



## Dismissal of Criminal Case Investigation-Kosovo Context

Azem Hajdari

Professor at University of Prishtina "Hasan Prishtina"

Law Faculty, Criminal Department, Professor of Criminal Procedure Law

### Abstract.

One of the manners of concluding investigation is its dismissal. Investigation duly is dismissed by a special ruling rendered by the competent state prosecutor. Dismissal of investigation is a procedural action that results with the dismissal of criminal proceedings entirely. The state prosecutor dismisses investigations when it comes to conclusion that there is a fulfillment of legal requirements which determine the undertaking of such an action. In any case, the ruling on investigation dismissal expresses unavoidable effects, except in dismissal of procedure, also in interruption of exercising actions which previously for the police have been authorized by state prosecutor as well as interruption of detention on remand and any other measure imposed against the defendant. Within this scientific paper, in order to have a better picture of situation related to dismissal of investigation has been reflected the practical work of the Basic Prosecution of Prishtina, Prizren and Mitrovica for the period of time 2013-2015. In this case, there are conclusions and concrete suggestions considered to be in function of professional advancement of state prosecutor decision-making concerning criminal cases investigation.

**Keywords:** State Prosecutor; Defendant; Case; Investigation; Ruling.

### Introduction

Investigation constitutes the first phase of criminal proceedings. The goal of investigation is linked with the necessity to provide evidence and other necessary data based on which the state prosecutor shall decide on filing an indictment or dismissal of investigation. The state prosecutor dismisses investigation by rendering a special ruling by means of which addresses this matter. But, up to dismissal of investigation may come automatically. This situation is manifested when the legal deadlines for duration of investigation pass. In these cases, the investigation is dismissed although for this matter does not exist any special ruling for its dismissal.

The state prosecutor dismisses the investigation whenever comes to conclusion by gathered evidence that: a) there is no a reasonable doubt that has been committed a criminal offence; b) the offence committed is not a criminal offence; c) the statutory limitation period has passed; d) criminal offence has been included by amnesty or pardon; e) there are other circumstances which obstruct criminal prosecution (the lack of evidence proving the commission of a criminal offence by the defendant, the lack of criminal liability, the death of defendant etc.).

In this scientific paper concerning dismissal of investigation has been presented the practical activity of three of the seven Basic Prosecutions of Kosovo, the Basic Prosecution of Prishtina, Prizren and Mitrovica for the period of time 2013 - 2015. In this case have been indicated the data concerning number of cases included to investigation, to those for which dismissal of investigation has been granted as well as have been analyzed cases concerning dismissal of investigation, observing this in terms of circumstances determining the need of undertaking such an action. In this case, there are conclusions and concrete suggestions which I consider serve to the advancement of state prosecutor professional work.

During the preparation of this scientific paper I have used the legal, comparative, analytical and statistical methods.

### 1. Meaning (Notion) and Several Consequences of Dismissal of Investigation

Investigation is the first phase of criminal proceedings serving as a premise for its further conducting. It includes in itself the goal to gather evidence and other necessary information to decide on filing an indictment or dismissal of investigation (Primorac, 2013), respectively the goal to collect evidence whose provision at the main trial would be impossible or

difficult (Hajdari, 2013). The investigation initiated should have its conclusion. One of the manners of concluding investigation is related to its dismissal. Consequently, by dismissal of investigation should be implied the undertaking of that criminal-procedural action which results in dismissal of criminal proceedings entirely. Of course, up to dismissal of investigation may come automatically. Up to dismissal of investigation in this manner comes when the legal deadlines for its duration pass. Hence, the investigation is dismissed when have been passed two years from initiation of investigation and there is no filed indictment, or have been passed two years and six months in cases when the pre-trial judge in accordance with legislation in force has authorized an extension of investigation for six months (Criminal Procedure Code, Code, Art. 159). Therefore, the dismissal of investigation, among other things, manifests the following consequences:

1. Dismissal of criminal proceedings concerning a concrete criminal case-By issuing the ruling on dismissal of investigation automatically comes to dismissal of criminal proceedings entirely. In other words, after dismissal of investigation, criminal proceedings concerning a concrete criminal case remains without object.
2. Interruption of undertaking investigative actions concerning a concrete criminal case-By issuing a ruling for dismissal of investigation the state prosecutor is obliged to interrupt the conduct of investigative actions referring to a concrete case. As a matter of fact the state prosecutor upon rendering the ruling for dismissal of investigation is obliged to authorize the dismissal of investigative actions by means of which the state police is in charged.
3. The release of defendant from detention on remand and other measure that may eventually be imposed for securing its presence in criminal proceedings-By issuing the ruling for dismissal of investigation, all grounds for detention of defendant shall be terminated as well as other measures that are in function of securing its presence in criminal proceedings (Grubać, 2006).

