final provisions of this law, a possibility was secured according to which, the procedures for which, before the beginning of the appliance of the new law, a verdict or solution was brought by the first instance court, and the procedure was ended before the first instance court, a further procedure should be conducted according to the old regulations. But if in the period after the new law came in force, the first instance verdict was cancelled, further procedure should be conducted according to the new law. Regarding the submitted request for

protection of legality, a decision is brought by the Supreme Court of Republic of Macedonia. Against this decision there is no right for an appeal.

In the administrative procedure, the authorizations of the public prosecutor are regulated in art.262, art. 263, art.267 and art.268 from the Law on general administrative procedure (Official Gazette of Republic of Macedonia no. 38 from 26.05.2005). The Public Prosecutor of RM, to the organ that according to the law is authorized to decide upon appeals against the attacked solution, can submit request for protection of legality against a final decision brought in an administrative matter, for which an administrative dispute can not be led, and a court protection is not provided outside the administrative dispute. Against this decision brought upon the request for protection of legality, there is no right for an appeal.

The Public prosecutor of Republic of Macedonia according to the Law on general administrative procedure has the right to request a cassation or cancellation of a final solution according to the right of supervision ( art. 267 and art.264), as well as the right to propose a pronouncement for abolishment of a solution (art. 267 and art.268). The solution is pronounced for abolished by the organ that brought the solution or by the second instance organ, and if there is no second instance organ, then the organ that according to the law is authorized to supervise the work of the organ that brought the decision. Against the solution for pronouncing abolishment of the brought decision, an appeal can be submitted. Also, against the rejected proposal for pronouncement of abolishment of the solution, submitted by the party or by the Public prosecutor of Republic of Macedonia, an appeal can be submitted. If there is no organ to decide upon the appeal, against that decision, an administrative litigation can be directly initiated.

In the administrative – court procedure, the authorizations of the Public prosecutor are regulated in art. 49 from the Law of administrative litigations ( Official Gazettes of Republic of Macedonia num.62 from 22.05.2006), according to which the Public prosecutor is authorized to submit a request for protection of legality only against the decision of the court brought upon the action for repetition of the procedure. Regarding the submitted request for protection of legality, a decision is brought by the Supreme Court of Republic of Macedonia. Against this decision there is no right for an appeal.

According to the Yearly report of the Public prosecutors Office of RM for 2007 that is in the phase of preparation, in 2007 the Public prosecutor's Office of Republic of Macedonia received 213 initiatives for starting a procedure for protection of legality in the civil court procedure, and apart of these newly received initiatives during 2007, the Public prosecutors Office of RM acted upon 10 other cases that remained unsolved in the previous year. From the total number of submitted initiatives, 14 of them were accepted and for these cases a request for protection of legality was submitted before the Supreme Court of Republic of Macedonia.

In the part of the administrative – court procedure or administrative litigations, in 2007 the Public prosecutor's Office of Republic of Macedonia received 56 initiatives for starting a procedure for protection of legality, and apart of these newly received initiatives during 2007, the Public prosecutors Office of RM acted upon

5 other cases that remained unsolved in the previous year. From the total number of submitted initiatives, 2 of them were accepted and for these cases a request for protection of legality was submitted before the Supreme Court of Republic of Macedonia. In the part of the administrative procedure, in 2007 the Public prosecutor's Office of Republic of Macedonia had no actions.

The Public prosecutor's Office of Republic of Macedonia doesn't have a special internal body that deals with issues outside the criminal matter. It is characteristic that with the new changes of the Law in litigation procedure and with the cancellation of the extraordinary legal remedy – Request for protection of legality in the civil court procedure, the work load of the Public prosecutor in this area significantly decreased. As an illustration, the Public Prosecutors Office of Republic of Macedonia used to have 5 prosecutors that worked on this area and now the civil and the administrative procedure is covered only by one public prosecutor.

The public prosecutor, while acting outside the criminal area has the same rights as the other party. Bu the right for submitting a request for protection of legality before the Supreme Court of Republic of Macedonia is an exclusive authorization of the public prosecutor.

Regarding the Verdicts of the European Court for human rights, we are specifying three verdicts in which the role of the Public prosecutor is mentioned outside of the criminal area:

Case: Kostovska against Republic of Macedonia (appeal no. 443535/02, verdict from 15.06.2006)

Case: Grozdanovski against Republic of Macedonia (appeal no. 21510/03, verdict from 31.05.2007)

Case: Markoski against Republic of Macedonia ( appeal no. 22928/03, verdict from 02.11.2006).

The authorizations of the Public prosecutor in the field of protection of legality in the administrative procedure and the authorizations to request a cassation or cancellation of a final solution according to the right of supervision, and the right to propose a pronouncement for abolishment of a solution, are important segments in the area of protection of human rights and the rule of law, in order to provide control of legality on the decisions of the state administrative organs, when they are deciding upon individual administrative matters.

CHIEF OF THE DEPARTMENT  
Jovan Ilievski