



Assessment Mission Report of the PPO

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Background

The purpose of the mission is to further improve the overall (legal and institutional) framework for data protection of the Judiciary, the PPO and the Ombudsperson in line with the best EU practices in order to ensure that individuals can exercise their data protection rights effectively through:

- aligning the national regulations to the reformed EU data protection acquis and best practices;
- enhancing the cooperation with data controller and processors;
- strengthening the mechanisms for personal data protections in different areas;
- developing and implementing data protection strategy;
- Implementing relevant privacy standards.

Methodology

In accordance with ToR A 9.1 the expert was expected to carry out – in close cooperation with the project and the Beneficiary – an assessment about the existing personal data protection system of the PPO.

On 4 April, 2017 a personal meeting and interview with Ms. Biljana Arsovska, DPO of the Chief Prosecution Office was organized. Ms. Arsovska has been in office since the end of 2016 and she is working within the unit of the public relation department. She explained that in Macedonia each prosecution office engages a DPO, appointed by the head of the prosecution office. The DPO is either a prosecutor or a public prosecution servant. It is quite problematic for somebody in the latter status to cooperate with the public prosecutors /who are appointed for a lifetime and seem to have a superior attitude/. On 6 April, 2017 a conference for DPOs of the PPO was organised within the framework of the project opening the possibility of informal discussions.

The interviews revealed mainly problems concerning the DPOs weak position and lack of information but highlighted no other privacy problems in connection with the functioning of the PPO.

Overview of the PPO in the Republic of Macedonia

The jurisdiction of the Public Prosecution Office of the Republic of Macedonia is regulated by the Constitution and the Public Prosecution Office Act and its amendments, the Criminal Procedure Act, and





part of the jurisdiction derives from the laws that regulate the civil, executive, administrative procedure and the procedure in administrative disputes, etc.

According to Articles 106-107 of the Constitution (1991) of the Republic of Macedonia the Public Prosecutor's Office is a single and autonomous state body carrying out legal measures against persons who have committed criminal and other offences determined by law; it also performs other duties determined by law.

The Law on the PPO ("Official Gazette of RM" number 150, dated 12.12.2007) states that the general right and duty is to *ex officio* prosecute criminals.

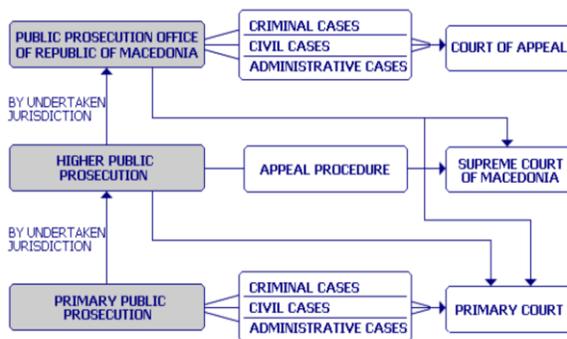
The Public Prosecutor is competent:

- to take necessary measures in relation of crimes and criminals and to direct the preliminary procedure;
- to demand investigation;
- to enforce and present the prosecution act i.e. prosecution proposal before the competent court;
- to appeal against court decisions which are not final and to propose extraordinary remedies against final court decisions
- to conduct other activities determined by the PPO Act.

The Public Prosecutor has jurisdiction in the framework of deferent legally regulated procedures:

- to give its opinion in the extraordinary legal remedies – revision in the civil procedure;
- to propose extraordinary legal remedies – demands for protection of legality in the civil, administrative, executive, and administrative dispute procedure;
- to act as a party in the above mentioned procedures in the circumstances provided by law;
- to conduct other activities determined by this Code;
- to submit initiative to start a procedure to decide on the conformity of laws with the Constitution and the conformity of other regulations with the laws and the Constitution, if this question appears in the activity of the Public Prosecutor.

The Public Prosecutor is appointed by the Assembly for a term of six years and is discharged by the Assembly. The Public Prosecutor is granted immunity on which the Assembly has the right to decide. The office of the Public Prosecutor is incompatible with the performance of any other public office, profession or membership in a political party. The Office of the Special Prosecutor for Corruption and Organised Crimes (2015) is a special criminal body which is not integrated in the PPO system.





In line with the Strategy for Reform of the Judiciary from 2004, a number of reforms in the legal and institutional judicial area were introduced in Macedonia. Due to the need for strengthening national capacities for the fight against crime and corruption, as a continuation of the reforms, the Ministry of Justice adopted in July 2007 the Strategy of the Reform of the Criminal Law 2007. The Law on the Public Prosecutors Office (2007) enhanced the position of the Public Prosecutor in the system of criminal justice by redefining the role of the public prosecutor's office in the pre-trial procedure and control over the police. The Basic Public Prosecutor's Office for Prosecuting Organised Crime and Corruption (2015) is equipped with competences for the entire territory of the country and the Ministry of Internal Affairs and other state bodies are obliged to inform the Public Prosecutors Office about actions which they undertake in the pre-trial procedure. Employees from law enforcement institutions, such as the Ministry of Interior, the Financial Police and the Customs Administration, can be requested to act under coordination of the public prosecutors. The Law has been aligned with Recommendation (2000) 19 of the Committee of Ministers of the Council of Europe and GRECO recommendations on the public prosecutors function. The Law on the Council of the Public Prosecutors adopted in 2007 enhanced the independence and efficiency of the prosecution service by establishing a Council of Public Prosecutors competent for nominating public prosecutors.¹

Special privacy issues of the PPO

1. PPO and the Press:

The Chief Prosecutors' Office provides information to the public in a strictly ruled manner - exclusively after charging accusation and only providing initials of the accused person. Information leaking on politically sensitive cases is no practice of the PPO (but presumably of other bodies of the execution power).