From what was emphasized above, it may concluded freely that dismissal of investigation represents a special situation concerning investigation and criminal proceedings in general (Hajdari, 2016), producing concrete consequences to criminal proceedings, parties and other criminal-procedural authorities.

## 2. Determining Criteria for Dismissal of Investigation

Contemporary states by their procedural legislation (codes or laws) have established clear criteria, the completion of which determines the dismissal of investigation. Related to such criteria, respective laws of almost all countries of the world have marked a high degree of their compliance (Pavišić & Vučković & Veić & Radolović, 1998). Such criteria concerning this issue contain the Criminal Procedure Code of the Republic of Kosovo. Hence, investigation under article 158, paragraph 1 of this Code terminates whenever is proven from collected evidence that:

1. There is no a reasonable doubt that a concrete person (the defendant) has committed a criminal offence for which is being suspected.-The existence of this case for dismissal of investigation is assessed under provisions of Criminal Code and based on evidence characterizing the concrete criminal case, respectively the lack of evidence that prove the guilt of defendant in relation to accusations. "In these cases of course it must be verified whether in actions that are subject of charge there are elements of criminal offence figure or not (Sahiti & Murati & Elshani, 2014).
2. The act committed is not a criminal offence that is prosecuted *ex officio*.- The existence of this case for dismissal of evidence is linked with the lack of criminal prosecution proposal of the injured party, for cases when for criminal prosecution is required the existence of such proposal. Otherwise, under Kosovo applicable laws all criminal offences are prosecuted *ex officio*. This means that the injured party in criminal proceedings cannot be presented as plaintiff as was the case with the Provisional Criminal Procedure Code of 2004. He/she may file a proposal for prosecution whose fate depends on the assessment done by the state prosecutor.
3. The statutory limitation period has passed.-The existence of this cause for dismissal of investigation is linked with the fact that statutory limitation of criminal prosecution is an absolute obstacle to prosecution of a criminal case in criminal proceedings. Therefore, for the statutory limitation period, the state prosecutor should take care *ex officio*. "Therefore, if during investigations it is found that has come up to statutory limitation of criminal prosecution the investigation should be immediately terminated (Hajdari 2018b).
4. Criminal offence is included to amnesty or pardon.- The existence of this cause for dismissal of investigation is linked to the fact that similarly to statutory limitation, amnesty and pardon present an absolute obstacle to prosecution of criminal cases involving these two institutes. Hence, if during investigations by amnesty or pardon is included any criminal offence or perpetrator being investigated he investigation should be immediately terminated.
5. There are other circumstances excluding criminal prosecution.- The existence of this cause for dismissal of investigation is linked with the presence of several circumstances which also dictate the dismissal of criminal proceedings entirely. Such circumstances may be: the lack of permission by competent body in cases when

permission is a condition for undertaking criminal prosecution, when it comes to adjudicated case, when there are no sufficient evidence to support the reasonable doubt that the defendant has committed a criminal offence, when the act for which the defendant is charged with is not a criminal offence etc. "Consequently, up to dismissal of evidence may come even in cases when the offence for which investigation is conducted does not contain all elements of criminal offence figure, and then when there is a cause for exclusion of illegality foreseen by legislation in force" (Pavišić, 2013). Investigation is terminated by state prosecutor even if during criminal proceedings course is verified that the defendant has died and when the defendant is not criminally liable. The fact of not being criminally liable may come due to the age or mental capacity (Islami & Hoxha & Panda, 2003). Finally, it should be emphasized the fact that investigation terminates also with the passing of time limits for the duration of this phase of the criminal proceedings (Novosel, 2008), for which is discussed above. With the passage of deadlines stipulated by law, investigation shall be terminated automatically, despite of the fact whether there is any ruling through which this matter is specified.

Duly, the presence of any of these circumstances (one or several altogether) creates an obligation to the state prosecutor to render a ruling for dismissal of investigation. Of course for each of these circumstances, when claimed to exist, is required to be ascertained undoubtedly through relevant evidence.

