

ANALYSIS

OF THE IMPLEMENTATION OF THE PENAL PROCEDURE CODE IN RESPECT OF THE EFFICIENCY OF PRETRIAL PROCEEDINGS

(Prepared by the Interagency working group on monitoring the implementation of the Penal Procedure Code, 9 March 2007)

With the adoption of the new Penal Procedure Code (PPC), effective as from 29.04.2006, the most essential amendments were made in the area of pretrial proceedings. Overlapping of the functions of the investigating authorities was eliminated and the efficiency and transparency of the system of pretrial proceedings was secured. Equal powers were assigned to the investigating magistrates and the police investigators the difference being only in the types of crimes investigated by the police investigators - "*doznateli*" and the investigating magistrates - "*sledovateli*" respectively. The types of crimes investigated by *doznateli* are approximately **97 percent of the total number** of the corpus delicti provided for in the Penal Code, including crimes related to organized crime, economic crime and corruption (only crimes against the Republic, crimes against peace and humanity and crimes committed by persons enjoying immunity were left in the competence of *sledovateli*). In this context the Penal Procedure Code provided for qualitatively new unified rules to conduct investigation:

- the rules for commencement, conduct and completion of the pretrial proceedings have been made identical;
- identical acts (rulings) have been introduced for the procedural investigative actions carried out by the bodies of the pretrial proceedings;
- time-limits for completion of the pretrial proceedings have been made identical and the grounds on which the time-limits could be prolonged were specified with greater precision.

Penal procedural norms establishing the role of the prosecutor as a master of the pretrial proceedings have been introduced. The constant control and the compulsory instructions by the supervising prosecutor is a guarantee for the quality of the investigation conducted.

With regard to the achievement of full compliance with the requirements of the European Convention for the Protection of Human Rights and Fundamental Freedoms the principle of reasonable time of the penal proceedings has been explicitly regulated.

The new PPC provided for improvement of the institute of summary penal proceedings, the number of cases on which real judicial proceedings should take place

has been reduced, the purpose being to avoid unjustified delay in the criminal process. The following procedures and institutes have been provided for:

- immediate judicial proceedings and reduced judicial trial in proceedings before the first instance under strictly determined conditions;
- extended field of application of Article 78a of the Penal Code - release from criminal responsibility by imposing administrative sanctions – in respect to juveniles, perpetrators of crimes and in respect of the types of crimes for which it will be applied;
- extended scope of crimes for which the institute of agreement could be applied.

The analysis of the statistics for the pretrial proceedings in 2006, compared to the preceding years shows enhancement of the efficiency of the work of the pretrial proceedings bodies:

In 2006 the Prosecution Office has exercised guidance and supervision over 8.92% pretrial proceedings more in comparison with the pretrial proceedings supervised in 2005 (2005 – 170 807, 2006 -186 042).

The number of the newly instituted pretrial proceedings has been increases by 10.72% (2005 – 129 693, 2006 - 143 595). This result comes form the increased number of pretrial proceedings investigated under the general procedure by *doznateli*.

At the same time there one could be impressed by the substantial decrease in the number of the newly instituted summary proceedings – in 2005 they were 17 399, while in 2006 – 10 885.

In total 151 575 pretrial proceedings have been concluded in 2006 – **11.50% more** than in the previous year while the trend that was established in recent years where the concluded pretrial proceedings were more than the newly instituted ones, has been maintained. This is evident in particular in the police investigations - “*doznanie*” that were investigated by *doznateli* under the general procedure, which are **17.50% more** than in the previous year (the increase in 2005 compared with 2004 was 10.71%). It should be noticed that **84.15% of the total number of pretrial proceedings** investigated under the general procedure have been **concluded within the statutory time-limit** (147 975 pretrial proceedings).

From the data summarized by the Directorate General “Police” concerning the time-limits in the activities of *doznateli* in respect of the investigation conducted by them, it is evident that substantial progress in the efficiency of their work has been achieved. From 16 435 cases not concluded in 2006, 4 583 have been delayed what represents **3.13% of the total number** of pretrial proceedings investigated by *doznateli*.

A total of 193 566 cases were decided in 2006 of which: 493 immediate proceedings and 11 341 summary proceedings. 72 683 proceedings were suspended, 49 771 were

terminated. 51 070 pretrial proceedings were submitted to the national courts with a prosecutor's act, of which 29 035 indictments, 7 707 agreements and 14 328 proposals under Article 78a of the Penal Code.

The reported data provided by the Ministry of Interior and the Supreme Cassation Prosecution Office, although incomparable with preceding years, taking into account the new legal regulation and the new staffing and structural peculiarity of the pretrial proceedings suggest the following conclusions:

1. During the reported period the prosecutors and *doznateli* attended different workshops and training courses in relation to the new legislation that entered in force (the Penal Procedure Code, the Administrative Procedure Code, the Law on Legal Assistance, the Law on the Ministry of Interior).

2. The Supreme Cassation Prosecution Office gave practical instructions for the organization of the work on the conclusion of the cases in delay (in the majority of the cases the proceedings commenced when the already repealed PPC was still in effect).

3. The organization of the pretrial proceedings was streamlined:

- **through adoption of Instruction No. II-139/22.06.2006** on the organization of the work of the joint teams of the Prosecution Office and the Ministry of Interior on combating organized crime; **Instruction No. II-145/03.07.2006** on the interaction between the Prosecution Office, the Financial Intelligence Agency and the Ministry of Interior; **Instruction No. II-14120/25.09.2006** on the interaction between the bodies to establish property acquired through criminal activity, the Ministry of Interior and Ministry of Finance units, the Prosecution Office and the Investigation.

- **through issuing of instructions** by the Prosecutor General, the Supreme Cassation Prosecution Office and the Minister of Interior concerning the activity of the Prosecution Office on assignment, carrying out and completion of the preliminary checks; concerning the unification of the criteria for commencement of pretrial proceedings, inspection verification ??? by the prosecutors or the police; concerning the estimation of the time-limit of the investigation when resuming suspended criminal proceedings; concerning the correct application of the provision of Article 234, paragraph 2 of the PPC concerning the extension of the time-limit for investigation in the pretrial proceedings and others.

4. The material and technical support for the police investigation units have been substantially improved and efforts are being made to further strengthen this trend.

5. Nationwide efficient interaction between the Prosecution Office and Ministry of Interior bodies and the structures of the National Unit for Legal Assistance was achieved at all levels.

As a result of the analysis of the implementation of the new PPC and regardless of the positive outcomes that were reported, the working group estimated that there are certain problems stemming from the application of the new legislation. This necessitated the elaboration of a proposal for amendments to the PPC. The main amendments provided for in the Law on Amendment of the Penal Procedure Code, submitted to the National Assembly by a group of PMs are:

- securing in short terms sufficient number of officers with investigation functions in order to enhance the efficiency of the work of the police on pretrial proceedings. Assigning of investigation functions to all police officers;
- extension of the time-limits provided for by the law from two to minimum six months with possible extension with another six months;
- providing possibility for the police officer who conducted the investigation to appear as witness in the court;
- providing possibility for the head of the police unit acting under cover to appear in the court as witness, on behalf of the officer under cover, who has participated in the operation;
 - dropping out of the necessity for participation of certifying witnesses when carrying out procedural actions in pretrial proceedings.

In this context and in view of the urgent need of amendments, the working group supports both the Law on Amendment to the Law on the Ministry of Interior and §7 of the Transitional and Final Provisions extending the term of functioning of the found in office *doznateli* who without legal education as they are, have gained sufficient experience.