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GEORGIA

**CONCEPT
OF THE REFORM OF THE CRIMINAL PROCEDURE CODE
REGARDING THE RELATIONSHIPS
BETWEEN THE PROSECUTION AND THE POLICE**

**STAGES OF INVESTIGATIONS
UNDER THE GEORGIAN LAW (EXPLANATORY NOTE)***

**Translation provided by the Authorities*

Separation of Investigative and Prosecutorial Functions

Reform of the Criminal Procedure Code¹

The present reform is necessitated by the absence of clear separation between the responsibilities of investigators and prosecutors as defined by the Criminal Procedure Code of Georgia (hereinafter - the Code).

Based on the Code, both investigator and prosecutor actively participate in the process of investigation. Moreover, both have instruments to define the direction of investigation. The prosecutor, whose main function is criminal prosecution, at the same time has the responsibility to conduct the investigation to a full extent.

This legislation creates the risks of ineffective investigative and prosecutorial activities and makes it rather difficult to identify specific person responsible for undue investigation².

The aim of the reform is to re-allocate functions among investigator and prosecutor during the investigation in such a way that will allow identification of the level of responsibility of investigator and prosecutor at each stage of investigation, avoid conflict of interest caused by concentration of qualitatively different functions in the hands of a single actor and ensure the effectiveness of investigative as well as prosecutorial activities.

The present document is a concept paper for the legislative reform. It analyses the deficiencies of the existing Code and re-defines the functions of investigator and prosecutor based on the stages of investigation as well as specific procedural decisions.

1. Investigative and Prosecutorial Functions within the existing Legislative Framework

The Prosecutor's Office is an authority responsible for criminal prosecution. In order to fulfil this function, the Prosecutor's Office provides procedural guidance of the investigation.

Procedural guidance of the investigation includes the obligation of immediate notification of the prosecutor on the fact of launching the investigation. It also includes the responsibilities of providing investigators with binding instructions at every stage of investigation (including before launching criminal prosecution), familiarizing with the criminal case, participation in the investigative activities conducted by the investigator, assigning investigation to specific investigator, obtaining court order on taking investigative/procedural activities restricting human rights, recognizing a person as a victim, recusal of participants of the process, transfer of the case based on institutional or territorial jurisdiction, joinder and separation of cases, conduct investigation at a full extent, etc.

The prosecutor is responsible for criminal prosecution, however, at the same time having the function of procedural guidance of the investigation, the prosecutor possesses legal instruments to direct the investigation as well as actively participate in it. With this model of allocation of functions, the Code transforms the investigation into the instrument of criminal prosecution, creates the conflict of

¹ Key legal act defining the responsibilities of investigators and prosecutors in Georgia

² Low qualification level of investigators also affects investigation and prosecution activities. This is caused by various factors and differs among investigative authorities. This aspect, as well as ongoing or planned reforms in the investigative authorities are not part of the present document.

interest and the risk of conduct of investigation with active involvement of the prosecutor (and not independently).

Moreover, margins and essence of procedural guidance function over investigation prove that the responsibility of investigation is assigned to both investigator and prosecutor simultaneously. This complicates identification of a person responsible for undue investigation or investigation conducted in breach of the provisions of the legislation. Absence of clear margins between the functions and assigning similar functions to investigator and prosecutor increase the risks of irresponsible attitude of investigator towards the investigation.

The exclusive responsibility of the prosecutor over the investigative/procedural activities restricting human rights, is additional barrier in the process of conducting these activities and for investigation overall, particularly baring in mind that based on the Code, conduct of these activities falls under the court control anyway. Moreover, the prosecutor is assigned with the function that by nature should be conducted by the investigator.

Unclear provision of the Code on the responsibilities of investigator and prosecutor regarding launching the investigation allows for involvement of both in the decision-making process. This creates the risk of delay in launching the investigation and makes it meaningless to appeal the decision on denial of the launching investigation to the prosecutor.