### **3. Competent Authority for Dismissal of Investigation**

Under article 101, paragraph 1 of Criminal Procedure Code investigation is conducted by the state prosecutor against a particular person for whom there is a reasonable doubt that has committed a criminal offence (Jon, 2013). The logical course of this legal determination, and based on article 158, paragraph 1 of this Code the authority to terminate investigation belongs to the competent state prosecutor. He/she terminates investigation by a special ruling, by means of which as abovementioned criminal proceedings entirely is terminated. The competent state prosecutor decides for dismissal of evidence in a discretionary manner. This implies that such decision-making cannot be influenced by anyone outside and is not required any consent or coordination to any other criminal procedure body.

In ruling for dismissal of investigation the state prosecutor should in special manner specify the time and cause determining the dismissal of investigation. In fact, in the moment considered to be fulfilled any of causes determining the dismissal of investigation the obligation of the competent state prosecutor to render the ruling addressing the decision-making on the matter is raised. This ruling should be rendered in the shortest possible time. Whereas, the time of dismissal of investigation specified in a respective ruling of state prosecutor that produces abovementioned effects automatically, existence of which should be taken care of by state prosecutor. Of course the legislator has left room that for eventual fulfillment of legal criteria for dismissal of investigation, the state prosecutor to be informed by the defendant itself his/her defense counsel or any other subject.

Although in principle, the dismissal of investigation is required to be done through rendering a special ruling, in particular cases, for instance those related to passage of legal deadlines concerning duration of investigation (Hajdari, 2018a). This implies in such situations that the investigation shall be considered to be terminated despite the fact whether there is or not any ruling addressing this issue.

### **4. Procedure for Dismissal of Investigation**

The Criminal Procedure Code of the Republic of Kosovo, in no single provision of its own, deals with the procedure that should be conducted for dismissal of investigation. The causes of this situation should be sought in decision-making autonomy granted by Kosovo legislator for the state prosecutor within exercising its authorizations concerning criminal prosecution, as well as in clear specification of criteria, the fulfillment of which leaves no other alternative to the state prosecutor except to terminate the investigation.

Despite of the fact that Kosovo legislator explicitly did not address the procedure which should have preceded the fact of dismissal of investigation, nevertheless bases on context of legal solutions addressing to this matter, it may come to conclusion that to the state prosecutor in its practical activities shall be imposed the fact of undertaking such actions until it renders the ruling for dismissal of investigation. "This implies that nevertheless in the largest number of cases it conducts a concrete procedure and only based on its persuasion created after verification of circumstances which determine the dismissal of investigation and its application is oriented in his decision-making for dismissal of investigation (Markus, 2006).

Consequently, although is a state prosecutor duty that during the whole duration of investigation to take care if in relation to the case being subject of investigation exist or in meantime have been appeared conditions determining the dismissal of investigation, the legislator did not exclude the possibility that concerning their existence initiative to may come even by other criminal-procedural participants for example by the defendant and its defense counsel. In these cases, the initiative may come through submission of any information letter or specific request these acts duly should be subject of a concrete review and assessment by the state prosecutor. In this reviewing and assessing process orienting the decision-making for dismissal of investigation, the state prosecutor may come to a situation to undertake concrete actions being in

function of proving the fact of fulfilling such requirements for instance to secure the certificate which confirms the death of defendant, documents proving the lack of age for criminal liability etc. In this verification process may be included numerous actors which are linked with exercise of concrete liabilities in relation to proving the fulfillment of such conditions.

Finally, it should be emphasized the fact that as any other decision-making in criminal proceedings as well as the one linked with dismissal of investigation should have its support in uncontested evidence, evidence for securing and verification of which is required to be applicable a special procedure. This is the only acting approach which may bring a guarantee to the state prosecutor concerning the legality and objectivity of decision taken, whichever it is, and in this case of the one who influences the dismissal of investigation.

## **5. Obligations Resulting From Decision-Making for Dismissal of Investigation**

By dismissal of investigation shall be established certain obligations for the state prosecutor, but without excluding other parties which may be included in this phase of criminal proceedings (Initiation, suspension and discontinuation of a criminal investigation). For several changes referring to this matter the legislator mentions concretely within respective provisions of the Criminal Procedure Code, whereas for some others may be discussed about only in context of various principled solutions contained in this Code and inter-procedural relationships created between respective subjects of criminal proceedings.