According to the relevant provisions of the PPO Act:

Article 8 (1): The Public Prosecution Office shall be obliged to inform the public about the cases that are being processed, especially if they are of such a nature as to cause a wider general interest by the public or are important for the exercising of the public prosecutorial function, for the purpose of protection against criminal and other illegal activities.

(2) The Chief Public Prosecutor of the Republic of Macedonia, the Higher Public Prosecutors, Basic Public Prosecutors for Prosecution of Organized Crime and Corruption and the Basic Public Prosecutors or people authorized by them shall provide the general public and the public media with an access to information related to the crime situation and other general issues important for the operation of the Public Prosecution Office, under conditions regulated by law.

(3) If the Chief Public Prosecutor of the Republic of Macedonia believes that certain data or comments published in the media violate the constitutional rights of presumption of innocence, the principal of independence of the Public Prosecution Office or the work of the Public Prosecution Office on the basis of the Constitution and the law, he or she shall have the right and obligation to refer to the public and shall be obliged to point out the violation of the above mentioned principles.

¹ https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/the_former_yugoslav_republic_of_macedonia/ipa/2009/11pf_cri.pdf





(4)The Chief Public Prosecutor of the Republic of Macedonia may allow access and insight in subscripts and documents of the Public Prosecution Office, to a person who might need that data for scientific and research purposes. Insight shall be possible only in the subscripts and documentation that have been recorded pursuant to a law that regulates the issue of classified information.

2. The competencies and duties of the Data Protection Officers (DPOs)

- Responding to complaints (in fact there are very few complaints, mainly from employees of the PPO). No information is available on the complaints regarding lower level PPOs.
- Few awareness raising activities have been initiated by the DPOs (e.g. printed privacy manuals to be found at reception desks)
- Regular checking and inspections of data processing activities are only planned.
- Implementation of existing rulebooks on data protection and preparation of new ones (e.g. rulebook on video surveillance).

3. Internal privacy guidelines of the PPO

Several rulebooks and guidelines exist, all issued by the Chief Prosecutor:

- On organisational and technical requirements, 21 March 2013
- Guidelines for establishing obligations and responsibilities for the information systems (similar to AKMIS used for the judiciary system)
- Rules on making safe copies and archiving
- Rules for deletion
- Rules for IT Security
- Procedure for access to personal information of the data subjects
- Rules to react and report data incidents
- Guidelines for taking proofs

Problematic areas identified

- General awareness of privacy is low in the country.
- Sectoral awareness of privacy is low within the judicial sector.
- It shall be the duty and obligation of the relevant public prosecutor to take all the necessary measures to protect privacy of all the persons taking part in the process.





- Representing the power of the state it shall be the constitutional duty and obligation of the Public Prosecution to guard general public interest also in relation to privacy regarding criminal as well as civil or administrative legal procedures.
- The position of the DPO is weak and uncertain within the system of the PPO.
- There is no cooperation and information sharing among the DPOs working at different offices.
- The public prosecutors have no information on the principles, mechanisms and the practical guidelines of EU Police Directive or other existing mechanisms of international data transfer in the judicial sectors although these apply also to cross-border processing of data for the purpose of law enforcement. This includes the prevention, investigation, detection and prosecution of criminal offences, as well as the safeguarding and prevention of threats to public security.
- Reliable and update criminal statistical data is not available.
- No special institute conducting scientific search on criminological matters is operating. However, if such institution is going to be set up, the researchers' right to access to criminal and other official document shall be regulated.

Recommendations

- The general awareness level of the people should be improved. The PPO and the DPDP shall have a vital role in it.
- It is highly recommended that the Act on PPO contain an independent data protection chapter covering the personal data issues of the sectoral data processings (covering the duties and activities of the PPO in regard to the supervision of the inspection, the prosecution and the protection of the general interest of the people).
- The numerous privacy guidelines and internal orders on data protection measures of the PPO provide fragmented information. Need for updating and unification.
- It is highly recommended to secure the position of the DPOs functioning within the system of the PPO in order to enable supervision and coordination activities concerning privacy issues.
- The coordinated activity and regular information sharing of all DPOs working for the PPO all over the republic of Macedonia is of vital importance. The organizational measures should be formulated in a regulation.
- The public prosecutors have little knowledge of data protection rules. Regarding the relatively low level of privacy awareness of the Macedonian people, public prosecutors should possess higher standard and more updated knowledge of data protection rights and rules. The principle of the independence of the prosecution, the key status of the prosecutor and the effective and dynamic functioning of the entire criminal proceedings system means increased responsibility. Prosecutors must exercise their powers within the hierarchy system of the PPO independently and after careful consideration required by the legal protection of the parties and the public interest.





- The Academy for PPO should provide general and updated trainings and exams in close cooperation with the DPDP. Privacy related awareness raising and educational programmes should be organised among the public prosecutors (including public prosecution servants) on a regular basis, including trainings on current data protection topics (e.g rules on archiving, how to achieve safe copying etc.). Special attention should be payed to the introduction of existing European data protection regimes in relation to judicial and criminal data processings.
- Criminal statistics are enormously important for the judicial sector. In the practice no updated and available figures are available neither for the prosecutors, nor for other public prosecution servants (such as DPOs or press officers).
- There is a clear need to set up and engage a research body or institute specialised on criminology issues to serve updated and relevant scientific data both for the public prosecution as well as for the judiciary.
- There is no evidence of regular and close cooperation with the DPDP, which should be involved in all the trainings and other consultation events focusing on specific privacy issues. Guidelines or opinions may deal with single topics e.g. procedural rights of the parties to inspect documents/ to make copies of documents containing personal data of third parties, publicity of the trial, restricted access to victims'/witnesses' personal data etc.

Budapest, 8 May, 2017