Based on the Code, the prosecutor studies the complaint regarding the action or decision of the investigator in the process of investigation. This includes complaints regarding failure to conduct specific investigative activities and delay of investigation, as well as any decision linked to the process of investigation. These provisions stipulating the review of the complaint are of purely formal nature as the Code considers the wide involvement of the prosecutor in the decision-making process on any procedural activity at any stage of investigation.

According to the Code, the investigator is a party to a state prosecution. On the one hand, investigator is obliged to conduct comprehensive and impartial investigation of the case, and on the other hand, from the very initial stage of investigation, he/she has every instrument to direct his/her efforts (together with prosecutor) to collect the evidence that supports the position of state prosecution, otherwise ensuring the criminal prosecution. This might create the risk for impartial investigation.

2. Investigative and Prosecutorial functions within the post-reform Legislative Framework

Following the legislative changes, in the process of investigation, the functions as well as responsibilities of the investigator and prosecutor will be clearly separated. The investigator will be responsible for launching investigation and its independent conduct, while the prosecutor will be responsible for launching/non-launching criminal prosecution and making the summary decision on the case (referring the case to the court, termination of investigation).

The investigator will have the responsibility to make independently a decision on launching investigation. This does not exclude the access of the prosecutor to the criminal case files.

Investigator will no longer be a party to a state prosecution. Investigator will have an obligation to conduct comprehensive and impartial investigation before and after the launch of criminal prosecution, until referring the case to the court or termination of investigation/criminal prosecution.

The law will clearly define the responsibility of investigator to make independently a decision on different investigative/procedural activities and define the direction of investigation. Among others, the investigator will be responsible to file a motion to the court to obtain the permission (order) on investigative/procedural (including covert) activities restricting human rights (except for the investigative/procedural activities, which are linked to the status of defendant).

At the same time, the prosecutor will have the function of procedural oversight on the investigation (rather than procedural guidance), without active role in the investigation and without the function of defining the direction of investigation.

Intensity of the procedural oversight will differ based on the stages of investigation, in order to ensure that the prosecutor fulfills the function of criminal prosecution on the one hand and, on the other, to consider the interest of the prosecutor as a party to the state prosecution after launching criminal prosecution.

Procedural oversight function includes assessment of the grounds for launching criminal prosecution or termination of investigation. It also includes decision-making regarding the issues, on which the possible decision of the investigator or the head of investigative unit creates ground for doubt about its impartiality (e.g. recusal of the investigator, transfer of the case based on institutional subordination, etc). The prosecutor will also make a decision on the issues that might be linked to his/her interests as a person responsible for criminal prosecution (e.g. joinder or separation of cases).

Procedural oversight function does not include the review of the complaint regarding the conduct of different investigative activities or the issues on the direction of the investigation. Complaints regarding delaying investigation, conduct of various investigative activities and other issues linked to the direction of investigation (including the qualification of the case) will be reviewed by the head of the investigative unit, who will gain the status of the participant of the process for this purpose.

Prosecutor and head of the investigative unit will not be authorized to consider inadmissible the evidence obtained in violation of the requirements of the law. This will remain the prerogative of the judge in the pre-trial hearing.

In the frames of procedural oversight function, before launching criminal prosecution, the prosecutor will have a mandate to give the investigator a recommendation (rather than binding instruction). In particular, the prosecutor will have the right to assess the sufficiency of evidence obtained by the investigator and make a decision to launch criminal prosecution, terminate the investigation or give a recommendation to investigator to further identify necessary circumstances for making decision on launching criminal prosecution.

After launching criminal prosecution, the prosecutor will have the right to effectively use the investigator as an instrument to support his/her position as of a state prosecutor. In particular, the prosecutor will be authorized to give binding instructions to investigator regarding identification of necessary circumstances to create the standard of evidence for the referral of the case to the court. This does not exclude the responsibility of investigator on comprehensive and impartial investigation.

All responsibilities regarding the status of defendant (restrictive measures, postpone of pre-trial hearing, plea bargain, termination of criminal prosecution, etc.), will be fulfilled by the prosecutor.