Within these obligations specified by concrete provisions are the following:

- a) Informing the injured party.-This information must be made within eight days upon dismissal of investigation, and it should address also reasons based on which the state prosecutor rendered such decision (Sahiti & Murati, 2013). Information that in these cases is made to the injured party aims that the injured party as a procedure subject to be informed about the course of case in which he/she is an injured party, as well as after this he/she may consider the possibility of realization of his/her rights with property character in a possible civil dispute.
- b) Informing pre-trial judge.-This information must be done immediately upon rendering the ruling for dismissal of investigation. In this case also information must contain reasons based on which investigation has been dismissed. Information made to pre-trial judge is linked with his/her role in pre-trial procedure as a guarantor of legality of actions exercised by prosecution body.

Whereas, within obligations deriving from the context of principled provisions of the Criminal Procedure Code and inter-procedural relationships established between particular subjects of criminal proceedings among others, these are the following:

- a) Informing state police.-This information also should be made immediately upon rendering a ruling for dismissal of investigation aiming the dismissal of police activity in charge of which the application for enforcement has been granted of certain investigative actions.
- b) Informing any actor included in investigative activities.-It is meant in necessity of notifying the state/public institutions with the fact of dismissal of investigation which by law may set specific obligations concerning investigation, to expert which has been in charge with the realization of duty of any expertise related to criminal case etc. In these cases also information is required to be made as soon as possible upon rendering ruling for dismissal of investigation.

Although, the law does not specify it decisively, I consider this information should be made also through submission of copy of a ruling by means of which has been dismissed investigation. It is worth emphasizing the fact that despite its advantages, this acting manner is not applicable in practice in most of the cases.

## **6. Several Data Concerning the Dismissal of Investigation in Kosovo during the Period of Time 2015-2017**

In order to come to sustainable conclusions and providing concrete and useful recommendations serving to state prosecutor institution, other relevant institutions and the society in general, in cases related to investigative activities, it was necessary to research and study practical activity of this state authority concerning its approach in cases when by his/her decision-making dismissed investigations in Kosovo during the period of time including the last three years (2015 – 2017). Presentation and elaboration of this data will include the activity of three of the seven basic prosecutions currently operating in Kosovo. This due to the fact concerning Basic Prosecutions work there are no published data that would entirely serve to structure and goal of this scientific paper (Hajdari A.,2018, p,5). Conducted researched prove that such data have not been reflected and published at all in reports which are published by Kosovo Prosecutorial Council.<sup>1</sup>

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<sup>1</sup> <http://kpk-rks.org/raporte/213/raport-pune-2017/213>.

Therefore, in the following handlings, the presentation of data concerning dismissal of investigation shall be done on basis of data provided by the criminal records of the Basic Prosecution of Prishtina, Prizren and Mitrovica.<sup>2</sup>

Years	Number of generally investigated cases	Number of dismissed investigations
2013 - 2015	34192	10136

**Table 1. Number of generally investigated cases and dismissed investigations**

Years	There was no reasonable doubt that the defendant had committed a criminal offense	The act committed was not a criminal offense	The statutory limitation has expired	Criminal offence has been involved by amnesty or pardon	Other circumstances that have excluded criminal prosecution
2013 - 2015	3622	1383	2357	1843	931

**Table 2. Circumstances under which investigations have been dismissed**

According to data included in these two tables during the period of time 2015-2017 in Basic Prosecution of Prishtina, Prizren and Mitrovica have been rendered 34192 rulings for conducting investigations, of which investigations were dismissed in 10136 cases, whereas remained in investigative procedure 24056 cases. In this regard, abovementioned prosecutions had dismissed investigations based on these grounds: for the lack of reasonable doubt that the defendant has committed a criminal offence in 3622 cases, for the lack of criminal offence in 1383 cases, due to passage of statutory limitation in 2357, due to involvement of a criminal offence by amnesty or pardon in 1843 cases and for other causes that have excluded criminal prosecution in 931 cases.

Indicated data prove that Basic Prosecution of Prishtina has rendered the largest number of rulings for dismissal of investigation during the researching period. This prosecution has implemented this decision-making in 5136 cases. This situation was expectable because the level of burden with prosecution cases is significantly higher than other basic prosecutions, based on the fact that Basic Prosecution of Prishtina extends its activity to a territory where nearly half of the population of Kosovo inhabits. This situation is also reflected by the heterogeneity of the population living in this region as well as the numerous (socio-economic and infrastructural) problems faced by its citizens, which extend their influence to the level of crime presence in society.