After the general review of the Code and post-reform legislative framework, present document discusses the Code and practice as well as post-reform legislative framework **regarding specific procedural decisions:**

1. Launching the investigation

Existing law and practice:

According to the article 100 of the Code, when notified of the commission of an offence, an investigator, prosecutor shall be obliged to launch an investigation. An investigator shall immediately notify a prosecutor of launching an investigation. In practice, in most cases a decision on launching an investigation is made by mutual agreement of an investigator and a prosecutor. The law and relevant flawed practice create problems related to timely adoption of a decision on launching an investigation. In addition, a prosecutor is engaged in decision-making from the very beginning. Therefore, appealing a decision on refusal of launching an investigation to a prosecutor is a formality.

Legislative framework after reform:

- An investigator shall be entitled to make decision on launching an investigation independently
- An investigator shall be also entitled to define independently qualification of the case when launching an investigation
- An investigator shall not be obliged to notify a prosecutor on launching an investigation
- A decision on refusal of launching an investigation shall be appealed to a chief of investigative unit.

2. Joinder and separation of criminal cases

Existing law and practice:

According to the articles 109 and 110 of the Code, a prosecutor shall make a decision on joinder and separation of criminal cases during the investigation.

While the law does not specify the grounds for joinder and separation of criminal cases, based on the practice, cases may be joined or separated at the initial stage of investigation before launching criminal prosecution, also during investigation while the criminal prosecution is launched or during the summary decisions (termination of an investigation, referring the case to the court).

A reason for joining the cases differ. It may be justified by the fact that the same person is identified as a potential defendant or is already assigned a status of defendant in several criminal cases, also if a crime is committed with analogous way, methodology or style in different cases (including those committed by different persons), etc.

A reason for separation of a criminal case from another criminal case might be necessity to transfer the case according to institutional or territorial jurisdiction, also revealing signs of another crime during investigation, need to separate a juvenile's case from criminal case related to adults, etc.

Accordingly, it might be stated that joinder and separation of cases is in the interest of effective implementation of an investigative and prosecutorial activities (including supporting the charges to the court).

Legislative framework after reform:

- Both an investigator and a prosecutor shall be entitled to make a decision on joinder and separation of cases
- Before launching a criminal prosecution an investigator shall make a decision on joinder and separation of cases
- After launching a criminal prosecution a prosecutor shall make a decision on joinder and separation of cases
- At the stage of making a summary decision, relevant authority (investigator or prosecutor) shall respectively decide on joinder and separation of cases.

3. Transfer of a case based on (institutional, territorial) jurisdiction

Existing law and practice:

Based on the article 33.6.a of the Code, a prosecutor may, according to the investigative jurisdiction, task a certain law-enforcement body or investigator with the investigation of a criminal case, withdraw a case from one investigator and transfer it to another. Thus, it is the responsibility of a prosecutor conducting procedural guidance of a particular case to transfer this case according to institutional or territorial jurisdiction.

It is logical to vest an authority to transfer a case based on institutional jurisdiction within a neutral actor (a prosecutor) as it might solve a potential dispute over institutional jurisdiction among different investigative bodies. At the same time, it is not reasonable to grant an authority to a prosecutor to transfer a case according to territorial jurisdiction, as a dispute over jurisdiction among structural units within a single institution might be decided by a top-official of the latter (e.g. Minister). Therefore, a decision to transfer a case according to the territorial jurisdiction should be made by an investigator. However, if a criminal prosecution has already being launched, a prosecutor, as a person responsible to support state prosecution in court, having a procedural interest in further development of a case, should decide whether to transfer a criminal case according to territorial jurisdiction or not.

As for transferring a case irrespective of the investigative (both institutional and territorial) jurisdiction, according to the article 33.6.a of the Code, the General Prosecutor of Georgia or a person authorized thereby may, regardless of the investigative jurisdiction, withdraw a case from one investigative authority and transfer it to another.

This authority of the General Prosecutor creates safeguards for elimination and prevention of potential conflict of interests in the course of investigation. However, it also creates a possibility to transfer a case to another authority without justification as the Code does not specify grounds for a decision of the General Prosecutor and a person authorized thereby regarding the transfer of a case to another investigative authority irrespective of the investigative jurisdiction.

In addition, according to the articles 35 and 36 of the Code, investigative jurisdiction (who investigates what) is determined solely by the General Prosecutor and not by the Code.

Legislative framework after reform:

- A prosecutor shall retain a right to transfer a case according to institutional jurisdiction

- An investigator shall be able to transfer a criminal case according to territorial jurisdiction unless a criminal prosecution is already launched
- The General Prosecutor or a person authorized thereby shall retain a right to transfer a case to another investigative authority irrespective of the investigative jurisdiction
- Investigative (institutional and territorial) jurisdiction shall be specified in the Code
- Grounds for transferring a case to another investigative authority/investigator irrespective of the investigative jurisdiction shall be specified in the Code.

4. Investigative-procedural actions restricting human rights

Existing law and practice:

According to the article 33.6.e of the Code, a prosecutor may file a motion to obtain a court order for conducting investigative activities restricting human rights. Even though this article refers only to investigative (and not procedural) activities, in practice, through using the rule of analogy the same regulation is also applied to procedural activities.

According to the article 37.6.a, an investigator may carry out all investigative and other procedural activities prescribed by the Code except for the actions that fall within the competences of a prosecutor.

According to the article 112.1, an investigative activity that restricts private property, ownership or the inviolability of private life shall be carried out under a court order upon a motion of a party. Part 5 of the same article provides that if such an activity was carried out in the case of urgent necessity a prosecutor shall within 24 hours after initiating this action notify a judge for verification of lawfulness of the investigative activity.

At the same time, the articles of the Code specifying rules of carrying out investigative/procedural activities restricting human rights expressly state that a prosecutor has an authority to apply to a judge for obtaining a prior permission or verification of lawfulness of investigative/procedural activities carried out in the case of urgent necessity.

Therefore, while article 112 prescribing general rules of carrying out investigative measures refers to a party (according to article 3.5 of the Code an investigator and a prosecutor may be a party), based on article 33.6.e and articles regulating specific investigative/procedural activities it may be concluded that only a prosecutor is entitled to apply to a court for a prior permission on carrying out investigative/procedural activities restricting human rights and for verification of lawfulness of investigative/procedural activities carried out in the case of urgent necessity.

An investigator may not apply to a court for a permission to carry out some investigative/procedural activities, such as:

- Search, seizure, inspection, investigative experiment in an apartment, storage facility, dwelling facility, or other property
- Personal search
- Exhumation

- Investigative activities related to computer data
- Covert investigative activities
- Taking samples
- Compelled appearance
- Forfeiture of property
- Removal of the defendant from office (suspension from duty)
- Suspension of the passport of defendant

However, an investigator may conduct some of the aforementioned activities (e.g. search and home inspection) in case of consent of an owner/holder or urgent necessity. Prosecutor shall apply to a court for verifying lawfulness of such activities.

The aforementioned articles of the Code are translated into the practice as follows: if there is a probable cause to believe that object necessary for a case is kept in the apartment and a search to seize an item needs to be conducted (thus an investigative activity that restricts right to property), an investigator notifies a prosecutor. The latter reviews the case files and prepares a motion for a court to obtain a permission to carry out search. If an investigator conducts such search in case of urgent necessity, he/she will notify a prosecutor who reviews the case files and applies to the court for verifying lawfulness of the search.

Similar rule is applied to all investigative/procedural activities restricting human rights.

Such a regulation – lack of direct contact between an investigator and the court – creates several problems in practice: hinders obtaining timely permission for carrying out important investigative activities through creating additional barriers, damages efficiency of investigation of criminal cases as in most cases such activities are necessary, a prosecutor is burdened with additional task that by nature is the competence of an investigator.

It is not reasonable to grant exclusive competence to a prosecutor for the purpose of minimizing the number of investigative activities restricting human rights and preventing abuse of powers by an investigator as such activities are subject to mandatory judicial review. As for activities carried out in case of urgent necessity, a prosecutor does not have any effective leverage neither under the legislation nor in practice.

Accordingly, it is recommended that a prosecutor should have an authority to apply to a court in relation to investigative/procedural activities concerning the status of defendant and an investigator should have similar authority for all other investigative/procedural (including covert) activities.