The second place concerning the number of dismissed investigations takes the Basic Prosecution of Prizren with a total of 3057 cases. This is also explained by the fact that this prosecution, after the Basic Prosecution of Prishtina has the largest burden of cases within the prosecutorial system of Kosovo, and that the Prizren Region is extremely overcrowded and faces many social and infrastructure problems, which also reflect in manifestation of criminal phenomena in society. The last one concerning the number of dismissed investigations is the Basic Prosecution of Mitrovica. This prosecution has rendered 1943 rulings for dismissal of investigations. This is explained by the fact that in a part of the Mitrovica Region (northern part) there is still no full functionality of the prosecutorial system. There, for political reasons, in 2017 the appointments of the first prosecutors were made after Kosovo's declaration of independence (2008), so that crime-related issues, to a relatively large extent, were out of the reach of the Kosovo State Prosecutor.

In handling cases included to investigation the work of these Prosecutions has been accompanied by numerous problems. Among them should be mentioned also those referring to the lack of proper professionalism (has been conducted investigations in 3622 cases which did not result with relevant evidence), external interventions (have been granted amnesty and pardon from criminal prosecution 1843 defendants) etc., so it is necessary to organize proper training programs (especially recently appointed new prosecutors), to increase the number of state prosecutors, but also to have continued advancement of legal solutions securing independence and impartiality in the work of prosecutors.

## Conclusion

Investigation is the first phase of criminal proceedings serving as a premise for its further conducting. It encompasses the purpose of gathering the evidence and other necessary information to decide on filing the indictment or dismissal of proceedings, respectively the goal to gather evidence who's secure at the main trial would be impossible or difficult.

The investigation initiated must have its closing performance. One of manners of concluding investigation is its dismissal. By dismissal of investigation should be implied the undertaking of that criminal-procedural action which

<sup>2</sup> See: Criminal Records of the Basic Prosecution Office of Prishtina, Gjilan, Mitrovica and Peja for the period of time 2013 - 2015.

results with dismissal of criminal proceedings entirely. of course, up to dismissal of investigation may come automatically. Until dismissal of investigation comes when the legal deadlines for its duration passes.

Dismissal of investigation, among other things expresses the following consequences: results with the dismissal of criminal proceedings related to a concrete criminal case; b) termination of undertaking investigative actions concerning a concrete criminal case and c) release of the defendant from detention on remand and any other measures that eventually could have been imposed to secure its presence in criminal proceedings.

Investigation shall be dismissed by the competent state prosecutor, duly by rendering a special ruling. He/she dismissed the investigation whenever comes to a conclusion by collected evidence that: a) there is no reasonable doubt that a criminal offence has been committed; b) the offence committed is not a criminal offence; c) the statutory limitation period has expired; d) criminal offence has been included by amnesty or pardon, or e) there are other circumstances that obstruct criminal offence (the lack of evidence proving the commission of a criminal offence by the defendant, the lack of criminal liability, the death of defendant etc.).

According to indicated data during the period of time 2015-2017 in Basic Prosecution of Prishtina, Prizren and Mitrovica have been rendered 34192 rulings for conducting investigations, of which investigations have been dismissed 10136 cases, whereas remained in investigation procedure 24056 cases. In this regard, the abovementioned prosecutions dismissed investigations based on these grounds: a) for the lack of reasonable doubt that the defendant has committed a criminal offence in 3622 cases; b) for the lack of criminal offence in 1383 cases; c) due to expiration of statutory limitation in 2357 cases; d) due to inclusion of a criminal offence by amnesty or pardon; e) for other causes excluding criminal prosecution in 931 cases.

Indicated data prove that Basic Prosecution of Prishtina has rendered the largest number of rulings for dismissal of investigation. This prosecution has implemented this decision-making in 5136 cases. The second place takes the Basic Prosecution of Prizren with 3057 cases and at the end Basic Prosecution of Mitrovica with 1943 cases. This situation has been conditioned by the level of burden with cases that had these prosecutions as well as by width of territory they have covered with their activity etc.

When it comes to handling cases included to investigation the work of these prosecutions have been accompanied by various problems. Consequently, is necessary to organize proper training programs, increasing the number of prosecutors as well as continuous advancement of legal solutions securing independence and impartiality in prosecutors' work.

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