Legislative framework after reform:

- An investigator shall apply to a court for prior permission to carry out investigative/procedural activities restricting human rights
- An investigator shall apply to a court to verify lawfulness of such investigative/procedural activities carried out in case of urgent necessity

- A prosecutor shall apply to a court for a permission of procedural activity related to the status of defendant (forfeiture of property, removal of the defendant from office), as well as for verification of lawfulness of such activities carried out in the case of urgent necessity.

5. Recognizing a person as a victim/provision of information to a victim

Existing law and practice:

According to the article 33.6.o of the Code, a prosecutor may recognize a person as a victim and explain to him/her his/her rights and duties. According to parts 5, 5¹ and 6 of the article 56, if there are appropriate grounds a prosecutor shall recognize a person or his/her legal successor as a victim. A prosecutor or upon his/her instructions an investigator shall familiarize the victim with the decree on the recognition of a person as a victim and explain to him/her all the rights and duties. If no appropriate grounds exist, the prosecutor shall decide to annul the decree on the recognition of a person as a victim. According to parts 2 and 3 of the article 57, a prosecutor or an investigator shall draft a protocol on granting a victim a right to review the case files. If this request has been denied a prosecutor shall issue a substantiated decree. According to the article 58 of the Code, a prosecutor shall inform a victim on the place and time of some procedural activities.

Article 3.22 defines a victim as a state, natural or legal person that has incurred moral, physical, or material damage directly as a result of a crime. While this article refers to a crime, the Code does not specify any standard of proof that should be met for recognizing a person as a victim. Accordingly, even a minor doubt may serve as a ground for recognizing a person as a victim.

A person is usually recognized as a victim at the initial stage of an investigation, in rare cases – during investigation and in very rare cases – after launching criminal prosecution. A decree on recognition is usually annulled when final decision (termination of investigation) is made.

As a rule, an investigator has initial contact with a victim, who establishes the fact that damage was incurred to a person. Afterwards a prosecutor responsible for procedural guidance adopts a decree on recognizing a person as a victim, instructs an investigator to familiarize a victim with a decree and explain to him/her his/her rights. Prosecutor does not have any direct communication with a victim. In practice, this rule of recognizing a person as a victim creates efficiency problems – there are cases that a prosecutor cannot timely recognize a person as a victim due to workload related to other prosecutorial tasks. Accordingly, in some cases, investigative/procedural activities with participation of a victim are also postponed.

Legislative framework after reform:

- An investigator shall decide on recognizing a person as a victim
- A decision of an investigator rejecting recognition of a person as a victim may be appealed to the head of an investigative unit and afterwards to the court³
- An investigator shall decide to annul a decree on recognizing a person as a victim. This decision may be appealed to the head of an investigative unit and afterwards to the court

³ Necessity of a court appeal was stated in the judgement of the Constitutional Court of Georgia dated December 14, 2018.

- An investigator shall decide to familiarize a victim with the case files
- A prosecutor shall retain the power to notify a victim on the place and time of procedural activities.

6. Recusal

Existing law and practice:

According to the articles 59-66 of the Code, a prosecutor shall decide on recusal of process participants (including an investigator). In addition, process participants (including an investigator) shall declare about the self-recusal to a prosecutor.

Taking into account the post-reform clear re-allocation of functions between investigators and prosecutors, it is reasonable to grant investigator an authority to decide on recusal of all process participants, while retain the right to decide on recusal of an investigator to a prosecutor, to avoid possibility on biased decisions within the system.

Legislative framework after reform:

- At the stage of investigation, a decision on recusal of a process participant shall be made by an investigator
- At the stage of investigation, a decision on recusal of an investigator shall be made by a prosecutor.

7. Termination of an investigation

Existing law and practice:

According to the article 105 of the Code, a prosecutor shall decide on termination of an investigation irrespective of the ground for such a decision. A prosecutor is also authorized to decide not to launch or terminate a criminal prosecution. According to the articles 106 and 168 of the Code, a decision to terminate an investigation and criminal prosecution, as well a decision not to launch a criminal prosecution may be appealed to a superior prosecutor and afterwards to a court.

Taking into account post-reform re-allocation of functions of an investigator and a prosecutor and independence of an investigator in the course of investigation, as well as for the purposes of decreasing workload of prosecutors, it is reasonable that an investigator is entitled to decide on termination of an investigation in criminal cases that do not require evaluation of the fact of commission of a crime with a standard of a probable cause or when criminal prosecution is not launched.

Legislative framework after reform:

- A prosecutor shall retain a right to decide on non-launching or termination of criminal prosecution
- If a criminal prosecution has been already launched, a prosecutor shall decide on termination of an investigation based on any ground
- An investigator shall decide on termination of an investigation based on the article 105.1.a, if a criminal prosecution has not been launched

- An investigator's decision on termination may be appealed to the head of an investigative authority and afterwards to a court
- A prosecutor's decision on termination may be appealed to a superior prosecutor and afterwards to a court.

8. Arrest

Existing law and practice:

According to the article 171.1 of the Code, a prosecutor shall submit a motion to the court to obtain permission (order) for arrest. According to part 2 of this article, a person may be arrested without a court order if the ground prescribed by the Code exists. According to the article 172, both prosecutor and investigator are authorized to make an arrest. Therefore, in case relevant grounds exist, only a prosecutor may apply to a court with a motion on arrest of a person, while an investigator has a power to make an arrest in case of urgent necessity. As for releasing an arrested person, according to the article 176.2, a person shall be released under a decision of a prosecutor or a judge.

These provisions of the law are in full compliance with the essence of prosecutorial function on launching a criminal prosecution. As a decision on arrest is related to the evaluation of a commission of a crime with a standard of a probable cause and is almost equivalent to indictment, a prosecutor shall retain a right to apply with a motion on arrest to a court. An investigator shall also retain a right to carry out an arrest in case of urgent necessity as such a right is justified by practicalities. Under a new legislative framework, it is reasonable to introduce an obligation to notify a prosecutor about arrest immediately.

Legislative framework after reform:

- A prosecutor shall retain an authority to submit a motion to the court to obtain permission (order) for arrest
- In cases of urgent necessity specified by the law, an investigator shall retain an authority to make an arrest
- An investigator shall notify a prosecutor on arrest of a person immediately.

Brief description of the stages of investigation¹

The basis for launching an investigation is the notification of the crime. Launching an investigation is mandatory. The investigator shall immediately notify the prosecutor about launching an investigation.

After launching an investigation, until its completion (before the case is referred to the court or the investigation/criminal prosecution is terminated) the investigator shall carry out investigative/ procedural activities to determine the circumstances of the offense and the perpetrator.

Investigative activities	Procedural activities
<ul style="list-style-type: none">• Interview• Interrogation with Magistrate Judge• Search (including personal) and seizure• Visual Inspections (crime scene, corpse, item etc.)• Monitoring of bank accounts• Investigative experiment• Identification of a person or an object• Exhumation• Investigative activities related to computer data• Covert investigative activities	<ul style="list-style-type: none">• Forensic examination• Taking sample• Coercive appearance• Forfeiture of property• Removal of defendant from the office• Suspension of the passport of defendant• Search for a fugitive defendant/ convict

The Code differentiates the rule of conducting the abovementioned investigative/procedural activities as per the degree of interference into human rights. In particular:

- Investigative/procedural activities related to the restriction of inviolability of private property, ownership or private life, shall be conducted on the basis of a court order.
- Such investigative/procedural activities may be carried out without a court order, if the owner, or one party of communication agrees to conduct investigative activities.
- Such investigative/procedural activities may be carried out without a court order if the owner or one party of communication refuses to conduct it, but there is an urgent necessity. In such case, the court should be notified in 24 hours after the commencement of investigative/procedural activities.
- Such investigative/procedural activities require probable cause standard (i.e., totality of evidence confirming the necessity of carrying out any activity).
- There are investigative/procedural activities that do not require a court order and the consent of the owner or one party of communication. The Code also does not require probable cause standard for conducting such investigative activities. For example, visual inspection of the crime scene in the street, interviewing the person, identification, etc.

¹ The process is described in accordance with the Criminal Procedure Code of Georgia

Investigative/procedural activities are conducted by the investigator, however, the prosecutor requests the court permission (order) to conduct it. For example, the investigator conducts a search in an apartment, but only the prosecutor's can request a permission from the court to conduct a search in an apartment.

In case of urgent necessity, an investigative/procedural activities shall be conducted by the investigator and immediately notified to the prosecutor who will apply the court to examine the lawfulness of the conducted activity in 24 hours after the commencement of this activity.

The judge shall consider the issue of issuance of permit on conducting investigative/procedural activities and examination of the lawfulness of investigative/procedural activities conducted in case of urgent necessity, within 24 hours after application, usually without oral hearing.

If the perpetrator is determined with probable cause standard as a result of investigative/procedural activities, criminal prosecution is launched against him. If the fact of crime is not confirmed during the investigation, the investigation is terminated. The prosecutor decides to terminate the investigation.

Arrest or indictment involves the launch of criminal prosecution. The person may be indicted without arrest.

A person can be arrested by an investigator, as well as a prosecutor, but adoption of the indictment is the authority of a prosecutor.

As a rule, arrest of a person needs a court order, which is requested by the prosecutor. In order for the court to issue a permission (order), there should be the actual (evidentiary) and formal (procedural) basis of arrest. That means that there must be enough evidence collected which proves that the person has committed a crime beyond probable cause standard and there should be a risk of absconding, commission of a new offence or any other basis envisaged by the Code.

In case of urgent necessity (for example, the person has been caught in action while committing a crime), a person can be arrested without court order, the lawfulness of which is examined by the magistrate judge at the initial appearance of the defendant in the court. The investigator as well the prosecutor can arrest a person in case of urgent necessity.

Indictment also requires probable cause standard.

If a person is arrested, indictment, charging and the initial appearance of the defendant in front of a magistrate judge shall be carried out within 48 hours. Among other things, at the initial appearance session, the judge considers the issue of lawfulness of the arrest and the issue of application of a restrictive measure (such as detention, bail, etc.). The prosecutor applies to court with the motion regarding application of a restrictive measure. The prosecutor also takes part in the initial appearance session.

When resolving the issue of applying a restrictive measure, the judge assesses whether there are actual (evidential) and formal (procedural) grounds for applying such measure. In particular, there should be enough evidence collected to prove that the person has committed the crime beyond probable cause standard; and there should be risk of absconding, commission of a new offence, destruction of evidence or any other basis envisaged by the Code.

At the initial appearance session, the judge also appoints the date of the pre-trial hearing. 5 days prior to a pre-trial hearing, the prosecutor refers the case to the court. If there is no totality of evidence which proves commission of the offence with high probability, the prosecutor is entitled to terminate criminal prosecution.

At the pre-trial session, court assesses the admissibility of the evidence submitted by the parties and high probability of commission of an offence by the defendant. If the judge establishes with high probability that the defendant has committed a crime, he/she refers a case to substantial hearing. If the crime cannot be proved by such a standard, the judge shall terminate criminal prosecution against a person.

The investigation process is in progress from launching the investigation, until the case is referred to the court or until termination of the investigation. Investigative/procedural activities are conducted both before and after the launch of criminal prosecution.

The prosecutor provides procedural guidance over investigation process. From the initial stage of the investigation, he/she has full access to the case files.

In the course of investigation, before and after launching criminal prosecution, the prosecutor is authorized to give the investigator binding instructions, participate in the investigative/procedural activities, take the case from one investigator and transfer it to another, request court order to conduct any investigative/procedural activities. The prosecutor is also entitled to make a decision on recusal of the participant of the process, transfer of the case based on institutional and territorial jurisdiction, joinder and separation of cases, recognition of a person as a victim. The prosecutor has the right to annul investigator's decision and consider an appeal against his/her actions.

Taking into consideration the above-mentioned, from the beginning of the investigation until the moment when the case is referred to the court or before termination of investigation/criminal prosecution, the process is as follows:

