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**RELATIONSHIP BETWEEN
PUBLIC PROSECUTORS AND THE POLICE**

REPLIES TO THE QUESTIONNAIRE

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RELATIONSHIP BETWEEN PUBLIC PROSECUTORS AND THE POLICE

QUESTIONNAIRE¹

1. Who is ultimately responsible for a proper investigation?
2. Who has the task of ensuring that the police respect all statutory rules and procedures in criminal investigation with respect to the effectiveness of the fight against crime and to make sure they respect human rights (in particular where persons are deprived of their liberty)?
3. Are the police under an obligation of prior consultation with the public prosecutor on investigation matters? If so, does this apply to all criminal cases or to important cases only?
4. May the public prosecutor issue detailed instructions to the police? If so, please elaborate.
5. In what type of cases do police officers need approval of, or co-operation with, the public prosecutor for the use of certain means of coercion?
6. Can the police use special investigation methods without prior authorisation (such as use of informants, infiltrations and so forth)?

¹ The Bureau is grateful to Professor Peter Tak for accepting that part of this questionnaire has been taken from his study "Tasks and powers of the Prosecution Services in the EU Member States" published in 2004 by Wolf Legal Publishers - E-mail : wlp@hetnet.nl

7. Is it possible for the prosecutor to take over, either in whole or in part, the investigation from the police or any other criminal investigating authority? If so, in what circumstances?
8. Can the prosecution service set priorities as to the instigation of investigations?
9. May the prosecution service lay down general crime policy guidelines (priority targets) for the police? In what form? If not the public prosecutor, then who?
10. Are the police in general obliged to report to public prosecutor all offences / some offences that came to their knowledge? Do they do this in practice?
11. Can the police refuse an order of the public prosecutor to conduct an investigation or delay its execution? How does it work in practice?
12. Which body deals with complaints against police involved in criminal investigation?
13. In practice, do prosecutors or police provide the media with information about criminal investigations?
14. If you have experiences with Joint Investigation Units between prosecutors and police, please describe advantages and disadvantages.

ANDORRA²

1. Who is ultimately responsible for a proper investigation?

The person responsible for a proper investigation is the head of the institution conducting the particular stage of the investigation. For example, if the investigation is at the police stage, the person ultimately responsible is the Chief of Police ; if the investigation is in the hands of the Prosecution Service, the person responsible is the Chief Public Prosecutor; and when the investigation is at the judicial stage, the person ultimately responsible is the investigating judge in charge of the case.

Article 93 of the *Llei Qualificada* on Justice of 3 September 1993 stipulates: “The judges (Batlles) and the Prosecution Service shall direct police action in judicial matters, in accordance with the provisions of this Act”; Article 94 further stipulates: “The Police shall act under the orders of the judges and the courts and help them in all their tasks and in enforcing the decisions of all judicial authorities. In particular, the Police shall execute the tasks assigned by the judges concerning preparatory measures and investigations. The Police shall also carry out the investigations assigned to it by the Prosecution Service with a view to detecting crimes and collecting evidence. All this in addition to the general prevention, law enforcement and security duties of the Police.”

However, Article 32 of the Code of Criminal Procedure of 10 December 1998, stipulates: “The involvement of the Police in the preliminary investigation shall cease when the judge takes charge of the case. The Police may, however, continue to assist.”

Article 3 of the Public Prosecution Act of 12 December 1996, stipulates: “Within the mission assigned to it, the Prosecution Service (...) 3. Shall direct the crime detection work of the Police and may order investigations in order to collect evidence, as well as determining the advisability and duration of police custody. It shall transmit instructions accordingly to the Chief of Police, who shall assign officers to execute them and supervise their application. These functions shall cease when the investigating judge initiates preparatory or investigative measures.”

However, paragraph III of the explanatory memorandum to the *Llei Qualificada* on the Police Force, of 27 May 2004, notes that “In conformity with Article 94 of the Constitution, the judges and the Prosecution Service shall direct Police work in judicial matters in accordance with the law. This covers a series of police duties the purpose of which is to detect crime, discover the perpetrators and place them under the control of the judges, the courts and the Prosecution Service. This implies a degree of specialisation in the general duties of the police to guarantee people’s security and the free enjoyment of their rights and freedoms.

The Constitution does not propose a specific model for the *Police Judiciaire*, but refers to subsequent legislation which is found, in general terms, in the first section of title VII of the *Llei Qualificada* on Justice of 3 September 1993 and, more specifically, in the Public Prosecution Act of 12 December 1996, and in the Law amending the Code of Criminal Procedure, approved by Parliament on 10 December 1998. As stipulated in Article 95 of the *Llei Qualificada* on Justice,

² Original reply received in French, see Appendix

all members of the police force are responsible for criminal investigation duties when so required by the judges, the courts and the Prosecution Service, in keeping with the provisions of that and subsequent Acts expanding on it. Within its structure, the Police Force may set up special units to carry out such investigation work.

In Andorra, therefore, “judicial” investigation is one of the duties of the police, carried out under the supreme authority of the Executive and the direct supervision of the judges, the courts and the Prosecution Service, in conformity with the law.

The Police thus perform two main types of task: investigating crime before the judicial authorities become involved, and carrying out specific missions that the judges, the courts or the public prosecutor assign to them in each specific case, in conformity with the provisions of the Code of Criminal Procedure.

Assisting judges, courts and the prosecution service in crime investigation and the identification and apprehension of offenders, at the request of others or on their own initiative, is thus an essential, permanent priority of police work. This is why this Law provides for the formation of special judicial investigation (*Police Judiciaire*) units and for corresponding training for the officers concerned, with a view to assigning them to work with the judicial authorities and the Prosecution Service.”

Lastly, Article 11 of the *Llei Qualificada* on the Police Force, of 27 May 2004, stipulates: “Without prejudice to the criminal investigation work done by all sections of the Police, including registering complaints, the Government may create “Judicial Police” units formed by specially trained police officers, under the organisational control stipulated in Article 95 of the *Llei Qualificada* on Justice and Articles 32, 38 and 41 of this Law, and under the operational supervision of the judges, the courts and the Prosecution Service in the exercise and application of the duties they assign to them.”

2. Who has the task of ensuring that the police respect all statutory rules and procedures in criminal investigation with respect to the effectiveness of the fight against crime and to make sure they respect human rights (in particular where persons are deprived of their liberty)?

Ensuring that the police respect all statutory rules and procedures in criminal investigation is the responsibility of the Prosecution Service, the investigating judge and the criminal courts.

Article 13 of the 27 May 2004 *Llei Qualificada* on the Police Force stipulates: “The judges, the courts and the Prosecution Service shall have the following powers over the “judicial” police:

- a) They shall give them the necessary orders and instructions, in conformity with the provisions of the *Llei Qualificada* on Justice, the Code of Criminal Procedure and the Public Prosecution Act.
- b) In these orders or instructions, they shall determine the content and circumstances of the action to be taken by said units.

- c) They shall supervise the execution of the action, its form and the results obtained.
- d) They may request disciplinary action, in which case they shall draw up the reports required for the examination of the corresponding case files, and any others they consider necessary. They shall be informed of the decisions taken.

3. Are the police under an obligation of prior consultation with the public prosecutor on investigation matters? If so, does this apply to all criminal cases or to important cases only?

No.

4. May the public prosecutor issue detailed instructions to the police? If so, please elaborate.

The Prosecution Service may issue detailed instructions to the Police under the provisions of Article 3 of the Public Prosecution Act of 12 December 1996, which stipulates: “Within the mission assigned to it, the Prosecution Service (...) 3. Shall direct the crime detection work of the Police and may order investigations in order to collect evidence, as well as determining the advisability and duration of police custody. It shall transmit instructions accordingly to the Chief of Police, who shall assign officers to execute them and supervise their application. These functions shall cease when the investigating judge initiates preparatory or investigative measures.”

Article 4 of the same Act stipulates that when the Prosecution Service asks the authorities and official bodies to co-operate, including the Police, the co-operation must be provided within the limits of the law, with no excuses or delays.

5. In what type of cases do police officers need approval of, or co-operation with, the public prosecutor for the use of certain means of coercion?

Under the Code of Criminal Procedure, any measure adopted by the Police, other than police custody (eg house searches, telephone tapping, etc.), which imposes restrictions on fundamental rights requires the prior approval of the duty judge or the investigating judge in charge of the case, in the form of a reasoned decision.

The prior authorisation of the Prosecution Service is required only when the Police, exceptionally, in the event of particularly serious crime and because it is necessary to protect the investigation, decide to delay notification of the arrest to the family or other persons designated by the detainee for up to 24 hours.

6. Can the police use special investigation methods without prior authorisation (such as use of informants, infiltrations and so forth)?

No. Any surveillance of criminal activities or infiltration by undercover agents is regulated by Articles 122 *bis*, 122 *ter* and 122 *quater* of the Code of Criminal Procedure, which stipulates that the Chief of Police must obtain the prior authorisation of the duty or investigating judge.

7. Is it possible for the prosecutor to take over, either in whole or in part, the investigation from the police or any other criminal investigating authority? If so, in what circumstances?

No.

8. Can the prosecution service set priorities as to the instigation of investigations?

No.

9. May the prosecution service lay down general crime policy guidelines (priority targets) for the police? In what form? If not the public prosecutor, then who?

Yes, the Prosecution Service can give the police general guidelines on crime policy, in the form of instructions, but always subject to the law and the crime policy criteria laid down by the Government, which is ultimately responsible for crime policy.

Supreme command of the police lies with the Government, in the person of the Head of Government (cap de Govern) and is exercised by the person in charge of the Ministry with responsibility for internal affairs.

10. Are the police in general obliged to report to the public prosecutor all offences / some offences that come to their knowledge? Do they do this in practice?

Yes, always subject to the provisions of Article 96 of the 3 September 1993 *Llei Qualificada* on Justice: “The Chief of Police shall submit a daily report on proceedings and events to the court (Batllia) and the Prosecution Service.”

Article 3 of the Public Prosecution Act of 12 December 1996 also stipulates: “Within the mission assigned to it, the Prosecution Service (...) Shall receive every day from the police department and the prison authorities a report on activities and events, as well as a list of the persons placed in custody and released from custody.”

Article 22 of the Code of Criminal Procedure of 10 December 1998, stipulates that “when police officers learn that a punishable offence has been committed, they shall inform the Prosecution Service and investigate immediately, following the proper procedure.”

Finally, Article 28 of the Code of Criminal Procedure stipulates: “When police officers arrest a person, under the provisions of the previous Article, they must release them or hand them over to a judge within 48 hours.

The police must immediately inform the Prosecution Service of any arrests made or detainees released.”

In practice the police abide by the above rules.

11. Can the police refuse an order of the public prosecutor to conduct an investigation or delay its execution? How does it work in practice?

The police cannot refuse to conduct an investigation ordered by the Prosecution Service, or delay its execution. On the contrary, they must carry it out without any excuses or delays.

12. Which body deals with complaints against police involved in criminal investigation?

The police itself, the Prosecution Service or the investigating judge.

13. In practice, do prosecutors or police provide the media with information about criminal investigations?

Prosecutors, no; the police, yes.

14. If you have experiences with Joint Investigation Units between prosecutors and police, please describe advantages and disadvantages.

Thus far we have no experience of joint investigation work between prosecutors and the police. However, there is usually direct personal contact between the prosecution service and the police officers in charge of the investigation, which facilitates the co-ordination and progress of the investigation.

ARMENIA

Who is ultimately responsible for a proper investigation?

According to the part 1, 2, 3 of the Article 55, as well as Article 56 of the Criminal Procedural Code of Armenia:

Article 55. The Investigator

1. Investigator is a state official, which is authorised to conduct preliminary investigation of the criminal case within the limits of his/her competence.

2. The investigator is authorised to prepare materials on the event of the crime and in accordance with the rules of subordination established by this Code, the investigator accepts the case for his/her proceedings or forwards it to other investigator or the body of inquiry; the investigator can institute a criminal case during his proceedings, if an event of a new crime by another person has been discovered. The investigator is also entitled, in accordance with the provisions of this Code, to reject the institution of the proceedings of the criminal case.

3. After accepting the criminal case for his/her proceeding, the investigator, for the purpose of comprehensive, full and objective investigation shall independently lead the course of investigation, make necessary decisions, conduct investigatory and other procedural actions in accordance with the provisions of this Code with the exception of cases, when criminal procedure law stipulates to receive warrants from the prosecutor. The investigator bears responsibility for the lawful and timely implementation of investigatory and other procedural actions.

Article 56. Bodies of Inquiry

The following are the bodies of inquiry:

- 1) the police;
- 2) the commanders of military units, the heads of military institutions, regarding the cases of military crimes, and also regarding the cases of the deeds, committed on the territory of military units or incriminated to the conscripts;
- 3) the bodies of state fire control: regarding the cases on fires;
- 4) the state tax bodies: regarding the tax crimes ;
- 5) the custom's bodies: regarding the cases on smuggling;
- 6) national security bodies: regarding the cases within their competence.

2. Who has the task of ensuring that the police respect all statutory rules and procedures in criminal investigation with respect to the effectiveness of the fight against crime and to make sure they respect human rights (in particular where persons are deprived of their liberty)?

According to point 3 of the Article 53 of the Criminal Procedural Code of Armenia:

Article 53. The Powers of the Prosecutor at the Pre-trial Proceedings of the Criminal Case

3. The prosecutor, during administration of the procedural management, is also entitled to:
- 1) pass separate necessary decisions personally and to conduct separate investigatory and other procedure decisions, and also the consideration of the cases in their full volume;
 - 2) to receive from the body of inquiry data on the conduct of operative-investigatory activity and the undertaken measures on the disclosure of crimes, on revealing of disappeared persons and lost property;
 - 3) to demand documents and materials, which might contain data on accidents and the persons involved in it;
 - 4) to give to the body of inquiry written instructions, obligatory for them, on the implementation of operative-investigatory measures in connection with the criminal case proceedings;
 - 5) to apply to the court in order to select arrest as a measure securing the appearance and to extend arrest, to impose arrest upon the arrest of communications, telephone conversations, postal, telegraph and other messages, and for warrants for wire-tapping the telephone conversations, searching apartments;
 - 6) to refuse from the criminal prosecution of the accused, to suspend the criminal proceedings or to terminate the criminal prosecution;
 - 7) to assign the body of inquiry the execution of the resolutions on detention, bringing to court, arrest, the implementation of other procedure actions, and also to receive immediate assistance upon from the body of inquiry, for implementation of investigatory and other procedural actions;
 - 8) to undertake measures for the protection of the injured, the witness, and other persons participating in the criminal proceedings;
 - 9) to address the court with motions, prescribed by this Code;
 - 10) to release the persons, imprisoned without legitimate bases or without necessity;
 - 11) to cancel the arrest of communications, telephone conversations, postal, telegraph and other messages when the necessity for such arrest terminates.

3. Are the police under an obligation of prior consultation with the public prosecutor on investigation matters? If so, does this apply to all criminal cases or to important cases only?

According to the paragraph 1 the Article 53 of the Criminal Procedural Code of Armenia:

Article 53. The Powers of the Prosecutor at the Pre-trial Proceedings of the Criminal Case

1. The prosecutor is authorised to conduct the following during the pre-trial proceedings:
- 1) to institute and carry out criminal prosecution and to start proceedings of cases instituted by the body of inquiry, the investigator, to cancel the decision of the body of inquiry and the investigator on suspension of a case, to institute a criminal case based on court motion, to cancel the decision of the body of inquiry and the investigator rejecting the institution of a criminal case and to institute a criminal case.

- 2) to investigate personally the criminal case in its full volume, passing necessary decisions during the preliminary investigation and implementing investigatory and other procedural actions in accordance with provisions of this Code;
- 3) in case of a crime, instructs the body of inquiry and the investigator to prepare the materials for the institution of a criminal case.
- 4) To instruct the body of inquiry and the investigator to conduct urgent investigatory measures or conduct them personally;
- 5) To participate in the inquest;
- 6) To carry out prosecutorial management of the inquest and the preliminary investigation.

4. May the prosecutor issue detailed instructions to the police? If so, please elaborate.

Particularly, it is mentioned in the 1st paragraph of the Article 53 of the Criminal Procedural Code of Armenia:

5. In what type of cases do police officers need approval of, or co-operation with the public prosecutor for the use of certain means of coercion?

According to the paragraph 3 of the Article 53 of the Criminal Procedural Code of the Republic of Armenia:

3. The prosecutor, during administration of the procedural management, is also entitled to:

- 1) pass separate necessary decisions personally and to conduct separate investigatory and other procedure decisions, and also the consideration of the cases in their full volume;
- 2) to receive from the body of inquiry data on the conduct of operative-investigatory activity and the undertaken measures on the disclosure of crimes, on revealing of disappeared persons and lost property;
- 3) to demand documents and materials, which might contain data on accidents and the persons involved in it;
- 4) to give to the body of inquiry written instructions, obligatory for them, on the implementation of operative-investigatory measures in connection with the criminal case proceedings;
- 5) to apply to the court in order to select arrest as a measure securing the appearance and to extend arrest, to impose arrest upon the arrest of communications, telephone conversations, postal, telegraph and other messages, and for warrants for wire-tapping the telephone conversations, searching apartments;
- 6) to refuse from the criminal prosecution of the accused, to suspend the criminal proceedings or to terminate the criminal prosecution;
- 7) to assign the body of inquiry the execution of the resolutions on detention, bringing to court, arrest, the implementation of other procedure actions, and also to receive immediate assistance upon from the body of inquiry, for implementation of investigatory and other procedural actions;
- 8) to undertake measures for the protection of the injured, the witness, and other persons participating in the criminal proceedings;
- 9) to address the court with motions, prescribed by this Code;

- 10) to release the persons, imprisoned without legitimate bases or without necessity;
- 11) to cancel the arrest of communications, telephone conversations, postal, telegraph and other messages when the necessity for such arrest terminates.

6. Can the police use special investigation methods without prior authorization (such as use of informants, infiltrations and so forth)?

According to the points 2, 4 of the paragraph 3 of the Article 53 of the Criminal Procedural Code of Armenia:

3. The prosecutor, during administration of the procedural management, is also entitled to:

- 1) 2) to receive from the body of inquiry data on the conduct of operative-investigatory activity and the undertaken measures on the disclosure of crimes, on revealing of disappeared persons and lost property;
- 2) 4) to give the body of inquiry written instructions, obligatory for them, on the implementation of operative-investigatory measures in connection with the criminal case proceedings.

7. Is it possible for the prosecutor to take over, either in whole or in part, the investigation from the police or any other criminal investigating authority? If so, in what circumstances?

According to the point 1 of the paragraph 3 of the Article 53 of the Criminal Procedural Code of Armenia.

3. The prosecutor, during administration of the procedural management, is also entitled to:

pass separate necessary decisions personally and to conduct separate investigatory and other procedure decisions, and also the consideration of the cases in their full volume.

8. Can the prosecution service set priorities as to the instigation of investigations?

According to the point 6 of the paragraph 2 of the Article 53 of the Criminal Procedural Code:

3. The prosecutor, during administration of the procedural management, is also entitled to:

- 6) to refuse from the criminal prosecution of the accused, to suspend the criminal proceedings or to terminate the criminal prosecution;

9. May the prosecution service lay down general crime policy guidelines(priority targets)for the police? In what form? If not the public prosecutor, then who?

No, because it is legislative power.

10. Are the police in general obliged to report to public prosecutor all offences/ some offences that came to their knowledge? Do they do this in practice?

Yes. In the Police of the Republic of Armenia, there is a special unit, which is after registration immediately informing about this.

11. Can the police refuse an order of the public prosecutor to conduct an investigation or delay its execution? How does it work in practice?

According to the points 7,8 of the paragraph 2 of the Article 53 of the Criminal Procedural Code of the Armenia:

2. During the implementation of the procedure of prosecutorial management of the inquest and the preliminary investigation, the prosecutor is exclusively entitled to the following:

- 7) to resolve objections, prescribed by this Code, brought by the body of inquiry and its employee, the investigator, who disagree with the instructions of inferior prosecutor, conducting the procedure management of the investigation;
- 8) to cancel illegitimate and ungrounded resolutions of the inferior prosecutor, the investigator, the body of inquiry, and its officer and also the instructions of the inferior prosecutor;

12. Which body deals with complaints against police involved in criminal investigation?

According to the points 9 of the paragraph 2 of the Article 53 of the Criminal Procedural Code of the Armenia:

2. During the implementation of the procedure of prosecutorial management of the inquest and the preliminary investigation, the prosecutor is exclusively entitled to the following:

- 9) to resolve the appeals against the decisions and actions of the subordinate prosecutor, investigator and the body of inquiry, with the exception of appeals the consideration of which is in the competence of the court.

13. In practice, do prosecutors or police provide the media with information about criminal investigations?

According to the Article 201(Prohibition to publicize the preliminary investigation data) the preliminary investigation data is liable to publication only by permission of the body in charge of case proceedings.

When necessary, the investigator, the investigating body warns in written form the witness, the injured person, the civil plaintiff and civil defendant, their representatives, specialists, experts, translators, witnesses to the search, lawyers and other persons related to the case about their responsibility not to publicize preliminary investigation data without the permission.

14. If you have experience with Joint Investigation Units between prosecutors and police, please describe advantages and disadvantages.

The Article 194 of the Criminal Procedural Code of the Republic of Armenia described conducting of the preliminary investigation conducted by investigation group.

In case of complexity or large size of the case, the preliminary investigation can be delegated to several investigators, which is indicated in the decision to initiate criminal prosecution or a separate decision is made. The prosecutor or chief of investigation department is entitled to make such decision. The decision must indicate all investigators who have been instructed to conduct the preliminary investigation, including the head investigator of the group who takes over the case and supervises the activities of other investigators. The suspect, the accused, the injured person, the civil claimant and their representatives must be familiarized with the decision on conducting the investigation by a group of investigators and they are advised that they are entitled to challenge any investigator in the group.

There are a lot of advantages, but at the same time there is a risk of duplication of actions, problems during in exchange of information and other.

AUSTRIA

Preliminary remarks:

Austria is going to change its system of preliminary proceedings fundamentally. The investigative judge will be abolished and the public prosecutor will be entitled to direct the investigations. The new law will enter in force on 1 January 2008.

The answers to the questionnaire are given on the base of the law in force now.

1. Who is ultimately responsible for a proper investigation?

The body which directs the investigation is responsible. This can be the police, the public prosecutor or the investigative judge.

2. Who has the task of ensuring that the police respects all statutory rules and procedures in criminal investigation with respect to the effectiveness of the fight against crime and to make sure they respect human rights (in particular where persons are deprived of their liberty)?

The head of the acting police unit and his hierarchical superiors, on the top the Minister of Interior are responsible.

3. Are the police under an obligation of prior consultation with the public prosecutor on investigation matter? If so, does this apply to all criminal cases or to important cases only?

Pursuant to the Code of Criminal Procedure, police has only to make the preparative arrangements for the investigation by themselves. In practice they often carry through the whole investigation without contacting the public prosecutor. But this is only in cases possible, in which the exercise of coercion is not necessary.

4. May the public prosecutor issue detailed instructions to the police? If so, please elaborate.

If the public prosecutor is directing the investigation, he can issue detailed instructions to the police.

5. In what type of cases do police officers need approval of, or co-operation with, the public prosecutor for the use of certain means of coercion?

For all means of coercion – except for arrest und home search in cases of emergency – police need a warrant of the investigative judge, for which only the public prosecutor can apply. Thus the police has to report to the public prosecutor before using any means of coercion.

6. Can the police use special investigation methods without prior authorisation (such as use of informants, infiltration and so forth)?

Police can use informants and infiltration without prior authorisation.

7. Is it possible for the prosecutor to take over, either in whole or in part, the investigation from the police or any other investigating authority? If so, in what circumstances?

The public prosecutor is not allowed to carry out any investigative measure by himself. If he directs the investigation, he can give instructions to the police.

8. Can the prosecution service set priorities as to the instigation of investigations?

If the public prosecutor directs the investigation in a certain case, he can set priorities. But the prosecution service cannot instigate the police to clear up certain types of crimes prior than others.

9. May the prosecution service lay down general crime policy guidelines (priority targets) for the police? In what form? If not the public prosecutor, then who?

The prosecution service is not entitled to lay down general crime policy guidelines for the police. Priority targets for the police are defined by the police administration, whose head is the Minister of Interior.

10. Are the police in general obliged to report to public prosecutor all offences/some offences that came to their knowledge? Do they do this in practice?

Police must report all offences the public prosecutor is obliged to prosecute, also when the perpetrator is unknown. They do it in practice completely. Otherwise the police officer in charge would commit the crime of abuse of official function (Missbrauch der Amtsgewalt).

11. Can the police refuse an order of the public prosecutor to conduct an investigation or delay its execution? How does it work in practice?

The police can refuse an order of the public prosecutor (or of the investigative judge) only when the order is illegal or when the police office is not competent to carry it out. The police can determine the time and the way of the execution of the order of the public prosecutor or the investigative judge.

12. Which body deals with complaints against police involved in criminal investigation?

If police direct the criminal investigation or exceeds the order of the public prosecutor or the investigative judge, a complaint at the independent administrative tribunal (Unabhängiger Verwaltungssenat) is possible.

13. In practice, do prosecutors or police provide the media with information about criminal investigations?

In general the prosecution service does not provide media with information about criminal investigation by its own initiative. Information is given on demand of the media considering the interests of the pending investigation and of people involved.

Police shall give information about criminal investigation in accordance with the competent prosecutor's office or court.

14. If you have experiences with Joint Investigation Units between prosecutors and police, please describe advantages and disadvantages.

Joint Investigation Units between prosecutors and police do not exist in Austria.

BELGIUM³

1. Who is ultimately responsible for a proper investigation?

Section 28 bis of the Code of Criminal Procedure states that *the investigation shall be conducted under the direction and the authority of the competent public prosecutor, who shall take responsibility for it.*

2. Who has the task of ensuring that the police respect all statutory rules and procedures in criminal investigation?

Subject to the exceptions provided for by law, investigative measures must include no constraints or violations of individual rights and freedoms. The public prosecutor ensures compliance with the law in the collection of evidence (Section 28 bis para. 3 of the Code of Criminal Procedure).

In the course of their administrative or judicial duties all police officers may, bearing in mind the risks involved, use force to pursue a legitimate goal which cannot be achieved by other means. Any use of force must be reasonable and in proportion with the intended purpose.

Section 131 para. 1 of the Code of Criminal Procedure stipulates that when the court in chambers finds a defect, omission or ground of nullity in the investigative proceedings or the collecting of evidence, it may, where appropriate, declare the act and all or part of the subsequent proceedings void.

The court in chambers also decides every month whether to remand accused persons in custody (at the same time making sure that their human rights are respected), whether to commit mentally unbalanced persons to institutional care, and whether to (provisionally) defer sentences. The decisions (or ‘ordinances’) of the court in chambers may be appealed before the Indictments Chamber of the Court of Appeal.

3. Are the police under an obligation of prior consultation with the public prosecutor on investigation matters? If so, does this apply to all criminal cases or to important cases only?

As the public prosecutor directs the investigation, the police receive their orders from the public prosecutor’s office, except where the police are authorised to act independently, under a procedure called *Traitement Policier Autonome* (TPA – autonomous police treatment). When the police open a file under this procedure, they have a fortnight to inform the public prosecutor’s office, thereby giving them the opportunity to react.

The police have forty days to complete the investigation.

4. May the public prosecutor issue detailed instructions to the police? If so, please elaborate.

³ Original reply received in French, see Appendix

As the public prosecutor directs the investigation, he may naturally issue detailed instructions to the police. The public prosecutor has the authority to require the police services stipulated in Section 2 of the Police Act (Appendix 5) and all other members of the criminal investigation authorities to take any action required for the purposes of the investigation, subject to the restrictions laid down by law. The police services thus requisitioned are required to comply with the request and make as many officers as necessary available for the task at hand (Section 28 ter para. 3 of the Code of Criminal Procedure). The public prosecutor is free to decide which police service or services to use for which tasks in a particular investigation. If several services work on the same case, the public prosecutor coordinates their work.

The police immediately report any relevant information to the competent judicial authority and inform it of any investigative work carried out under the instructions of the public prosecutor.

5. In what type of cases do police officers need approval of, or co-operation with, the public prosecutor for the use of certain means of coercion?

Except when crimes are discovered *in flagrante delicto*, the police may only take precautionary measures. Suspects may be placed in detention only on the orders of the public prosecutor (Section 2 of the law on detention on remand (see Appendix 2)).

6. Can the police use special investigation methods without prior authorisation?

No. This also applies to proactive investigations, conducted in order to permit the prosecution of offenders, which involve the researching, collection, recording and processing of information based on reasonable suspicion that punishable offences are about to be committed, or have already been committed but not yet discovered, by criminal organisations as defined by law, or which constitute a crime or offence under Section 90ter, paras. 2, 3 and 4 (Section 28 bis para. 2 of the Code of Criminal Procedure).

The prior written authorisation of the public prosecutor, the labour judge or the federal prosecutor, in their respective fields of competence, is required before a proactive investigation may be opened.

Special investigation methods are governed by the law of 6 January 2003 (Appendix 3).

7. Is it possible for the prosecutor to take over, either in whole or in part, the investigation from the police or any other criminal investigating authority?

Yes, the public prosecutor directs the investigation, so he also has the power to drop a case. However, any person allegedly prejudiced by a crime or offence may file a suit for damages with the competent investigating judge (Section 63 of the Code of Criminal Procedure). Thus the closing of a case by the public prosecutor does not necessarily mean the end of the investigation. Filing a suit for damages with the investigating judge effectively initiates criminal proceedings.

8. Can the prosecution service set priorities as to the instigation of investigations?

Section 28 ter para. 1 stipulates that “within the context of the investigation policy determined in conformity with Sections 143 bis and 143 ter of the Judicial Code, the public prosecutor shall determine the types of offence which shall take priority in his or her jurisdiction.”

Note should also be taken of the tri-annual zone security plans (PZS), which comprise the priority tasks and objectives set by the burgomasters and the public prosecutor in their respective spheres of competence. In so far as it helps plan police activities at the local level, the PZS is part of a broader process, a comprehensive, integrated approach to security, and is therefore prepared with due reference to other planning instruments, both at federal level (ministerial policy lines, four-yearly national security plan) and at local level (municipal policy lines).

The zone security Council determines policy orientations on the basis of which the draft zone security plan is drawn up. It is then approved by the zone security Council and signed at least by the local authorities (burgomaster(s) and public prosecutor).

Once the plan has been approved by the Justice and Interior Ministers, the authorities have four years to implement it, through projects or action plans focusing on the priorities concerned, or by incorporating it into their everyday activities.

While the implementation phase lasts four years, the action plans are annual (Appendix 4).

9. May the prosecution service lay down general crime policy guidelines (priority targets) for the police?

Yes. According to Sections 26 of the Code of Criminal Procedure, 143 bis of the Judicial Code and 5 para. 2 of the Police Act (Appendix 5), the public prosecutor may issue general guidelines for the police, for example the general guidelines necessary for the police to perform their duties in the district under his jurisdiction. These guidelines remain applicable unless the investigating judge decides otherwise in the course of the investigation. They are communicated to the Prosecutor General.

10. Are the police in general obliged to report to the public prosecutor all offences / some offences that come to their knowledge?

The task of the police is to investigate crimes and offences and report their findings immediately to the competent judicial authority (Section 28 ter para. 4 of the Judicial Investigation Code and Section 15 of the Police Act (Appendix 5)).

11. Can the police refuse an order of the public prosecutor to conduct an investigation or delay its execution?

No. The police must carry out the public prosecutor’s instructions without question, unless the instructions are manifestly illegal, in which case they immediately inform the requesting authority in writing, stating their reasons (Section 8/2 of the Police Act (Appendix 5)).

If a police department is unable to place the necessary staff and means at the public prosecutor's disposal, the latter may refer the matter to the Prosecutor General and inform him of the situation. The Prosecutor General may submit the matter to the Board of Prosecutors General, who take the necessary action (by assigning more staff, for example) (Section 28 ter para. 4 of the Code of Criminal Procedure).

12. Which body deals with complaints against police involved in criminal investigation?

The Police Supervisory Board (known as the "P Committee").

See the State Authorities Act of 18 July 1991 on supervision of the police and intelligence services (Appendix 6.).

13. In practice, do prosecutors or police provide the media with information about criminal investigations?

Only the public prosecutor (with the agreement of the investigating judge where one is involved in the case) may, if it is in the public interest, provide information to the press. This must be done with all due regard for the presumption of innocence, the rights of the defence, victims and third parties, and for people's privacy and dignity. As a rule, the identity of the people involved in the case is not divulged if possible (Section 57 para. 3 of the Code of Criminal Procedure).

14. If you have experiences with Joint Investigation Units between prosecutors and police, please describe advantages and disadvantages.

There are no disadvantages, only advantages: close co-operation, team work, direct control of investigation capacity and a clearer view of the usefulness of some of the orders received.

BOSNIA AND HERZEGOVINA

1. In accordance with the Criminal Procedure Law ("Official Gazette of the Federation of Bosnia and Herzegovina", No. 36/03), that entered into force on 1st of August 2003, investigation is ordered and conducted by the competent prosecutor (Article 45. and Article 231. paragraph 1. of the Law).
2. Having regard that prosecutor orders and conducts an investigation, prosecutor is obligated to make sure that police complies with laws and procedures in the course of investigation. Prosecutor is also obligated to ensure the respect of human rights and freedoms, because court cannot build its decision upon evidence that was gathered by breaching human rights and freedoms, this being prescribed by the Constitution and international treaties Bosnia and Herzegovina ratified, nor can court build its decision upon the evidence obtained through illegal evidences, which means that prosecutor is bound during an investigation to base his indictment only on legally gathered evidence (Article 11. – basic principles).

Besides, police is obligated to act according to and to comply with the Law on Internal Affairs. This Law also insists on legal procedures in the course of criminal proceeding. Special obligations with regard to specific investigative actions of police are prescribed in the mentioned Criminal Procedure Law as well.
3. Police is obligated to act according to prosecutor's instructions during investigation and to consult with the prosecutor. This pertains to all criminal offences.
4. Prosecutor is authorised to give detailed instructions to the police by an Order on Investigation Conduct, where he determines what actions police is to undertake with

regard to taking evidence against a suspect. Prosecutor may also give other instructions to the police, depending on circumstances and the course of investigation in a criminal case.

5. It is established by special regulations when and on what conditions police has a right to use force. If force is used in cases where prosecutor had ordered an investigation, police is obligated to inform the prosecutor about that, both before and after use of force, because illegal use of force can influence the validity of evidence gathered and consequently the outcome of investigation in a criminal case.
6. In accordance with the Criminal Procedure Law police may apply special investigative actions only upon an order by a court (pre-trial judge). The court issues this order upon motion of the prosecutor (Articles 130. – 135. of the Law), and exceptionally when there is a danger of delay special investigative actions may be undertaken upon oral order of the court – pre-trial judge, in a way that written court order is to be issued in 24 hours from the oral one.
7. This question presumes situation in those countries where police is authorised by law to conduct an investigation. It was previously stated that prosecutor is the authority that initiates and conducts an investigation, therefore it is not possible for police to take over the investigation, since it would not be in accordance with the mentioned Criminal Procedure Law.
8. Office of the Prosecutor may establish priorities with regard to initiation of an investigation, and in this regard may, as a priority, determine investigations against suspect for specific criminal offences, as are for example terrorism, corruption, organised crime, war crimes and so on.
9. In the context of previous answer, there are no restrictions for a Prosecutor's Office to establish general guidelines and priority objectives of criminal policy, although as a rule, general guidelines and priority objectives are determined by the Government and Parliament within their own competences. In any case, Prosecutor's Office is authorised to propose to the Government and Parliament setting up of general guidelines and priority tasks in a criminal policy.
10. Police is obligated by the Criminal Procedure Law to immediately inform Prosecutor's Office on all committed criminal offences based on a reasonable doubt, when for the criminal offences in question is prescribed 5 years or longer imprisonment sentence, and within 7 days from learning of reasonable doubt that a criminal offence, for which a imprisonment sentence of up to five years is prescribed, had been committed. Such notifications are regularly submitted from the police.
11. Police can not refuse valid Prosecutor's Order for a conduct of investigation.
12. Work of police is subject to supervision by Internal Affairs Units of Police Administrations, also by Complaint Office of the Ministry of Interior and by

Independent Board of Parliament for Appointment and Review of work of police directors, and of police commissioners.

13. Both police and Prosecutor's Office have a right to give information to media on criminal investigations. This is prescribed by the Law on Freedom of Access to Information. However, they also have a right to deny information if they assess that it would harm the investigation. In cases where a prosecutor has ordered conduct of investigation, practice shows that it is the prosecutor who decides whether and when an information on a course of investigation will be given to media or not.
14. Experience shows that in complex criminal cases team work is necessary in a way that under a leadership of a prosecutor investigative teams are established, and these teams are usually comprised of authorised officials from the police, Customs Administration, Tax Administration, State Border Service, Financial Police, depending on a nature of criminal offence.

BULGARIA

1.

As regulated by Bulgarian penal-procedural legislation investigators are the investigation bodies in carrying out preliminary proceedings about crimes of higher degree of public threat, explicitly set out in the Penal Procedure Code, and the inquirers – in the remaining cases.

Inquirers are employed by the Ministry of Internal Affairs and designated by ministerial order; customs and currency offenses are examined by customs officials as designated by order of the Minister of Finance.

Investigative bodies act under the direction and supervision of the prosecutor, although they are not in one institution and they are not subordinated to the prosecutor. For this reason the responsibility for an efficient process of good quality should be borne by all bodies taking part in the investigation.

These responsible for the quality of pre-trial investigation are public prosecutors since they are the head and supervisory authority, and also investigating bodies in their capacity of these who perform the pre-trial investigation in its entirety.

2.

In the event of investigation into a police procedure already in progress, procedural and direction and supervision is effected by the prosecutor, hence the prosecutor is empowered to ensure observance of the law by the police.

As far as imprisoned/detained persons are concerned it is the commitment of the Ministry of Justice to ensure observance of the law by personnel of prisons and detention centers.

Pursuant to the Judiciary Act /JA/ the prosecution is empowered to make inspections in prisons and places of detention. In the event of finding illegally detained persons or other illegally imposed compulsory measures it can order the immediate release of such persons. In case of finding other violations of human rights the prosecutor issues compulsory written instructions to the respective competent officials, and can also order the suspension or revocation of their unlawful acts.

In the field of penal law enforcement, public prosecutors are who supervise the police with regard to respect of human rights and observance of legal rules. Article 127, point 2 of the Constitution of the Republic of Bulgaria provides that the public prosecutor's office supervises the enforcement of sanctions and other compulsory measures.

3.

In order to begin any police proceeding for which the inquirer is competent under the Bulgarian Penal Procedure Code to conduct the investigation, such inquirer shall forthwith inform the prosecutor. Except for the cases where police proceedings have started at the orders of the prosecutor proper. The inquirer is also held to immediately inform the prosecutor in the event of ordering the detention of an incriminated person for a term of 24 hours. Under summary police

proceedings the inquirer, with the consent of the prosecutor, can also omit the conduct of inquiry of witnesses.

The penal procedural system of the Republic of Bulgaria does not provide for preliminary consultation of investigating police officers with public prosecutor. However, the public prosecutor's office has the powers to give mandatory written instructions to the investigating police officers at any time during the pre-trial procedure. It is a wide spread practice for police officers to consult prosecutor during investigation: on matters concerning the penal law evaluation of a crime, the scope of charges, the required procedural compulsion, etc.

4.

In the course of any police proceedings the prosecutor issues to the inquirer the instructions necessary for the successful investigation and these are compulsory for the inquirer. The prosecutor may also take part in the conduct of investigation, as well as to remove the inquirer if he has committed a breach of the law or is unable to ensure the proper conduct of the investigation.

Public prosecutors may, in their capacity of governing and supervisory authority, give mandatory instructions to investigating police officers. According to Article 409 of the Code of Penal Procedure, investigating bodies are not entitled to objections against such instructions, and are obliged to follow them with out any reservations. It is the court (respectively, the first instance court where in most of the cases judges sit alone) that gives permission for performance of investigation actions comprising a compulsory element, and for application of compulsory measures. It is not provided for public prosecutors to give preliminary consent or assistance therefor.

5.

Under the Bulgarian penal-procedural legislation compulsory and restrictive measures related to the limitation of human rights, in all kinds of pre-trial proceedings (preliminary proceedings conducted by investigators, and police proceedings conducted by inquirers) are imposed by the Bulgarian criminal court at the request of the prosecutor.

In case of necessity to carry out pressing procedural-investigative actions, such as personal search, search of premises, seizure of correspondence, etc., their execution is allowed without search warrant by a judge in cases explicitly defined in the PPC. The inquirer however is under the obligation to submit, within a term not longer than 24 hours, the protocol of the respective act for court approval.

The inquirer is also obliged to inform the prosecutor in the event of detaining an incriminated person for a term of 24 hours /see the answer to question 3 above/.

All national offices of the Interior Ministry engaged in combating crime are entitled to require from the court permission to use special intelligence means /SIM/ and to use the data collected thereby and the material evidence in accordance with their competence.

6.

Under the Ministry of Internal Affairs Act, the bylaws and norms for their application and the respective internal departmental instructions, the police is entitled to carry out operational-tracing and undercover activity, surveillance, identification and control over persons and objects, to effect controlled deliveries; to organise the infiltration of employees and their activity in state institutions, organisations and bodies corporate.

Data collected under this procedure do not have the force of material evidence in a future criminal case. They are evaluated on a general basis as data sufficient or not for the inception of a criminal prosecution.

The use of SIM in the course of pre-trial proceedings, as indicated in the response to question 5, is only admissible after a reasonable request by the Interior Ministry offices and upon the explicit authorisation of the competent court.

Special methods (special intelligence means) may be used under the current Bulgarian legislation only and solely after preliminary court permission. The Minister of Interior may, as an exception only, order the use of such means for a term of up to 24 hours without court permission; within the said term the court should be notified and its permission requested, and if such permission is not granted any use of such special means should be terminated. It is not provided for investigating police officers or public prosecutor to use special intelligence means in case of emergency without court permission.

7.

When this is necessary for discovering the objective truth the prosecutor may transform the summary police proceedings into an inquiry. That is, transformation at discretion is only admissible from one type of police proceedings into another police proceedings, which is also conducted by a police official. Any investigative and other procedural acts performed, as well as the evidence collected and verified, retain their procedural value. This principle was adopted with the PPC Amendment and Supplement Act of 12 October 2004. Until then the prosecutor had the power of transforming a police proceedings in both of its forms /summary police proceedings and inquiry/ into a preliminary proceedings and to assign the case to an investigator – an investigative body within the judicial system, as a better warranty of discovering the objective truth.

The only principle remaining is when the prosecutor transforms a police procedure into a preliminary one and assigns it to an investigator, when the inquirer has erroneously transformed it for crimes beyond his investigative competence under the PPC.

In order to avoid duplicate functions in the course of investigation, now the PPC provides for a procedural possibility under which the prosecutor may institute preliminary proceedings, instead of a police procedure, in cases of factual and legal complexity.

8.

The prosecution determines the main procedural-investigative actions to be performed under police investigation in the cases when the police proceedings are initially instituted by the prosecutor himself. Such a possibility exists also when the inquirer has started the police procedure and has fulfilled his obligation to immediately inform the prosecutor about the first

investigative act performed by the police /with the first act under the investigation – such as personal search, seizure of an object indicative of a crime – it is considered that the proceedings has started without the need of a formal procedural act – an order for its institution.

According to the penal procedural system in the Republic of Bulgaria the public prosecutor's office has no discretionary power to initiate or not penal proceedings, or to raise or not criminal charges for indictable offences. Accordingly, the public prosecutor's office may not specify priorities to the investigating police officers in relation to pre-trial investigation performed by them. Investigating bodies are obliged to initiate such investigation any time it falls within their competences.

9.

The prosecution formulates the main goals and priorities of police investigation by way of specific written instructions, set out in the decree ordering the inception of a police procedure.

Again by a decree the prosecutor may issue compulsory instructions to the police in the events when the inquirer has already started an inquiry and has immediately informed the prosecutor to this effect.

The public prosecutor's office may, during a given pre-trial investigation, specify the priorities for performance of the investigation activities. In this respect the public prosecutor's office may give instructions on the methods. Besides, the Chief Public Prosecutor may pass, together with the Minister of Interior, instructions for cooperation between preliminary investigation bodies, such as Instruction No. 1 (2004) where the priorities of the cooperation between the public prosecutor's office and the investigating bodies are also specified.

10.

The Ministry of Internal Affairs Act /MIAA/ defines in general descriptive terms the obligation of the police concerning the discovery and registration of crimes. 'In the dispensation of its duties the National Police independently and jointly with other Interior Ministry departments undertakes all necessary steps, within the limits of powers vested in them if data exist for a crime or another offense against public order. Police forces reveal and participate in the investigation of crimes under the terms and procedure provided for in the Penal Procedure Code'.

In cases of failure to inform the prosecution about all discovered crimes, and failure to undertake the respective legal action on the part of police staff, the Penal Code provides for criminal responsibility therefor /art. 288 PC/.

Penal responsibility is also envisaged for any natural person, including officials, in the event of personal concealment /art. 294 PC/.

Police officers same as any other officials, institutions and citizens are obliged to notify the public prosecutor of a crime. Where the law provides for such crime to be investigated by investigating police officers, the latter should start such investigation and should notify the public prosecutor (Article 409 of the Code of Penal Procedure). If a crime is to be investigated

by some other investigating body, police officers are obliged to forward to the public prosecutor's office any material available to them concerning the crime committed.

11.

According to the Bulgarian Penal Procedure Code and the Judiciary Act written orders of the prosecutor, issued within his competence to officials, inclusive of police bodies, are compulsory for execution.

In cases of non-performance the prosecutor for a specific police procedure can remove the inquirer who has acted improperly, respectively – delayed the investigation, and to re-assign the case to another inquirer. At the same time the police official bears disciplinary responsibility under the MIAA.

The Bulgarian PC incriminates the activity of an official who fails to discharge in a timely manner the duties assigned thereto by his position, in relation to a criminal prosecution.

The police may not refuse the fulfilment of an order by a public prosecutor for performance of pre-trial investigation. However, in practice there are cases where police investigation exceeds the time limits (the statutory terms are not observed). The public prosecutor's office has the power to prolong the term of police investigation with up to 6 months at the most.

12.

A specialised administration has been formed and operates with the Ministry of Internal Affairs: the 'Inspectorate' directorate and 'Inspectorates' within the territorial divisions of internal affairs in the country. They operate in the aspect of disciplinary offenses, respectively disciplinary responsibility of police personnel performing investigations.

In the second place, all acts and deeds of police personnel performing investigations are subject to control by the supervising prosecutor, pursuant to articles 176 and 181 of the PPC, respectively art. 411 and 414 of the PPC.

In the event of gross violations by police personnel in the course of investigation, that contain the elements of a crime, the supervising prosecutor, the other players in the process and each citizen may approach the Military Prosecution Office to undertake criminal prosecution.

In the cases where complaints against investigating police officers concern the fulfilment of their immediate procedural powers such complains are forwarded to the public prosecutor who directs and supervises the given penal proceedings. In all other cases complaints may be sent to the respective directors of the investigating police officers in the regional units of the Ministry of Interior for invoking police officers' professional liability under the Ministry of Interior Act.

13.

A Press center has been opened at the Supreme Cassation Prosecutor's Office, and speakers have been nominated in local prosecutor's offices /acting prosecutors – owing to the shortage of jobs/, who inform from time to time the public on cases of high threat for the public and of considerable public interest. The information is delivered in the volume and degree admissible under the law, so that the official and investigation secrecy are not infringed, in order to

guarantee the efficiency of criminal proceedings and at the same time – to realise the right of citizens and institutions to be informed of the work of the prosecution.

The police also informs the public on criminal investigations in progress.

Information to mass media in relation to penal investigations should be given by the public prosecutor's office as long as the latter is directly engaged under the Constitution in indicting to penal liability those who have committed crimes (Article 127, point 1 of the Constitution of the Republic of Bulgaria).

14.

The penal-procedural and judiciary structure laws do not regulate specifically the team principle of work in investigation. At the initiative of the Prosecutor's Office in recent years this model is becoming ever more established in practice as an effective tool. In 2003 under the instruction of the Chief Prosecutor a team of prosecutors from the Supreme Cassation Prosecutor's Office elaborated Instruction No. 1 on the work and interaction of preliminary investigation bodies providing for the formation of investigation teams and statutory regulation of their interaction in the course of pre-trial proceedings; this Instruction was adopted in April 2004 and promulgated in the State Gazette. The Instruction was signed by the Chief Prosecutor of the R of Bulgaria, the Minister of Internal Affairs, the Director of the National Investigation Service and it has the effect of an applicable regulatory bylaw, mandatory for the officials of the above indicated departments.

On this normative basis teams are formed for cases on grave crime of high degree of threat for the public; they consist by a prosecutor, an investigator/inquirer, a detective, experts and technical assistants. The advantages are indisputable: interaction and coordination of procedural-investigative actions from the very beginning of the investigation into a discovered crime, a more rapid and higher-quality penal procedure – collected conclusive evidence and evidential means in support of the accusation thesis for the delivery of a just conviction sentence.

CROATIA

1. Who is ultimately responsible for a proper investigation?

Under the Criminal Proceedings Act (CPA) provision is made for court investigation. A distinction is made between an inquest conducted by the police and the public prosecutor before formally instituting a procedure, on one hand, and, on the other, an investigation as a part of a formal court procedure. The important difference between them is that no formal testimonies can be obtained through an inquest; what is possible though is that a statement is taken from a suspect, apprehended and assisted by a legal counsel, which can be used in the court procedure.

A criminal procedure before the court is initiated by an authorised attorney. As already mentioned, before a court investigation is undertaken the PAO and the police are conducting inquests. Pursuant to Article 42 of the CPA, the basic right and duty of the public attorney is to prosecute criminal offenders and hence, according to paragraph 2 of this article, the public attorney is authorised to take required measures for detection of criminal offences and identification of the offender. In exercising these powers, the public attorney can himself or herself conduct inquests or demand or check the progress of inquests and measures, notably those by the police, with the purpose of gathering data relevant for bringing criminal charges.

It follows from the above that the public attorney is responsible for the conduct of inquests. However, although this competency is deducible from the CPA, the PAO cannot give direct orders to the police which is a part of the Ministry of the Interior. The CPA in its Article 174, paragraph 3 provides that the failure to act upon a request of the public attorney or an unjustified delay in the delivery of requested information constitute a serious breach of official duties. Therefore, should the police fail to comply with the request of the public attorney, he or she may notify a responsible police official who alone is authorised to decide whether or not a disciplinary action is called for.

2. Who has the task of ensuring that the police respect all statutory rules and procedures in criminal investigation with respect to the effectiveness of the fight against crime and to make sure they respect human rights (in particular where persons are deprived of their liberty)?

Pursuant to Article 9 of the CPA, if the police provide evidence in contravention of law or by violating fundamental human rights, such evidence will be considered invalid and not usable in proceedings. Within the police special control mechanisms are in place, the police are accountable for abuse and exceeding of authority and police officers are disciplinable for violations as well as criminally liable in cases of serious violations.

3. Are the police under an obligation of prior consultation with the public prosecutor on investigation matters? If so, does this apply to all criminal cases or to important cases only?

The police are under no formal obligation of prior consultation with the public attorney during the conduct of an inquest. It is an established practice for the police to consult the public attorney in important cases, but that is not an obligation. Whether or not the police will consult the public

attorney in investigation matters or inquests they have initiated on their own is entirely within the discretion of the responsible police official.

However, in matters where the public attorney has requested an inquest, he or she is authorised to demand to be kept informed by the police and the police will, as a rule, comply.

4. May the public prosecutor issue detailed instructions to the police?

Yes. Pursuant to Article 174 of the CPA, it is the public attorney's duty to specify which actions should be taken. Besides, the public attorney may ask to attend certain actions taken by the police and the police are obliged to brief him or her on all actions taken. Therefore, the public attorney may issue instructions to the police, but, as already mentioned, a failure on the part of the police to comply with these instructions constitutes a disciplinary offence, if so decided by the responsible police official. The public attorney has no power to give direct orders to the police and the responsible police official is not obliged to act upon a direct request by the public attorney.

5. In what type of cases do police officers need approval of, or co-operation with the public prosecutor for the use of certain means of coercion?

If a criminal offender is unknown, the police may conduct certain investigations only if so requested by the public attorney. That is the only case where the police need an approval of the public attorney for taking action. For an inquest and other investigative actions (such as taking fingerprints), depending on the type of investigation, the police may take such actions independently or must have a warrant of the investigative judge. For a house search or special inquests the police must always have a warrant of the investigative judge.

6. Can the police use special investigation methods without prior authorisation?

No. The police may use special investigation methods, those affecting the fundamental constitutional rights and freedoms, only upon a warrant issued by the investigative judge.

Such a warrant may be issued by the investigative judge only if inquests could not be conducted by using other methods and only if so requested by the public attorney.

7. Is it possible for the prosecutor to take over, either in whole or in part, the investigation from the police or any other criminal investigating authority?

As already noted, our procedural law knows of court investigation and inquest conducted by the police and the attorney. The public attorney can conduct inquests through the police or independently. Investigation is conducted only by the public attorney.

8. Can the prosecution service set priorities as to the instigation of investigations?

No. As mentioned above, the public attorney may request the police to examine something or to do something urgently, but on the order of steps taken decides the responsible police official,

with the public attorney having no competencies in this regard. In respect of a court investigation, the public attorney may just make representations with the presiding judge about the length of a procedure.

9. May the prosecution service lay down general crime policy guidelines (priority targets) for the police?

No. The public attorney has no authority to act in this capacity. There are situations where the police, in spite of consultations with the public attorney, act contrary to the instructions given by the public attorney. It is only the director of the police or the minister of the interior, who is superordinated to the police directorate, that can guide the work of the police.

10. Are the police in general obliged to report to public prosecutor all offences / some offences that came to their knowledge? Do they do this in practice?

The police are obliged to report to the public attorney all offences, both those that came to their knowledge and those reported to the police by injured parties. As a rule, in practice the police report all offences to the public attorney.

11. Can the police refuse an order of the public prosecutor to conduct an investigation or delay its execution? How does it work in practice?

The police independently decide on execution. The police may bring a person before the judge even if the public attorney may have a different opinion on it. The investigative judge decides whether or not the person will be detained.

12. Which body deals with complaints against police involved in criminal investigation?

Responsible bodies as defined in the Police Act. In cases of serious abuses it is the internal control service and senior police officers.

13. In practice, do prosecutors or police provide the media with information about criminal investigations?

In Croatia a distinction is made between court investigations and inquests which are conducted by the police or the public attorney. In exceptional cases the investigating judge or the public attorney are providing only general information about an investigation. Regarding the statements for the media on received criminal charges, the PAO normally gives just a brief statement confirming that criminal charges have been filed, but abstains from any details about the case itself. The police inform the public about a criminal case (a homicide, for example) without disclosing names.

14. If you have experience with Joint Investigation Units between prosecutors and police, please described advantages and disadvantages

In some cases, especially those involving offences within the responsibility of the Office for the Fight against Organised Crime (USKOK), the police and USKOK work together and conduct joint inquests. Our experience suggests that this is the most efficient method of conducting inquests, however, as noted in the above answers, the PAO cannot force the police to conduct with him or her joint investigations. It depends on how the police internally decide on the matter, but we feel that such an obligation of the police should exist.

CZECH REPUBLIC

1. Who in fact is responsible for ordinary investigation?

According to modification as amended by the grand amendment of the Criminal Procedure Code from 2001 the investigation⁴ itself should be executed by the police (police authorities),⁵ public prosecutors are responsible for due investigation. Public prosecutors supervise the measures taken by the police authorities (not only during investigation which comprises the measures taken after the initiation of criminal prosecution against a certain person, but also the measures taken before the initiation of criminal prosecution). Within the framework of such supervision the public prosecutors are entitled to give instructions to the police authorities about the measures they should take, request reports and information from the police, perform inspections of files, carry out particular investigating tasks and the whole investigation on their own, take part in important procedural transactions, return the subject matter to the police authorities for amendment, make decisions in disputes concerning allocation of jurisdiction between them (as long as it is subject-matter jurisdiction, not local jurisdiction), take away the case from one police authority and assign it to another.

According to the Czech adjustment the public prosecutor is the “dominus litis” of the preliminary stage of the proceeding. This means that he/she assumes responsibility that in the preliminary stage of the proceeding conclusions of facts necessary for submission of an indictment or another decision to conclude the preliminary stage will be made, that nobody will be prosecuted for criminal act without reason and that the police authority will proceed according to law and the actions taken by them will be fast and continuous. The public prosecutors also share responsibility (jointly with the court or the judge who adjudicates in the cases concerning serious interferences with human rights and fundamental freedoms) that the police abide with the fundamental rights and freedoms. The fact that the public prosecutor is the “dominus litis” of the preliminary stage of proceeding does not imply any reduction of the responsibility of the police for due performance of the investigation (examination – measures taken before initiation of the criminal prosecution). Through his/her supervision of the police procedures the public prosecutor obtains the necessary grounds for submission of an indictment (unless the preliminary stage is concluded by another meritorious decision – on discontinuance of criminal prosecution, transfer the case to another authority on the ground of suspicion of an administrative infraction, another

⁴ Public prosecutors conduct obligatory investigation whenever a policeman, member of the Czech Security Information Service or a member of the Office for Foreign Relations and Information commit a crime. Optionally, they may conduct investigation in any case they deem useful (but this right is not used very frequently).

⁵ Although the term “police authority“ is used in the Criminal Procedure Code (after the grand amendment from 2001), it is just a legislative abbreviation. Under this term, not only the authorities of the Police of the Czech Republic but also, in case of selected offences, the inspection body of the Ministry of the Interior (with respect to the procedure before initiation of criminal prosecution of policemen), commissioned bodies of the Military Police (procedure before initiation of criminal prosecution of members of Prison Service), commissioned bodies of the Czech Security Information Service (procedure before initiation of criminal prosecution of members of the Czech Security Information Service) and commissioned customs bodies (Customs Directorate) are encompassed. The grand amendment of the Criminal Procedure Code from 2001 furthermore cancelled the distinction between police investigators and other police bodies. Other police bodies than those of the Police of the Czech Republic may only conduct, on their own, the procedure before initiation of criminal prosecution and still in a limited extent; the investigation can be conducted only by the bodies of the Police of the Czech Republic and public prosecutors (other police bodies may only play auxiliary role).

administrative delict or disciplinary wrongdoing) and, hence, the fulfilment of the public prosecutor's principal role – representation of the prosecution in the court.

2. Who will guarantee that the police will abide with all the legal standards and rules concerning the investigation with reference to the effectiveness of abatement of criminality, and that the provisions of human rights are observed (especially where people's freedom is restricted)?

As already suggested in the answer to question 1, during the preliminary stage of the proceeding the public prosecutors share the responsibility that the police abide with the provisions of protection of human rights and fundamental freedoms. In connection therewith the prosecutors may decide on allowing less serious interference to be made with these fundamental rights and freedoms (e.g. they request information subject to bank secret or those obtained during tax proceeding, order monitoring of an account in the bank, give preliminary consent to detain a person suspect of commitment of a crime, give preliminary consent to take away an item of importance for criminal prosecution which certain person refused to give on his/her own accord, issue orders or preliminary consents to execute search of premises other than house or apartment, give permission to retain mailings, give orders to monitor mailings, decide on retention of financial means on a bank account or with another subject keeping financial means on behalf of other subjects, make decisions on retention of booked securities, give permissions to make fictitious transfers or surveillance of persons and things, unless inviolability of premises, mailing secret is interfered or content of other written documents or records kept in private is investigated with the use of technical means).⁶

A power of high importance the public prosecutors have can be considered the responsibility they assume for the ordinary prosecution. In other words – although it is the police who usually decide on initiation of criminal prosecution, the public prosecutors have the competence, within the framework of their supervision during the preliminary stage of proceeding, to examine whether the criminal prosecution was initiated according to the law and is well-grounded and, in case of any fault found, to cancel the decision on the initiation of criminal prosecution immediately. The cases, where the public prosecutor cancels the decision on initiation of criminal prosecution, either on the ground of a complaint submitted by the accused person (see below) or from his/her own initiative, are relatively frequent in practice.

⁶ In several cases of such interference (detention of suspect person, search other premises, forfeiture of items of importance for criminal prosecution, fictitious transfer, surveillance of persons and objects or retention of financial assets on bank account or retention of booked securities), if no delay is possible and the consent or permission cannot be obtained beforehand, the police authorities are entitled to carry out the relevant interference or action. The public prosecutor should then give a subsequent consent or permission (otherwise the action will be discontinued) or examine the case and take appropriate steps (e.g. order immediate liberation of the accused person, order return of the withdrawn items to the person from which it was taken away, cancel decision on retention of financial means on account, etc.).

The judge (the court) makes the decision on more important interferences with the fundamental rights and freedoms during the preliminary stage of proceedings. These include taking into custody, execution of search of premises, eavesdropping and recording of telecommunication traffic, getting information from telecommunication traffic, surveillance of persons and items in cases where inviolability of premises or mailing secret are interfered or where content of other written documents or records kept in private is investigated with the use of technical means, or engagement of police agent.

Be it from their own initiative or from the accused person's initiative, the public prosecutors must examine whether the criminal prosecution is lawful and well-grounded. Public prosecutors also decide on any complaints against decision of initiation of the criminal prosecution. The aforesaid control shall be performed continuously, i.e. in the whole course of investigation.

3. Are the police obliged to carry out preliminary consultations with public prosecutors in the affairs concerning investigation? If so, is this competence used in all criminal cases or just in serious ones?

Supervision that the public prosecutors conduct over the legitimacy, speed and continuity of the measures taken by the police during the preliminary stage of the proceedings should, as a rule, be performed in all criminal cases and refers to the procedures performed before as well as after the initiation of the criminal proceeding. Owing to the lower number of public prosecutor positions (after the grand amendment of the Criminal Procedure Code from 2001 the number of public prosecutors positions is by far not saturated, about one fifth is missing, and, in conflict with the law, the Ministry of Justice does not fill the vacancy in public prosecutors positions, appealing to unfavourable situation in the state budget) it is a matter of fact that not in all cases the public prosecutors can perform their supervision with equal consistency. The supervision is performed with even greater rigorousness in more serious cases, cases where accused persons were taken into custody, cases of crime, in which case not district courts but regional ones would be the courts of the first instance for submission of indictment (e.g. murders, deadly robbery and rape, highly serious offences against property – deception and fraud) or in offences against juveniles (15 – 18 years). Generally, the supervision is performed in all criminal cases, but the public prosecutor should take into account the nature and seriousness of the case and the findings about the level of work of the police authority, which takes the appropriate steps before initiation of criminal prosecution or investigation.

Besides the inspection of written files, questions about the situation in examination or investigation, the methods of supervision also include consultations with the police bodies. These methods of supervision are also used in every particular case, where fundamental human rights and freedoms are interfered and where prosecutors should in advance give consents to the police authorities for the actions they take.

4. Are public prosecutors entitled to give detailed instructions to the police? If so, please, describe.

One of the competences the public prosecutors have within the framework of their supervision over the abidance with legitimacy during the preliminary stage of the proceedings (both examination and investigation) is the power of giving binding instructions.

They give such instructions for example for the initiation of criminal prosecution, legal qualification of crime, scope of accusation, the way of execution of the case during the preliminary stage of proceedings (where such execution falls within the competence of police authority), engagement of an expert, return of the case for amendment, return of the case by the court to public prosecutor for additional investigation, forfeiture and allocation of the case, and whenever the public prosecutor may deem necessary with reference to the seriousness of the

case. The instructions may be given either by word of mouth; in which case they must be recorded in the appropriate supervision performance file. Otherwise they will be given, as a rule, in writing.

Written instructions apply particularly to the initiation of the criminal prosecution, legal qualification of the crime, scope of accusation and the method of execution of the case during the preliminary stage of proceedings. Written instructions are also given if the case is returned to the police authorities for amendment. The instructions – particularly as concerns more serious cases or those relating to custody – can be given in great detail. They contain the facts of the case, legal analysis and explicitly formulated instructions given to the police authority. The police may not refuse to fulfil the instruction (as it was the case when there was a contradiction with a law found, according to the legal provision effective until the end of 2001). On the other hand, if the given instructions were evidently unlawful, the police could not perform it, e.g. execution of a search of premises without instruction by the judge (but the cases like this do not occur in practice).

5. In which cases the police need approval or consent from the public prosecutor for the use of coercive measures?

This question was already partly answered in the answer to question 2.

Public prosecutor gives the police authority a preliminary consent for:

- detention of suspect person,
- forfeiture of item of importance for criminal procedure,
- decision of retention of financial means on bank account and decision on cancellation or limitation of retention of financial means on bank account,
- decision of retention of financial means on accounts in savings bank or credit cooperative or other subjects keeping financial means on behalf of other subjects, decision of blockage of financial means from supplementary pension insurance with state financial contribution, blockage of withdrawal of financial loans and blockage of financial lease, and decision to cancel or limit the aforesaid kinds of blockage,
- decision to cancel or limit the blockage of booked securities,
- search of other premises and land,
- personal body search of the accused person,
- if it is necessary to carry out reconstruction, recognition, examination or investigation trial in other premises or land and the nature of such action implies that it cannot be performed elsewhere, provided that the owner of the premises and land to make such action did not permit to make the action,
- temporary postponement of the initiation of criminal prosecution (in case of serious offences, if the initiation of criminal prosecution prevents from disclosure of the so called “big fish”).

Public prosecutors give the police authorities permissions to:

- fictitious transfer; if no delay is possible, this can be given additionally,

- make surveillance of persons and items, in which case sound, visual and/or other records are to be obtained (over 6 months); if no delay is possible, this permission can be given additionally as long as no constitutional rights and freedoms are interfered.

Public prosecutor may permit or cancel:

- decisions made by the police authority to retain financial means on bank account in urgent situations where no delay is possible,
- decisions made by the police authority to retain financial means on accounts in savings bank or credit cooperative or other subjects keeping accounts on behalf of other subjects, decision of blockage of financial means from supplementary pension insurance with state financial contribution, blockage of withdrawal of financial loans and blockage of financial lease in urgent situations where no delay is possible,
- decisions made by the police authority to block booked securities in urgent situations where no delay is possible.

If a public prosecutor investigates a case whereby a crime was committed by policemen, members of The Czech Security Information Service and members of The Office for Foreign Relations and Information, the provision of the public prosecutor's permission given to the police authority to perform the task will not be used (the public prosecutor in charge of the investigation may perform these actions on his/her own). If the investigation is carried out by the supervising public prosecutor, even then he/she does not need the permission or consent from the public prosecutor pertinent to the higher public prosecution authority.

The public prosecutor gives the permission or consent solely by virtue of the files (in very exceptional cases he/she is allowed to do so by telephone, but even then he/she must obtain the files immediately). If the police authority performs the relevant action without consent or permission from the public prosecutor, the latter must review the police actions and take relevant measures.

6. Are the police competent to use special methods of investigation without previous approval (e.g. use of informant, engagement of agent in the field and so on)?

In the Czech Republic, the following methods are usually regarded as special methods of investigation (without definition of such term by a relevant legal adjustment): replacement of mailing, surveillance of mailing, eavesdropping and recording of telecommunication traffic, getting information from telecommunication traffic, operational search means adjusted in the Criminal Procedure Code after its grand amendment in 2001 – fictitious transfer, surveillance of persons and items, engagement of police agent), or, if appropriate, several supporting operational search means adjusted by the Police Act, Customs Act and the Prison Service Act (in particular, the use of special financial methods and engagement of informant).

As implied by the answers to the questions 2 and 5, the police usually need consent from public prosecutor. In exceptional cases (e.g. in case of fictitious transfer, surveillance of persons and items), the police may proceed without the consent (in urgent situations) and request the consent from the public prosecutor additionally. In principle, engagement of an agent can be decided upon only by the court (actually, the High Court, i.e. the second highest court in the court hierarchy after the Supreme Court). Only on the use of special financial methods (e.g. use of

marked bank-notes) or the engagement of informant the police are competent to decide on their own. These techniques, however, are adjusted by other laws than by the Criminal Procedure Code.

Their use as means of evidence (in contrast to other special investigation techniques) is not enacted directly by law but their use as evidence is decided upon by the court after a detailed evaluation.⁷

7. Is it likely that public prosecutor takes over – partly or fully – the investigation from the police or another investigating authority?

Public prosecutors may carry out investigation on their own in any case whatsoever (obligatory investigation only in specific cases – see foot-note 1). They are also entitled to take over only a part of the investigation or carry out only a specific investigative action on their own (e.g. interrogation of the accused person or interrogations of some witnesses).

Since investigation is carried out exclusively by the authorities of the Police of the Czech Republic (and not, for example, by the Prison Service ones, Customs Authorities, etc.), investigation or a part of it can be taken over only from the police (theoretically, it is also possible that supervising public prosecutor takes over a case from a public prosecutor carrying out investigation relating to a crime committed by policeman, member of the Czech Security Information Service or member of The Office for Foreign Relations and Information).

As concerns the procedure to be adopted before initiation of criminal prosecution, public prosecutor does not perform it even if he/she carries out obligatory investigation in case of initiation of criminal prosecution. Nevertheless, he/she is entitled to take individual steps within the framework of such procedure, clarify the nature of submission, which he/she has received and which is labelled as a report of the commission of a crime. In specific cases – as mentioned above – also other police bodies may adopt the procedure before initiation of criminal prosecution.

8. Can public prosecution initiate an investigation?

Public prosecutors can give orders initiating criminal prosecution against a certain person as a part of their competence to give binding instructions to the police authorities (formerly this action was called notice of accusation). This is an expression of the public prosecutor's status of "dominus litis" in the preliminary stage of proceedings, as described in detail in the answer to question 1. In this position the public prosecutors are allowed to decide who is to be prosecuted for crimes (prosecuting function of public prosecutor), although in most cases the police implement the prosecution (investigation) itself.

⁷ There even exists a judgement, which rejects as evidence the use of special investigative techniques adjusted for example by the Police Act, simply because they are not directly adjusted in the Criminal Procedure Code. This applied particularly to the so called „police“ eavesdropping of telephone calls adjusted until the end of 2001 by the Police Act, whereas the eavesdropping carried out in criminal proceedings was adjusted by the Criminal Procedure Code (though the police eavesdropping, too, was permitted by courts). Adjustment of the so called police eavesdropping as well as any so called operative techniques was cancelled right by the grand amendment of the Criminal Procedure Code from 2001 and it was transferred in the Criminal Procedure Code.

This competence is being enforced also in those cases where accelerated preliminary proceeding is held with less serious (the so called petty) offences, after the grand amendment of the Criminal Procedure Code from 2001. In such cases the public prosecutor makes the final decision whether to use such form of preliminary stage of proceedings. Having come to the conclusion that standard investigation should be held, he/she may give an order that the case be transferred to the police conducting the investigation. If the accelerated preliminary stage of proceedings has been held before, he/she may order that the investigation be carried out by the body having conducted the preliminary stage of proceedings before.

9. Can public prosecution define a general line of criminal politics for the police (target priority)? In which form? If a public prosecutor cannot do so, who then can?

Public prosecution in the Czech Republic does not have such competence. In relation to the police the public prosecution defines procedural principles and rules only for individual criminal cases, though it cannot be ruled out that the police procedures will be also influenced in several cases of similar kind and in the future. The police procedures in several cases of similar kind may be also influenced by the interpretation standpoints of the Attorney's General office. However, such interpretation standpoints are binding neither for the public prosecutors nor for the police. If public prosecutors conform to these interpretation standpoints, also the police procedures will be indirectly influenced. The same applies to the instructions of common nature issued by the Attorney General defining (general) binding rules for procedures to be adopted by all public prosecutors. Even these can represent just an indirect, mediated influence, as the instructions of common nature are not binding for the police; only internal rules (regulations and instructions from the Minister of the Interior and binding directions from the Police President are binding for the police). The indirect influence results from the fact that it is on the ground of the binding internal adjustment contained in the instructions of common nature that the public prosecutors give, among others, their instructions for the procedure to be adopted in the individual cases. Similar situation would apply to the above-mentioned interpretation standpoints, though it is not an internal adjustment but a standpoint concerning a particular case.

The Ministry of the Interior, which establishes and governs the Police and then the Police Headquarters (Police President is superior to all policemen) have the competence to define the general line of criminal politics in relation to the police.

10. Are the police generally obliged to report to public prosecutors about every crime or just some crimes they have got knowledge of? How is this implemented in practice?

Owing to the enforcement of the principle of legality whereby the public prosecutors are obliged to prosecute every crime they have got knowledge of, if not otherwise enacted by law (e.g. in case that the initiation of criminal prosecution is temporarily postponed) or by a proclaimed international agreement the Czech Republic is bound with, the police are obliged to inform public prosecutor of any crime they have got knowledge of.

No exception from this rule is permissible for the police. Namely, any time they find out a matter of fact suggesting that a crime was committed the police are obliged to write a report of initiation

of the criminal procedure and send it immediately to public prosecutor. Before such a report is written, the police are just allowed to make immediate or non-reproducible actions (e.g. site inspection) and then write down the report immediately.

What is mentioned above does not deprive the police from detecting hidden signals of criminality and disclosing crimes, which are only being prepared or already started to be committed. Once the police find out commission of a crime they are obliged to inform public prosecutor immediately. It is from the point of such notification that the public prosecutor begins his/her supervision on the police actions in the preliminary stage of proceedings.

11. Are the police entitled to refuse that the investigation be directed (led) by a public prosecutor, or postpone the execution of such public prosecutor's power? What is the procedure in practice?

Not only that the police cannot refuse fulfilment of an instruction given by the public prosecutor (the concept of the so called "objection" or refusal to fulfil public prosecutor's instruction was cancelled by the amendment from 2001; only a refusal of an instructions being in clear conflict with the law is eligible) but they cannot preclude that public prosecutor potentially governs the investigation or conducts it on his/her own. All instructions given by public prosecutors are binding for the police.

12. What kind of bodies deal with the complaints raised against the police during the investigation?

Public prosecutors deal purely with those complaints referring to their legal actions. This means that in case of complaints, which they should adjudicate as an instance authority (e.g. complaints against decision about the initiation of criminal prosecution), or those labelled as "application for a review of the police authority's measures" they either issue an appropriate decision on the complaint or they should review the case and notify the applicant of the review result. In respect thereof they evaluate the legality, speed and continuance of the investigation (the same rules apply to the procedure before initiation of criminal prosecution, as in such a situation the complaint may be raised for example by the injured party).

If a complaint refers to the behaviour of a policeman conducting the investigation (or the course of investigation before the initiation of criminal prosecution), without direct relationship to a course of investigation in a particular case, such complaint will be resolved by a senior police body (head of the police body), the control and complaint departments established at the district police directorates and regional police management, the Police Headquarters or the inspection of the Ministry of the Interior. If the investigation conducted by one of the above-mentioned bodies resulted in suspicion of a crime committed by a policeman, public prosecutor would conduct the investigation after the suspicion is verified. If such investigation resulted in suspicion of just a disciplinary transgression, only a disciplinary sanction would be likely according to the Police Service Relationship Act.

13. Do, in practice, public prosecutors or the police inform media about criminal prosecution?

The formerly effective legal adjustment, which was based on the fact that the police give information of the preliminary stage of proceeding (about the investigation and about the course of it before the initiation of criminal prosecution) in specific co-operation with the public prosecutor and, essentially, subject to his/her consent, was cancelled in the CR for obscure reasons in early 90s. According to the new adjustment, information can be given unless the discovery and explanation of the case is threatened, unless information having no relation to the criminal activity is given about the persons taking part in the proceedings and, finally, unless presumption of innocence is violated. No information containing sensitive personal details or information classified according to a specific law can be given.

The information can be given by the police bodies as well as by the public prosecution ones, but in this respect the necessary co-ordination is not guaranteed.

A reason for this unsatisfactory condition is the fact that in this respect (communication with media) the public prosecution has no competence to manage the police and the police are not qualified to resolve this problem. Recently, the office of spokespersons has been established in the police and the spokespersons give information on behalf of the whole police or a specific police body. Even this measure has not prevented from leak of information from the files.

Also in many public prosecution bodies the office of trained spokespersons was established (this office is held partly by public prosecutors and partly by specially trained staff – graduates in the required field) and the appropriate professional level of the given information is ensured. However, it is generally accepted that also the public prosecutors themselves may give information (e.g. after a finished trial or during the preliminary stage of proceedings concerning the case they supervise); such given information is usually filed and consent from the High Prosecuting Attorney is not required. The high prosecuting attorneys give information concerning the activity of the whole public prosecuting body or concerning highly serious cases. Attorney General gives information relating to the whole system of public prosecution bodies.

14. Do you have experience with joint investigation teams comprising public prosecutors and policemen? If so, please, describe their advantages and disadvantages.

Joint investigation teams were not adjusted in the Czech Republic until the amendment of the Criminal Procedure Code No. 539/2004 Col. Effective from November 01, 2004. Therefore no experience is available so far.⁸

⁸ A proposal of a law establishing an office for prosecution of serious economical and financial criminality was prepared in the Czech Republic in 1997. Establishment of specific co-operating units comprising public prosecutors and policemen was expected in the proposal, but the proposal was not endorsed by the Chamber of Deputies.

DENMARK**1)**

The chief constable in each of the 54 police districts. On the local level the police and prosecution service are amalgamated in so far as the chief constable is both the chief of the local police force and head of the local prosecution service. Because of this dual function the chief constable in person and his legal staff (the acting prosecutors) must have a legal degree.

2)

The chief constable in the police districts (and his legal staff). The regional prosecutor in whose region the police district is situated has a general power of supervision. Court orders are generally needed for coercive measures.

3)

Prior consultation involving the legal staff of the local district is customary specially in important cases and directly prescribed in some cases. If the investigation involves a court order the local prosecutor will generally have to be consulted by the police. The regional prosecutor can or shall be consulted in some cases.

4)

Yes, on all issues concerning investigation and prosecution, e.g. interrogation of a witness. Instruction can be of a general nature or be related to a specific criminal case. The instructions can be issued on the local level or originate from the regional prosecutor or the general prosecutor.

5)

In all cases where means of coercion such as custody, telephone surveillance, confiscation involve a court decision (See Q 3 and Q 6).

6)

Use of special investigations methods will very often require a court decision and thereby a decision by a prosecutor (See Q 3). The police are always in command on the operational level.

7)

No. The police handle the investigation except in cases against police officers concerning alleged offences committed when on duty, which are investigated by the regional prosecutor (See Q 4).

8)

If the prosecution service is of the opinion that investigation can be useful in a criminal case, they can set priorities as to the instigation of an investigation.

9)

General guidelines and strategies can be issued from all levels of the prosecution service.

10)

No there is no general obligation, but because of the special double role of the chief constable the question can probably best be answered by stating that not all offences are reported to the legal staff of the local district, but serious offences should always come to the knowledge of the legal staff.

11)

No. The chief constable and his double role is supposed to ensure that the proper orders are issued to the police departments of the district and that they are executed in time.

12)

The Regional Public Prosecutors in whose region the police district is situated.

13)

In practice police officers normally provide the media with information about criminal investigations. When appropriate the chief constable can address the media himself or let one of the prosecutors do so.

14)

At the moment we have no specific experiences.

FINLAND

1. Who is ultimately responsible for a proper investigation?

The first stage of criminal procedure is conducting a criminal investigation, also referred to as a preliminary investigation in Finland. The purpose of this investigation is to determine the offence and its circumstances, the parties involved and other matters necessary to decide on bringing charges. Furthermore, the criminal investigation seeks to determine whether there is sufficient cause to bring charges.

Criminal investigations are conducted by the police unless otherwise provided for under law (Section 13 of the Criminal Investigations Act). The investigation is usually conducted by the police of the town where the offence was committed. The Police Act contains more detailed provisions on the party responsible for conducting criminal investigations and on the obligation to take action to investigate offences.

Under Section 14 of the Criminal Investigations Act, criminal investigations are lead by the head of investigation, who is usually an official with the power to arrest, i.e. a police officer. During the drafting of a new procedure for dealing with criminal matters in lower court, it was proposed that prosecutors replace the police as head of investigation in all but the simplest criminal matters. The proposal met with opposition and the police retained the power to act as head of investigation.

However, it should be noted that in the Finnish legal system, prosecutors may monitor criminal investigations and request that certain investigative action be taken. In practice, the investigation of offences and consideration of charges in criminal cases remain separate.

2. Who has the task of ensuring that the police respect all statutory rules and procedures in criminal investigation with respect to the effectiveness of the fight against crime and to make sure they respect human rights (in particular where persons are deprived of their liberty)?

Criminal investigations are guided by the principles of swiftness, objectivity, presumption of innocence and the principle of least impediment. Under Section 6 of the Criminal Investigations Act, a criminal investigation must be carried out without undue delay. Objectivity calls for all facts and evidence, both for and against the suspect, to be cleared up and taken into account in a criminal investigation as provided in Section 7, subsection 1 of the aforementioned Act, while under subsection 2 of that Section the suspect shall be presumed not guilty in a criminal investigation. Under Section 8 of the same Act, in a criminal investigation the rights of anyone shall not be infringed more than what is necessary for the achievement of the purpose of the criminal investigation. International human rights conventions binding on Finland are also taken into consideration in criminal investigations.

The head of investigation has primary responsibility for the propriety of the investigation. The legality of police activities is also supervised by the Ministry of the Interior's Police Department,

which acts as the Supreme Police Command of Finland. Additionally, the police are supervised by the supreme overseers of legality, i.e. the Parliamentary Ombudsman and the Chancellor of Justice.

3 and 4. Are the police under an obligation of prior consultation with the public prosecutor on investigation matters? If so, does this apply to all criminal cases or to important cases only? May the public prosecutor issue detailed instructions to the police? If so, please elaborate.

Under Section 15 of the Criminal Investigations Act, the police shall inform the prosecutor of an offence which has been reported to it for investigation, when someone can be suspected of the offence. However, the prosecutor need not be informed if the matter is simple.

In other words, the police are obliged to notify the prosecutor of nearly all crimes reported to them. This gives the prosecutor an opportunity to instruct the police on general investigative guidelines. In principle, the prosecutor has a great deal of authority with regard to the substance of the matter under investigation while the decisions regarding the means and methods of the investigation are taken by the head of investigation.

As one purpose of criminal investigation is to secure a centralised main hearing, the prosecutor must be able to influence the conduct of the investigation. In complex cases, the prosecutor is usually better equipped than the police to determine the punishability of the offence and the sufficiency of proof as well as any need for additional investigation.

Section 15, subsection 2 of the Criminal Investigations Act provides that on the request of the prosecutor, the police shall carry out a criminal investigation or further investigations, as well as comply with the instructions issued by the prosecutor for the securing of the objectives of the criminal investigation. Under Section 34 of the same Act, if present during questioning, the prosecutor may put questions to the person being questioned.

Should the court find the criminal investigation incomplete, the prosecutor is responsible for completing it (Criminal Procedure Act, Chapter 5, Section 7).

5. In what type of cases do police officers need approval of, or co-operation with, the public prosecutor for the use of certain means of coercion?

The most typical coercive measures employed during criminal investigation are apprehension, arrest, detention, travel ban, prohibition of transfer, freezing order and restraint. Other coercive measures include telecommunications interception, telecommunications monitoring and technical surveillance.

It is provided in Section 10, subsection 1 of the Coercive Measures Act that during a criminal investigation, an official with the power of arrest may request detention. Before a request is made, it shall be notified to the prosecutor, who may take it upon himself to decide whether the detention request is to be made. When the case has been sent to the prosecutor after the

conclusion of the criminal investigation, the prosecutor may request detention. The prosecutor shall also be notified if the head of investigation requests that a detained person be released, as this may be significant in terms of preparations for the main hearing (Instructions and guidelines issued by the Prosecutor General, 2003:2).

As set out in Chapter 2, Section 3 of the Coercive Measures Act, on certain conditions instead of arrest or detention a travel ban may be imposed on a person suspected with probable cause of an offence. During criminal investigation, the official with the power to arrest decides on imposing a travel ban. However, before taking such a decision the official must notify the prosecutor, who may take it upon himself to make the decision. When the case has been sent to the prosecutor after the conclusion of the criminal investigation, the prosecutor decides on the travel ban.

Chapter 3, Section 2 of the aforementioned Act provides that before charges are brought, the head of investigation or the prosecutor may request a restraint or freezing order. Freezing orders and restraints are sought to secure a complainant's claim or, for example, reimbursement to the State.

Telecommunications interception and telecommunications monitoring may be employed in the investigation of aggravated offences and always require authorisation by the court. The authorisation and decision shall make mention of the head of investigation who manages and supervises the actions and is responsible for them. Before criminal investigation, the authority to decide on initiating technical surveillance (technical viewing and technical listening) is vested in a commanding officer or a police officer appointed head of investigation. Should the surveillance period exceed 72 hours, authorisation must be granted by the chief of a police precinct or the chief or deputy chief of a police unit with a nationwide ambit.

Coercive measures only recently made available to the police include undercover activities and pseudo purchases. Under Section 32a of the Police Act, decisions on undercover activities are taken by the chief of the police unit appointed by the Ministry of the Interior and decisions on making pseudo purchases are taken by a commanding police officer.

6. Can the police use special investigation methods without prior authorisation (such as use of informants, infiltrations and so forth)?

The matter of the right of the police to engage in undercover activities to prevent, detect or clear up criminal activity whenever the actions of the person under surveillance give justifiable cause to suspect that person would commit the suspected offence, as provided in Section 31a of the Police Act, has been addressed above under heading 5.

The police do not require the approval of the prosecutor to employ e.g. undercover activities in their investigations.

7. Is it possible for the prosecutor to take over, either in whole or in part, the investigation from the police or any other criminal investigating authority? If so, in what circumstances?

Under Section 14, subsection 2 of the Criminal Investigations Act, the criminal investigation of any offences in which a police officer is the suspect is always headed by a public prosecutor, with the exception of matters involving only a petty fine or matters to be dealt with in summary penal proceedings. The purpose of this arrangement is to safeguard the impartiality of criminal investigations.

Under Section 4a of the Criminal Investigations Act, the prosecutor may order, on the initiative of the head of investigation, that no criminal investigation is to be carried out or that the criminal investigation is to be discontinued, if the prosecutor would waive prosecution in light of the expected sanction and if there is no important private or public interest which makes the criminal investigation necessary. Limitation of the criminal investigation takes no stand as to the guilt or innocence of the suspect, however taking into consideration the presumption of innocence.

In Finland, the prosecutor cannot in principle take over investigations from the police. The only offences directly investigated by prosecutors are those in which a police officer is the suspect.

8. Can the prosecution service set priorities as to the instigation of investigations?

See under heading 4.

9. May the prosecution service lay down general crime policy guidelines (priority targets) for the police? In what form? If not the public prosecutor, then who?

The prosecution service may not lay down general guidelines that apply to all criminal investigations.

10. Are the police in general obliged to report to public prosecutor all offences / some offences that came to their knowledge? Do they do this in practice?

Under Section 15 of the Criminal Investigations Act, the police shall inform the prosecutor of an offence which has been reported to it for investigation, when someone can be suspected of the offence. However, the prosecutor need not be informed if the matter is simple. A more detailed definition as to what may be considered simple matters is available in instructions issued to prosecutors. According to the Government bill, matters such as criminal damage, driving while intoxicated and assault might be considered minor. Under Section 7 of the Criminal Investigations Decree, the police are additionally required to notify the prosecutor of any criminal matters of which the prosecutor has specifically requested to be notified.

11. Can the police refuse an order of the public prosecutor to conduct an investigation or delay its execution? How does it work in practice?

Pursuant to Section 15, subsection 2 of the Criminal Investigations Act, the police cannot refuse to conduct a criminal investigation.

However, it should also be noted that the prosecutor has no authority to prohibit the police from investigating a matter, i.e. the prosecutor has the authority to request investigation but not to restrict it.

12. Which body deals with complaints against police involved in criminal investigation?

Any complaints about the actions of the police during criminal investigations should primarily be addressed to the immediate supervisor of the officer involved. Other bodies dealing with complaints against the police are State Provincial Offices, the Police Department of the Ministry of the Interior and ultimately the general overseers of legality, i.e. the Parliamentary Ombudsman and the Chancellor of Justice.

13. In practice, do prosecutors or the police provide the media with information about criminal investigations?

Under Section 9 of the Criminal Investigations Decree, the right to make public information relating to a criminal investigation lies with the head of the investigation, his supervisor and another civil servant designated by the supervisor. The prosecutor may not make any information about a criminal investigation public unless acting as the head of investigation in the matter.

14. If you have experiences with Joint Investigation Units between prosecutors and police, please describe advantages and disadvantages.

Finland has not yet participated in any Joint Investigation Teams as referred to in the EU framework decision.

However, close cooperation between prosecutors and the police is very common especially in difficult and complicated criminal cases. The law in fact requires this because the prosecutor must be able to present the case to the court and he is in a position to do this when he has been involved in the investigation phase. Proper involvement in the investigation phase should reduce the workload required in the consideration of charges and during trial.

FRANCE⁹**1. Who is ultimately responsible for a proper investigation?**

The public prosecutor, since it is he or she who is legally empowered to direct the activities of the police in the investigation or prosecution of offences (Article 41 of the Code of Criminal Procedure).

This does not of course preclude bringing proceedings against the police officer in charge of the investigation if it appears that he or she has been seriously negligent or failed to comply with the public prosecutor's instructions.

2. Who has the task of ensuring that the police respect all statutory rules and procedures in criminal investigation with respect to the effectiveness of the fight against crime and to make sure they respect human rights (in particular where persons are deprived of their liberty)?

There are several levels of powers and responsibility in this connection:

- the public prosecutor is responsible for ensuring that procedural rules are observed during the preliminary investigation (supervising police custody for example);
- the investigating judge must perform this supervisory function during the judicial investigation;
- the judge responsible for decisions on freedom and detention handles exceptional proceedings falling outside the scope of the ordinary law; for example, when measures are taken to combat organised crime, it is for this judge to authorise exceptional extensions of the period of police custody beyond 48 hours, searches conducted outside legal hours, the interception of correspondence sent using telecommunications systems, the installation of listening devices in certain premises or vehicles and the recording of images of people or places or people's words.

3. Are the police under an obligation of prior consultation with the public prosecutor on investigation matters? If so, does this apply to all criminal cases or to important cases only?

No, not especially. However, prior consultation is customary and recommended in the most sensitive cases. There is no specific category of case for which prior consultation is advised. This is left to the investigator's discretion.

4. May the public prosecutor issue detailed instructions to the police? If so, please elaborate.

⁹ Original reply received in French, see Appendix

Yes, according to what he or she considers it necessary for them to do for the success of the investigation. Instructions generally relate to search operations, examining witnesses, placing suspects in custody, taking biological samples from witnesses or suspects, etc.

5. In what type of cases do police officers need approval of, or co-operation with, the public prosecutor for the use of certain means of coercion?

This question arises whenever exceptional procedure is being considered in cases of serious crime (infiltration of crime rings for example). More generally, the public prosecutor's approval can be sought whenever the investigating officer has any doubt about the appropriateness of the measure being considered (search, custody, seizure of documents, etc.; with regard to search and seizure, there are also restricted matters, in which investigating officers may not act on their own initiative and must be accompanied a member of the national legal service).

6. Can the police use special investigation methods without prior authorisation (such as use of informants, infiltrations and so forth)?

A distinction has to be made between investigating methods described in detail in legislation laying down special rules (infiltration, telephone-tapping, listening devices, etc.) and "conventional" police methods such as the use of informants, which can be deployed at the police officer's discretion.

7. Is it possible for the prosecutor to take over, either in whole or in part, the investigation from the police or any other criminal investigating authority? If so, in what circumstances?

The prosecutor is always entitled to take a particular police unit or service off a case. Generally, this will be because of difficulty in continuing the investigation, in which case the prosecutor can decide that it is preferable to appoint another unit or service "better placed" to conduct the investigation (for example, a police unit may be chosen instead of the *gendarmerie*, or vice versa).

8. Can the prosecution service set priorities as to the instigation of investigations?

It is the role of the prosecutor to establish a "criminal policy" in his jurisdiction, which will determine which investigations are given priority. However, a police investigator may also decide to start an investigation at his or her own initiative and in this case, it is for him or her to keep the prosecutor informed.

9. May the prosecution service lay down general crime policy guidelines (priority targets) for the police? In what form? If not the public prosecutor, then who?

This question overlaps with the previous one. In France, criminal policy is mainly the responsibility of the Minister of Justice, who may give general instructions to the principal state prosecutors, who are then expected to pass them on to their subordinates and see to it that they are actually applied.

10. Are the police in general obliged to report to public prosecutor all offences / some offences that came to their knowledge? Do they do this in practice?

Yes, one of the professional duties of police officers or *gendarmes* is to notify the public prosecutor of all crimes and offences that come to their knowledge. This is mandatory and must be observed as a matter of principle. Disciplinary proceedings may be brought if it is infringed.

11. Can the police refuse an order of the public prosecutor to conduct an investigation or delay its execution? How does it work in practice?

No. In principle, the police have a duty to carry out instructions given to them at the beginning or in the course of an investigation. The principle is sometimes difficult to apply in practice, owing to problems of resources, which account for certain delays in carrying out orders. However, delays of this sort cannot be justified on grounds of mere expediency. In practice, the public prosecutor and the head of the police investigating team will consult one another to establish how the investigation is to be organised when they are dealing with a particularly sensitive case.

12. Which body deals with complaints against police involved in criminal investigation?

The public prosecutor has the possibility of referring complaints to an internal police (or *gendarmerie*) body, namely the Inspectorate General of the National Police, which may be assisted by members of the Inspectorate General of Judicial Services. The IGNP investigates the facts and submits its report and conclusions to the public prosecutor, who is then required to decide what action to take in response to the complaint.

However, the prosecutor may also decide to ask an investigating judge to make the appropriate investigations.

13. In practice, do prosecutors or police provide the media with information about criminal investigations?

In principle, investigators have a duty of confidentiality. However, if the investigation gives rise to questionable information, the public prosecutor may issue a press release. Similarly, if the facts have caused a particularly serious disturbance to public order, it may be that the public prosecutor or his or her deputy, assisted by the chief police investigator, will publicise the results of the investigation while concealing the identity of the accused because of the principle of the presumption of innocence.

14. If you have experiences with Joint Investigation Units between prosecutors and police, please describe advantages and disadvantages

Joint Investigation Units are a highly topical issue in France but they are also an urgent one since, for the time being, local judicial authorities are not allowed to take the decision to set up such units, this power lying solely with the Ministry of Justice.

GEORGIA

1. Who is ultimately responsible for a proper investigation?

According to the Georgian criminal procedural legislation the investigative authority over the criminal cases is divided between the Ministry of Interior, Procuracy, the Ministry of Security and Financial Police of the Ministry of Finances. The power of overall supervision over the investigation in all of those agencies belongs to the Procuracy.¹⁰

2. Who has the task of ensuring that the police respect all statutory rules and procedures in criminal investigation with respect to the effectiveness of the fight against crime and to make sure they respect human rights (in particular where persons are deprived of their liberty)?

Police form the structural part of the Ministry of Interior.¹¹ Therefore, first of all it is the Ministry of Interior who bears responsibility for compliance by the police with all statutory rules and procedures in criminal investigation. However, close supervision is exercised by the Procuracy over their everyday activities with regard to the criminal process.

3. Are the police under an obligation of prior consultation with the public prosecutor on investigation matters? If so, does this apply to all criminal cases or to important cases only?

Police officer can initiate case solely with the approval of the prosecutor. Investigator is entitled to open a case independently. However, investigative jurisdiction of the Ministry of Interior is prescribed by law and of course, neither police nor any investigator of the Ministry of Interior can open a case when it does not fall within the investigative jurisdiction of the Ministry. Generally, the Procuracy has the power to investigate cases of almost all serious crimes (such as murder).

After the case is initiated the approval of the Prosecutor is necessary in order for the investigative actions to be conducted by the police officer. As regards the investigator, he/she needn't obtain any kind of approval from the prosecutor to conduct investigative actions. However, there are certain investigative actions defined by law that, by whomever conducted, necessitate prior sanction of the Court.

¹⁰ All these answers reflect current situation, however, huge reform is under way in the criminal justice system of Georgia. It is planned to abolish the Ministry of Security and instead of the Ministry of State Security and Ministry of Interior establish an unified Ministry. Along with those institutional changes involving criminal justice system of Georgia, criminal procedural legislation is also being substantially revised and completely new Code of Criminal Procedure will be adopted next year. For these reasons, the outlines of the system of criminal justice of Georgia we are providing in this questionnaire might be radically different in certain period of time.

¹¹ There are two types of persons dealing with the investigation in the Ministry of Interior. The first type of persons are investigators conducting the full scale investigation of the criminal case. The second type are those that do not conduct the full scale investigation, but only certain investigative actions to be conducted at an initial stage of investigation (that lasts for a period of seven days, or if the suspect is detained for 24 hours). With us the term *police* denotes the unit that solely carries out the initial investigative actions and after that transfers the case to the relevant investigator to continue the investigation (the second category). Therefore, when answering further questions involving *police* we will reflect on both police in its literal meaning under the Georgian Law and the investigators conducting full scale investigation.

4. May the public prosecutor issue detailed instructions to the police? If so, please elaborate.

The public prosecutor can issue detailed instructions to the police with regard to the particular case. In turn, as stipulated by the Georgian Law on Police, the Police is obliged to comply with the written instructions of the prosecutor and investigator regarding the conduct of particular investigative actions.

5. In what type of cases do police officers need approval of, or co-operation with, the public prosecutor for the use of certain means of coercion?

Georgian Law on the Police empowers the police to resort to the coercive means without the need of approval by anybody else for each particular case. However, when the use of gun caused the injury to the individual, then the police is under the duty to report to the Procuracy of that accident.

6. Can the police use special investigation methods without prior authorisation (such as use of informants, infiltrations and so forth)?

These kinds of the investigation methods belong to the operational activities carried out by the competent authorities including Police. Activities envisaged by the Law on Operational Activities are as follows: inquiry of a person; gathering of the information and visual control; test purchase; examination of the subjects and documents; the identification of the person; censoring the detainees, arrested and convicted persons; infiltration of the secret agent or operational employee into the criminal group; establishment of the conspiracy organized group in the manner prescribed by law.

These are the methods that do not need prior authorization of anybody else. However, there is another category of operational activities related to the restriction of the rights of an Individual that need the prior authorization in the form of an order of the judge.

7. Is it possible for the prosecutor to take over, either in whole or in part, the investigation from the police or any other criminal investigating authority? If so, in what circumstances?

Yes, at any stage of investigation any prosecutor is entitled to take any criminal case from the investigator of the Ministry of Interior (including the police officer) and transfer it to other investigator of the Ministry in accordance with the rules governing investigative jurisdiction. Besides, the Prosecutor General and the Deputy Prosecutor General, as well as the Prosecutor of the Autonomous Republic (within their territorial jurisdiction), can take the case and transfer it either to other investigative agency or to the investigator of the Procuracy without regard to the requirements of investigative jurisdiction.

8. Can the prosecution service set priorities as to the instigation of investigations?

The prosecution service sets priorities for the investigation for each particular criminal case. As far as the Prosecutor exercises the procedural oversight over the process of investigation, it is an established practice that the supervising prosecutor hears the materials of the case and after that issues legally binding instruction including specific priorities in the course of the investigation.

9. May the prosecution service lay down general crime policy guidelines (priority targets) for the police? In what form? If not the public prosecutor, then who?

The Under the Law on the Procuracy the Office of Prosecutor General is entrusted with the task of coordinating the fight against criminality. Therefore, it is the Procuracy who elaborates the general crime policy in terms of fight against criminality.

As a rule these guidelines don't take the form of written document of general character. As a rule, the exercise of procedural supervision by the Procuracy for particular cases is marked with laying down certain guidelines for the agencies dealing with the investigation of criminal cases. The whole operation of the Procuracy outlines the trends of the general crime policy and special priorities in the fight against criminality for the given period of time.

10. Are the police in general obliged to report to public prosecutor all offences / some offences that came to their knowledge? Do they do this in practice?

Yes, they are obliged to immediately report to the public prosecutor all crimes revealed and the investigation of the commenced cases. This obligation is performed by the Police as a matter of fact.

11. Can the police refuse an order of the public prosecutor to conduct an investigation or delay its execution? How does it work in practice?

The policemen and investigators are obliged to comply with the orders and directives of the prosecutor to conduct an investigation or delay its execution; accordingly, the policemen and the investigators are not entitled to refuse the order of the public prosecutor to conduct an investigation or delay its execution. And this stipulation of law is duly given effect in practice. However, if the police officer or investigator considers that kind of instruction to be manifestly unlawful he/she is then entitled to appeal it before the superior prosecutor.

12. Which body deals with complaints against police involved in criminal investigation?

On the one hand, the crimes having been allegedly committed by the employees of the Ministry of Interior fall within the investigative jurisdiction of the Procuracy. Therefore, the complaints against them are, as a rule, directly addressed to the Procuracy. On the other hand, there exists the Office of the Inspector General in the Ministry of Interior that deals with the misconduct of the employees of the Ministry. Accordingly, the complaints involving the abuse of power by them not related specially to the presence of the elements of crime are usually forwarded to the Office of the Inspector General of the Ministry of Interior.

13. In practice, do prosecutors or police provide the media with information about criminal investigations?

The Law provides for the possibility to provide the media by the prosecutors and police with the information on their activities. However, it is prohibited to impart the information involving the privacy, State, commercial and business secrecy, as well as the materials reflecting the results of the inquiry and investigation except for the cases provided for by law.

In practice, these agencies provide the media with that portion of information publication whereof does not infringe the interests of investigation. It should be mentioned that there is a frequent practice of holding press conferences and briefings by the Law-Enforcement Agencies including the Procuracy and the Ministry of Interior with the broad representation of the Georgian media.

14. If you have experiences with Joint Investigation Units between prosecutors and police, please describe advantages and disadvantages.

We don't have an experience to have separate structural units consisting of both investigators and prosecutors to operate on the permanent basis. However, investigative groups composed by prosecutors and investigators of the appropriate agencies are usually created on an *ad hoc* basis for the investigation of the most complicated or specially important cases. Formation of this kind of group for each particular case requires the formal decision of the Prosecutor or Head of the Investigative Agency.

GERMANY

1. Who is ultimately responsible for a proper investigation?

Public prosecutor up to the end of investigation by charge; after this: criminal court

2. Who has the task of ensuring that the police respect all statutory rules and procedures in criminal investigation with respect to the effectiveness of the fight against crime and to make sure they respect human rights (in particular where persons are deprived of their liberty)?

- in individual cases: public prosecutor
- in general: supervision by superior police authorities additionally

3. Are the police under an obligation of prior consultation with the public prosecutor on investigation matters? If so, does this apply to all criminal cases or to important cases only?

Police are under an obligation of prior consultation with the public prosecutor only on investigation of important cases.

4. May the public prosecutor issue detailed instructions to the police? If so, please elaborate.

Each investigation takes place under the rule of the public prosecutor who may issue detailed instructions to the police authorities, but without competence to choose a particular police officer.

5. In what type of cases do police officers need approval of, or co-operation with, the public prosecutor for the use of certain means of coercion?

Without co-operation with the public prosecutor the police may restrain red-handed caught suspects and take measures on verification of identity and registration at police records department. Assumed no judge or public prosecutor is attainable and the success of the inquiry is in danger the police may array a physical examination or a blood test by a doctor, execute a search, and they have confiscatory power except postal items. In all other cases means of coercion need approval by a judge or public prosecutor.

6. Can the police use special investigation methods without prior authorisation (such as use of informants, infiltrations and so forth)?

No, they cannot except in case of urgency insomuch the police must ask the public prosecutor for approval subsequently without delay.

7. Is it possible for the prosecutor to take over, either in whole or in part, the investigation from the police or any other criminal investigating authority? If so, in what circumstances?

Yes, the public prosecutor could dispose of an investigation like this at his own direction because each investigation takes place under his rule (see answer 4), however, normally he will be reliant on co-operation with police.

8. Can the prosecution service set priorities as to the instigation of investigations?

As both, prosecution service and police, are bound by the principle of legality there is no legal basis to set priorities as to the instigation of investigations. In practice prosecution service and police co-operate to postpone investigation of less important cases in favour of a main focus on prosecution of major delinquency.

9. May the prosecution service lay down general crime policy guidelines (priority targets) for the police? In what form? If not the public prosecutor, then who?

No, but there are general guidelines by mutual administrative instructions issued either by General State Prosecutors of the German "Länder" and superior police authorities or governmental departments of judicial and inner affairs.

10. Are the police in general obliged to report to public prosecutor all offences / some offences that came to their knowledge? Do they do this in practice?

Yes, they are obliged to report all criminal offences to the public prosecutor by federal law and conform to this. Administrative offences (e.g. traffic offences - Ordnungswidrigkeiten) are ruled by the principle of opportunity.)

11. Can the police refuse an order of the public prosecutor to conduct an investigation or delay its execution? How does it work in practice?

No, they must not refuse such orders but sometimes there is a certain delay of execution which is caused by shortage of staff. If the delay takes place for a longer time, there will be made arrangements by the superior authorities. Obstruction of criminal execution is a crime.

12. Which body deals with complaints against police involved in criminal investigation?

Correct conduct of police officers is supervised by superior police authorities which will take disciplinary action against them as the case may be, whereas public prosecutors and criminal judges have to examine failings in procedural questions.

13. In practice, do prosecutors or police provide the media with information about criminal investigations?

Although information of the media should be carried out by public prosecutor and police concertedly, in practice in normal cases it mostly occurs by police, in more severe cases by the Prosecution Service.

14. If you have experiences with Joint Investigation Units between prosecutors and police, please describe advantages and disadvantages.

As the investigation takes place under the rule of the public prosecutor there are no Joint Investigation Units by intrinsic sense. However, especially in prosecuting murder and organized crime prosecutors and police are working close together - even with sufficient success in skimming unlawful profits.

GREECE

1. According to article 27 of the Code of Penal Procedure (CPP), the criminal prosecution is initiated, in the name of the State, by the Public Prosecutor of the Magistrate Court. Furthermore, article 31 CPP stipulates that the Public Prosecutor of the Magistrate Court may attend in person, or be represented by one of the Deputy Public Prosecutors who are accountable to him, any interrogation and be informed of the documents relating to such interrogation.

In addition, article 33 CPP stipulates that the preliminary interrogation and examination may be carried out, inter alia, by rank-holders of the Greek Police Force by order of the Public Prosecutor of the Magistrate Court and under his direction.

2. The respect for enacted rules and procedures for preliminary interrogation, as well as for human rights is secured both by the points stated in the previous paragraph and by the obligatory presence of a court clerk or second interrogation officer during any interrogation (article 241 CPP).

Additional protection is provided by the presence of the accused person's lawyer both during the pleas and in any examination (article 100 CPP).

3. Relevant are paragraphs 1 and 10 hereof.

4. According to article 246 CPP, following a written order of the Public Prosecutor, the offence and the penal provision that prescribes it are determined and specified.

5. The use of any means of pressure or coercion is prohibited in all cases and, in the event of occurrence of such phenomena, the provisions of articles 239 "Abuse of power", 137A "Torture and other offences against human dignity" and 137B "Aggravated cases" of the Penal Code are applicable.

6. According to article 253A CPP "Interrogation for criminal organisations", the prior issuance of a specifically-justified decree of the competent judicial council, proposed by the Public Prosecutor, is required for the use of methods such as interrogatory penetration. In extremely urgent cases, the inquiry may be ordered by the Public Prosecutor or the Interrogator.

7. Relevant is paragraph 1 hereof.

8. According to article 43 CPP, when the Public Prosecutor receives a lawsuit or petition, he is obliged to initiate penal proceedings by order an interrogation or preliminary interrogation or by introducing the case to court with direct summons to the defendant. In exceptional cases that shock the public, he may also order that full priority be given to the interrogation (article 35 CPP).

9. The anti-crime policy (targets and priorities for action) at national level is formulated by the Hellenic Police Headquarters, in the framework of the Ministry of Public Order policy.

10. According to article 37 CPP, interrogation officers should immediately notify the competent Public Prosecutor about any information that comes to their knowledge in any way concerning an ex-officio prosecuted offence. The same obligation is imposed to the other civil servants for ex-officio prosecuted offences, if pertinent information came to their knowledge during the discharge of their duties.

In addition, according to article 243 CPP, interrogation officers should notify the Public Prosecutor as soon as possible and immediately submit thereto the reports that were prepared, if they undertook cases in the framework of flagrant felonies and misdemeanour or if the postponement causes imminent risks.

This procedure is also secured by article 2 of the Regulative Order 1/2001, according to which Police Services are obliged to forward their significant reports about Penal Code crimes and violations of Special Penal Laws to the competent Public Prosecutor authorities. There is no derogation from these obligations.

11. According to article 251 CPP, when they receive an order from the Public Prosecutor, Greek police force interrogation officers should immediately carry out all necessary preliminary interrogation acts that are required to assert the offence and reveal the perpetrator.

Moreover, article 18 of Law 1481/84 stipulates that the Hellenic Police Force personnel is obliged to enforce the court decisions and comply with the relevant orders of the competent judges. There is no derogation from these obligations.

12. Charges made against police offices for actions or omissions relating to the discharge of their duties during interrogations for offences may be examined either by the Public Prosecution authorities, according to the Court Regulations, or the Internal Affairs Department of the Hellenic Police Force, if such offences are included in paragraph 1 of Law 2713/99.

13. The Hellenic Police Force personnel is obliged to observe the secrecy (PD 96/86) and no publicity is given to the preliminary and main interrogation (article 241 CPP).

Certainly the above do not hinder journalist inquiries, which are governed by the constitutional provision of article 14 that establishes the freedom of the press.

14. We are aware of any operation of mixed interrogation teams, between Public Prosecutor and Police authorities.

HUNGARY

1. Who is ultimately responsible for a proper investigation?

a) The investigating authority which executes the different investigative measures is responsible directly, but not ultimately for the legality of the investigation. (In Hungary investigating authorities are: 1. police 2. border guards 3. customs and finance guards.)

In case the prosecutor - in the framework of his competence of supervision of investigations - gives an instruction to the investigating authority:

- the prosecutor is responsible for the investigative measure taken by the investigating authority,
- the investigating authority is responsible for the lawful execution of the prosecutor's instructions.

b) In Hungary investigations are conducted either by the above mentioned three investigating authorities or by the prosecution service.

Types of offences when the prosecutor has the competence to investigate are listed in the Act on the Criminal Procedure (CP).

Of course, in these cases the prosecutor is directly responsible for:

- lawful and proper investigation,
- the investigative measures taken by him, and
- the legality of his instructions given to the investigating authorities.

c) As the aim of the investigation is that prosecutor will be in position to decide whether to prosecute (to decide to bring the case to trial) or not, the prosecutor is ultimately responsible for the legality and professional execution of all investigations (regardless of whom the investigation was conducted by).

2. Who has the task of ensuring that the police respect all statutory rules and procedures in criminal investigation with respect to the effectiveness of the fight against crime and to make sure they respect human rights (in particular where persons are deprived of their liberty)?

The police have to observe all statutory rules and procedures in criminal investigations.

The prosecutor has the competence of supervision of investigation, as a strong competence provided by law for ensuring the legality of investigations conducted by the police.

If the prosecutor finds that police ignored provision(s) of acts on investigation, he must take all necessary measures to ensure the legality of investigation.

The police and the mentioned other two investigating authorities (plus the prosecutor and the court) must respect human rights during the whole criminal procedure, which means the

mentioned law enforcement and judicial authorities has their own responsibility for observing legal provisions on human rights.

The decision on the deprivation of liberty could be made solely by a judge (except for a maximum of 72-hour-custody ordered by the police).

Before the trialling (court) stage of the criminal procedure, the judge is obliged to decide on the deprivation of liberty of the offender (on the initiative of the prosecutor). It falls within the competence of the prosecutor to supervise - during the whole criminal procedure - the legality of execution of coercive measures ordered by the court.

3. Are the police under an obligation of prior consultation with the public prosecutor on investigation matters? If so, does this apply to all criminal cases or to important cases only?

The police are not obliged by law to consult the prosecutor on planned (or already executed) investigative measures.

But prosecutor is empowered by the act on Criminal Procedure to oblige police to consult him on the details of the investigation and provide him with information on future investigative measures.

In practice, the prosecutor obliges police for such prior consultation on investigative measures if the offence is serious, of high gravity or of high importance. Often prosecutor orders “enhanced prosecutorial supervision”, by which he receives information on the investigation from the police more frequently and he may determine further necessary investigative measures.

One of the goals of the “enhanced” supervision of investigation is that prosecutor would be also in position to make a decision on his possible participation in the execution of investigative measures planned by the police.

4. May the public prosecutor issue detailed instructions to the police? If so, please elaborate.

The prosecutor is empowered by law to give instructions in connection with the investigation to police (regardless the investigation was started by the police or by the prosecutor).

The prosecutor may, of course, issue detailed instructions, but in practice there is no need for these instructions in each investigation and for each investigating measure.

In case prosecutor orders ”enhanced prosecutorial supervision”, he gives usually more detailed instructions to police on the necessary investigative measures, on the execution of these measures , gives a list of possible evidence to gather...etc).

The area and number of these prosecutorial instructions is not restricted. The instructions to the police always depend on the prosecutor’s decision with regard to characteristics of the case (e.g investigation takes too long, evidence was gathered unlawfully...etc).

5. In what type of cases do police officers need approval of, or co-operation with, the public prosecutor for the use of certain means of coercion?

I. Without approval of the prosecutor:

Body search (the examination of the clothing and body)

Bench warrant (Arrest based on a bench warrant is an action restricting personal freedom in order to compel the attendance of the person before the court, the prosecutor or the investigating authority).

The police may decide on the deprivation of liberty of the offender for the maximum of 72 hours without pre-approval of the prosecutor (so called police custody). In practice, however, police officers often ask the prosecutor for his opinion in advance on the legality of the decision with regard to the possible later pre-trial detention. If public prosecutor decides not to initiate at the court the pre-trial detention of the offender in custody, police at once (before the end 72 hour custody) must release the offender.)

Application of bodily force

Search of the house (with some exceptions)

Seizure (with some exceptions)

II. Other coercive measures (pretrial detention, home custody, home curfew, temporary involuntary treatment in a mental institution, deprivation of passport, sequestration, and special cases of home search and seizure) belong to the competence of the court can not be applied by the police not even with the pre-approval of the prosecutor (because only the court may make a decision on them on the initiative of the prosecutor).

In practice the police co-operates and consults with the prosecutor before applying a certain types of coercive measures.

6. Can the police use special investigation methods without prior authorisation (such as use of informants, infiltrations and so forth)?

The police in Hungary is empowered to use special investigation methods (e.g surveillance equipment...etc.) in criminal procedure (after the investigation was started).

a) But for using these methods police must have the prior authorization of the investigative judge to:

- 1) keep under surveillance and record the events in a private home with a technical device,
- 2) learn and record with a technical device the contents of letters, other pieces of mail as well as communications made by way of a telephone line or other means of communication,

3) learn and use data transmitted and stored by way of a computer system (covert data gathering).

b) In the course of collecting data (infiltration, controlled delivery) the police is empowered – with the permission of the prosecutor – to use a member of the investigating authority who conceals his capacity (covert investigator), and the police may also perform data collection – according to the law governing its operation – not subject to judicial permit.

c) Police may use without prior authorisation of the judge or prosecutor some other special investigative techniques: observation, covered investigators, informers, covered documents, police trap.

7. Is it possible for the prosecutor to take over, either in whole or in part, the investigation from the police or any other criminal investigating authority? If so, in what circumstances?

Yes, it is possible, either in whole or in part - as Article 28 Section (4) subsection e) of the Act on the Criminal Procedure Code says - that the prosecutor may refer the proceedings in his own competence (depending on his decision based on his prosecutorial discretionary power).

If the event that prosecutor refer the investigation in his own competence he takes all investigative measures, but he might instruct the police to execute some of these investigative measures.

8. Can the prosecution service set priorities as to the instigation of investigations?

As the prosecutor may give instructions to the police, he also has the competence to set priorities:

For example: in case the investigation is started because of two or more offences, but the commission of the minor offences is likely to be unprovable, prosecutor may say that police first must collect all evidence of the other (more serious) crime.

Another example: The prosecutor may omit to indict a criminal offence having no significance for the purpose of liability (due to the commission of another serious criminal offence) and being the subject of the indictment. This fact than will be stated in the indictment.

9. May the prosecution service lay down general crime policy guidelines (priority targets) for the police? In what form? If not the public prosecutor, then who?

The prosecution service in Hungary can not set up policy guidelines/general guidelines for the police. The competence of determination of crime policy guidelines is within the tasks of the Parliament.

Nevertheless, the mentioned priority aims and criminal policy guidelines are reflected in the different legal provisions of the criminal law, which provisions must be observed by both the police and the prosecution service in the whole criminal procedure.

10. Are the police in general obliged to report to public prosecutor all offences / some offences that came to their knowledge? Do they do this in practice?

As the criminal procedure law in Hungary is based on the principle of legality, different provisions of the act on Criminal Procedure oblige the police to report all offences to the prosecutor. (Act on Criminal procedure says: ‘The police must notify the prosecutor of the investigation ordered or the rejection of the report on crime within twenty-four hours.’)

11. Can the police refuse an order of the public prosecutor to conduct an investigation or delay its execution? How does it work in practice?

The police is obliged to conduct investigation, and to execute all the instructions and orders of the prosecutor on different investigative measures, even if the police does not agree with the instructions and professional opinion of the prosecutor.

There is not any legal base for delaying the execution of the prosecutor’s instructions, as prosecutor has strong competence provided by law: the competence of supervision of police investigations.

12. Which body deals with complaints against police involved in criminal investigation?

During investigation stage of the criminal procedure there are 3 types of legal remedies:

- a) objection (a protest against the measure /omitted measure /not-written decision of the police). Based on the objection, the police will take the necessary and justified measures.
- b) complaint (a protest against the written decision of the police). Making a decision on the complaint belongs to the responsibility of the prosecutor.
- c) proposal for a court revision (in case the complaint against the decision of the police was rejected by the prosecutor).

13. In practice, do prosecutors or police provide the media with information about criminal investigations?

In theory, police may give information on criminal investigations to the media solely on those investigative measures and those police actions which were taken by the police itself (and upon its own decision).

This means police may not provide information on different investigative measures and actions based on the instruction of the prosecutor, and on the content of the prosecutor’s instruction/order.

Prosecutor may give information to the media on criminal investigations conducted either by the police or by the prosecution service (in that way as it is regulated in one of the circulars of Prosecutor General).

In practice, prosecution offices have their own spokespersons who regularly give answer and information to the questions of the representatives of the media in case the requested information is not against the interest of the investigation.

The spokesperson of the Office of the Prosecutor General (OPG) provides the media with information on a regular basis by launching press releases, statements, and publish them also on the homepage of the OPG.

14. If you have experiences with Joint Investigation Units between prosecutors and police, please describe advantages and disadvantages.

In the act on the Prosecution Service is regulated that in case the investigation is conducted by the prosecutor, he may instruct the police (or any other investigating authority) to perform – within its own geographical jurisdiction – an investigative action.

Furthermore, in the course of an investigation conducted by the prosecutors, the Prosecutor General may employ the members of the police (other investigating authorities) upon the consent of the national head of the police (other investigating authority).

This method of joint investigation was applied several times from 1 July 2003 and the co-operation between the police officers and prosecutors proved to be very successful.

ICELAND

GENERAL REMARKS

According to Section 25 of the 1991 Act on Criminal Procedure (ACP), the Director of Public Prosecutions and Commissioners of Police, including the National Commissioner of Police, hold the prosecution authority. The Director of Public Prosecutions is the highest holder of prosecution authority and prosecutes more serious offences against the Penal Code, including cases involving serious bodily harm, murder and manslaughter, sexual offences and serious narcotics cases. The Commissioners of Police have the authority to prosecute offences other than those handled by the Director of Public Prosecutions. Therefore, the Commissioners of Police are in charge of criminal investigation and public prosecution within the area of their office.

According to Section 66 of the ACP the police shall at any time when necessary initiate an investigation on account of knowledge or suspicion of crime, irrespective of whether a complaint has been made. The Director of Public Prosecutions may give orders to the police in this context. According to Section 8 of the 1996 Police Act, the police shall investigate offences in consultation with the prosecution authority. This is in accordance with Section 67 of the ACP, which states that the purpose of investigation shall be to collect any evidence necessary to enable the prosecutor to determine, when the investigation is completed, whether to prosecute a person, and to collect evidence in preparation of legal action. Therefore, the prosecution authority may initiate an investigation and intervene at any stage of its process.

1. Who is ultimately responsible for a proper investigation?

As stated above, according to Section 67 of the ACP, the purpose of the investigation shall be to collect any evidence necessary to enable the prosecutor to determine, when the investigation is completed, whether to prosecute a person, and to collect evidence in preparation of legal action. Furthermore, Commissioners of Police are in charge of criminal investigation *and* public prosecution.

Accordingly the prosecution is ultimately responsible for a proper investigation.

2. Who has the task of ensuring that the police respect all statutory rules and procedures in criminal investigation with respect to the effectiveness of the fight against crime and to make sure they respect human rights (in particular where persons are deprived of their liberty)?

Commissioners of Police have the task of observing use of police powers in this respect.

3. Are the police under an obligation of prior consultation with the public prosecutor on investigation matters? If so, does this apply to all criminal cases or to important cases only?

All claims before the courts are made by police advocates, who also serve as prosecutors. Otherwise there is no legal obligation in this respect.

4. May the public prosecutor issue detailed instructions to the police? If so, please elaborate.

The Director of Public Prosecutions is the highest holder of investigating and prosecution authority. He may give instructions concerning the investigation of specific cases and general instructions on i.e. on investigation methods/techniques.

5. In what type of cases do police officers need approval of, or co-operation with, the public prosecutor for the use of certain means of coercion?

A policeman shall arrest a person if there are reasonable grounds to suspect him/her of having committed an indictable offence, according to Section 97 of the ACP. According to Section 102 of the ACP the arrested person shall be brought before the court without delay. Commissioner of police/police advocate demands of the court that he/she shall be held in detention.

Other orders of coercive measures are made by the court, at the demand of a Commissioner of police/police advocate, except for registration of telecommunications and search, if the person involved gives consent.

6. Can the police use special investigation methods without prior authorisation (such as use of informants, infiltrations and so forth)?

The Director of Public Prosecutions has issued general instructions on special investigation methods such as interaction with informants, agents provocateur, controlled delivery and electronic surveillance. These instructions apply for the consent of a superior officer/Commissioner of Police before these special investigation methods are used.

7. Is it possible for the prosecutor to take over, either in whole or in part, the investigation from the police or any other criminal investigating authority? If so, in what circumstances?

As described above, Commissioners of Police have investigating and prosecuting authority in the area of their office.

The Director of Public Prosecution cannot take over an investigation. But he can intervene in the investigation and give the police instructions.

8. Can the prosecution service set priorities as to the instigation of investigations?

Yes.

9. May the prosecution service lay down general crime policy guidelines (priority targets) for the police? In what form? If not the public prosecutor, then who?

Yes. An example of this are general instructions issued by the Director of Public Prosecutions on time limits for investigation and prosecution of cases involving bodily harm, and in cases involving young offenders.

10. Are the police in general obliged to report to public prosecutor all offences / some offences that came to their knowledge? Do they do this in practice?

According to general instructions issued by the Director of Public Prosecutions the Commissioners of Police report serious offences that come to their knowledge.

11. Can the police refuse an order of the public prosecutor to conduct an investigation or delay its execution? How does it work in practice?

No.

12. Which body deals with complaints against police involved in criminal investigation?

According to Section 35 of the 1996 Police Act, complaints against a police employee for an alleged punishable offence committed in the course of his work shall be submitted to the Director of Public Prosecutions. The DPP conducts the investigation and prosecution of the case.

13. In practice, do prosecutors or police provide the media with information about criminal investigations?

Communication with the media would always be under the supervision of a prosecutor.

14. If you have experiences with Joint Investigation Units between prosecutors and police, please describe advantages and disadvantages.

The National Commissioner of Police operates a department for investigation of serious economic and tax offences. The National Commissioner has the authority of prosecution in these cases before the District Courts. The department is headed by a prosecutor and specially trained police officers and police advocates work together as a team. This has proven an efficient means of investigating and prosecuting these often complicated cases.

IRELAND

1. Who is ultimately responsible for a proper investigation?

Operationally, ultimate responsibility lies with the police force, the Garda Síochána, and its Commissioner. The Office of the DPP has no role in deciding on a day-to-day basis what priorities should be set in an investigation, for example, concerning the allocation of resources or the relative priority to be accorded to different or competing investigations at a given time. However, where the DPP is prosecuting in a case in which irregularities in an investigation are alleged, the DPP will generally be the respondent in the legal proceedings (discussed further below).

The general procedure in relation to prosecutions is that the Gardaí carry out investigations and upon completion of an investigation will then submit a file to the Office of the DPP; in less serious cases (minor offences), the Gardaí may prosecute summarily without reference to the Office of the DPP.

However, summary cases are in almost all cases prosecuted in the name of the DPP and subject in principle both to general and specific directions from the DPP. A Bill before the Oireachtas (Parliament) (the Garda Síochána Bill 2004, section 8) at present will give statutory effect to this principle. In Ireland, non-minor matters must be tried before a jury, pursuant to Article 38.5 of the Constitution. In such cases, the practice is generally that the Gardaí must consult with the DPP before charging a suspect. When a file is submitted to the DPP in relation to non-minor matters, the DPP will decide whether to prosecute. The DPP thus receives a file after the completion of the Garda investigation (though aspects of an investigation may still be ongoing or open).

In general, Irish criminal procedure reflects a fairly clear division between the investigative and prosecutorial aspects of a case. This is most evident in those serious cases where the Gardaí must submit a file to the DPP, and then the DPP directs how to proceed, i.e. whether to prosecute, and with what offences to charge the suspect, etc. It is worth noting that this is a characteristically common law view of the prosecution role, and differs from that in many civil law jurisdictions where the public prosecutor's functions are more closely interlinked with the investigative aspects of a case.

The Office of the DPP does provide legal advice to the Gardaí, and Gardaí may seek legal advice from the Office of the DPP as to the conduct of an investigation and the legal implications or requirements of a specific investigative step. For example, the Office of the DPP could advise that a particular proof is necessary in relation to a particular type or charge or offence, which may influence the Gardaí in their investigation. However, the Office of the DPP can only provide advice as sought, and legal advice given does not amount to a direction (see, e.g. *State (McCormack v Curran* [1987] ILRM 225). In practice, however, the Gardaí act in accordance with such advice, and would undoubtedly leave themselves open to criticism if they failed to do so, even though in strict legal terms advice given by the DPP is not a direction.

It is difficult to state unequivocally, in strict legal terms, who has ultimate responsibility for investigations in all respects. This is because, as stated above, operationally, the Garda Síochána is responsible, but in court proceedings, the DPP is generally the respondent in any challenge to a prosecution, including in relation to the methods of investigation. It is the Office of the DPP and its counsel at trial that must represent the Gardaí. For example, if a judicial review was taken of a trial in a lower court on the grounds of irregularities in an investigation resulting in the tainting of evidence, the Office of the DPP is generally the respondent (judicial review does not lie against High Court criminal trials, challenges to such trials must be brought by way of appeal in the first instance to the Court of Criminal Appeal). All of the agencies in the investigation and prosecution process are treated procedurally in court as a single entity for the purpose of such court challenges, with the DPP as the respondent party. An example of the latter has recently arisen in the context of the duty on the Gardaí to seek out and retain evidence that may assist an accused person in his or her defence. The precise scope of this duty has been the subject of considerable recent case law (*Murphy v. Director of Public Prosecutions* [1989] ILRM 71, which has been approved and elaborated on in more recent decisions, chiefly *Braddish v The DPP and His Honour Judge Haugh* [2001] 3 IR 127, *Robert Dunne v The DPP* [2002] 2 IR 305, and *James Bowes and Deirdre McGrath v. The DPP* [2004] 2 IR 25), with the DPP as the respondent. In these cases, an accused person sought to challenge the prosecution on the basis of a failure by Gardaí to fulfil the duty to seek out and retain such evidence (during an investigation, the Office of the DPP may have given its advice as to what evidence should be retained or sought out, but as mentioned above, such advice is not a binding instruction).

The role of the DPP as respondent in such cases is perhaps better seen as a matter of procedural formality, and does not detract from the practical independence of the Gardaí in carrying out investigations. But if the DPP became aware of some irregularity in the course of an investigation that could not be defended on judicial review, the DPP would have to refer the matter to the most senior Garda authorities.

2. Who has the task of ensuring that the police respect all statutory rules and procedures in criminal investigation with respect to the effectiveness of the fight against crime and to make sure they respect human rights (in particular where persons are deprived of their liberty)?

The DPP does not have a primary function in relation to ensuring Garda compliance with legal rules and procedures. This is primarily a matter for Garda management and ultimately for the Minister for Justice, Equality & Law Reform, who has political responsibility for policing in Ireland.

The precise nature of the degree of control exercisable by the Minister over the Gardaí is not currently set out in clear terms in legislation. It is a matter of convention that the Garda Commissioner is independent in terms of operational and day-to-day control over the Gardaí, but given that the Garda budget and that regulatory and other powers over the Gardaí are exercisable by the Minister for Justice, Equality & Law Reform, the Minister has a significant role in deciding broader policy objectives at least: see, generally (D. Walsh, *The Irish Police*, Dublin 1998, chapter 5). Legislation is currently being prepared that sets out on a statutory footing, in broad terms, this position (the Garda Síochána Bill 2004).

The Office of the DPP may be involved to the extent that it may be asked to provide legal advice on relevant matters, but the DPP has no enforcement authority against the Gardaí. In the context of breaches of the criminal law by individual Gardaí while acting in the course of their duty, an investigation is carried out by the Garda Síochána Complaints Board, an independent statutory body consisting of eight persons and a chairman appointed by the Government (only one of the members may be a Garda) (the Board was established by the Garda Síochána Complaints Board Act, 1986). It is required to submit a file to the DPP if it comes to the conclusion that the member of the Gardaí being investigated has committed an offence, whether summary/minor or serious/non-minor in nature.

It may be added that the Irish courts operate a strict exclusionary rule in relation to evidence obtained in breach of an accused's constitutional rights (see, e.g. *The People (Attorney General) v O'Brien* [1965] IR 42 and *The People (Director of Public Prosecutions) v Kenny* [1990] ILRM 569). The DPP is under a duty not to prosecute use evidence where he becomes aware of an irregularity, and in such a case his practice is to report the alleged irregular conduct to the Commissioner. From time to time, the Commissioner issues directions to the force in the form of Garda Circulars based on advice received from the DPP.

The role of the Irish Human Rights Commission under the Human Rights Commission Act, 2000 of reviewing the adequacy of the law and practice in the State with regard to human rights norms extends to reviewing the Garda Síochána in that regard too. Although it has no power to issue directions to the Gardaí to change their practice, the Commission may be influential in informing and shaping public debate and policy. For example, during 2003, the Commission submitted its views to the Minister for Justice, Equality & Law Reform on the Garda Síochána Bill 2004 (see Irish Human Rights Commission, *Annual Report 2003*, Dublin, 2004, pages 26-27). In December 2002, the Commission published a position paper entitled *A Proposal for a New Garda Complaints System* (the issue of how to handle complaints against Gardaí was one of the main issues addressed subsequently in the 2004 Bill). The Commission has not issued any public statements to date specifically on the role of the DPP. (See, generally, the Commission's Web site: < <http://www.ihrc.ie> >).

3. Are the police under an obligation of prior consultation with the public prosecutor on investigation matters? If so, does this apply to all criminal cases or to important cases only?

No, there is no specific obligation to consult with the DPP on investigative aspects of a case, although in practice the Gardaí frequently seek legal advice.

4. May the public prosecutor issue detailed instructions to the police? If so, please elaborate.

The Office can provide legal advice about criminal law and matters. In practice, this advice is translated into Circulars from Garda Headquarters to all Gardaí and so is generally followed. This is something carried out in a process of cooperation with the Gardaí – there is no legal basis for the DPP to issue instructions as such, and advice given is not a binding direction (see, e.g. *State (McCormack v Curran*, above). It is a matter of convention, rather than the subject of a

specific statutory provision. In practice, as already noted, it would be usual for the Gardaí to act in accordance with the DPP's advice.

In relation to the specific procedure for the submission of prosecution files, the Office of the DPP issues directions as to the appropriate procedure – for example, as to when certain offences that are triable before a jury may be prosecuted summarily (i.e. without a jury) by Gardaí without referring the matter to the DPP (some offences can be tried either on indictment, i.e. with a jury, or summarily, i.e. without a jury and in the District Court).

In this context, it is also worth noting that there is provision in Irish law for Gardaí to prosecute as private citizens, although acting in the course of their duties (this is the common law right to prosecute as a private citizen or 'common informer'). In such cases, the DPP may not control the prosecution (see, e.g. *State (DPP) v Ruane* [1985] ILRM 349). However, this practice has now effectively fallen into disuse (as noted in the *Explanatory Memorandum to the Garda Síochána Bill 2004*, pages 2-3). Paragraph 12.40 of the *Garda Síochána Code* draws the attention of members of the force to the fact that when they prosecute as common informers, they may incur liability for costs, but it does not go so far as to prohibit Gardaí from doing so (as noted in the *Report of the Working Group on the Outstanding Recommendations of Public Prosecution System Study Group*, Dublin, 2002, at paragraph 4.9). Another scenario is that a prosecution is initiated by a Garda in a summary matter without having referred the case to the Office of the DPP, but the prosecution will be brought in the name of the DPP (see District Court Rules 1997, Order 6, rule 1(e))(this is usually the practice where Gardaí prosecute in summary matters without referring to the DPP – it is less frequent that a Garda will prosecute as a common informer, in his own name, in such cases). In 1975, the DPP approved this practice in a direction to the Gardaí. The *Report of the Prosecution System Study Group* recommended clarifying that the DPP would retain control over the conduct of these prosecutions (paragraph 5.5.14). A provision in a Bill before the Oireachtas (Parliament) at present proposes to do this (Garda Síochána Bill 2004, section 8).

Another scenario that infrequently arises is that it is possible for a common informer to initiate a prosecution of a non-minor serious offence (tried normally before a jury, a trial on indictment) without reference to the DPP - but the DPP then has control of the proceedings once initiated. The DPP may discontinue the process at any time. It has been suggested that the DPP may not terminate such proceedings without showing good reason (see *The State (Ennis) v. Farrell* [1966] IR107). It does not ever occur in practice that a Garda would seek to initiate a prosecution in a serious matter in this way (i.e. as a common informer).

5. In what type of cases do police officers need approval of, or co-operation with, the public prosecutor for the use of certain means of coercion?

No, the Gardaí do not have to seek the approval or cooperation of the DPP in relation to certain means of coercion in the conduct of an investigation. To enforce a search warrant under most statutes, for example, the Gardaí must usually make an application to a judge of the District Court or to a Peace Commissioner, save in exceptional circumstances where it is not possible or practicable to so apply. Some statutes provide for a general power of summary search on reasonable suspicion that harm would occur or evidence would be lost otherwise (the procedure

for search warrants in different types of case is set out in numerous statutes). A further example relates to permission to intercept telecommunications – the Gardaí must seek prior approval from the Minister for Justice, Equality & Law Reform (see section 98 of the Interception of Postal Packets and Telecommunications Messages (Regulation) Act, 1993).

Although not a means of coercion, one function of the DPP that may be considered relevant in this context is the power to issue a certificate that a suspect should be tried by the Special Criminal Court, rather than the ordinary courts, on the grounds that the ordinary courts would be inadequate to secure the effective administration of justice and the preservation of public peace and order in the circumstances of the case (see section 47, Offences Against the State Act, 1939). The Special Criminal Court is a three-judge court that sits without a jury and may try serious offences; ordinarily, serious offences must be tried before a jury (Article 38.5 of the Constitution) – such certificates are granted by the DPP usually in relation to terrorist cases.

6. Can the police use special investigation methods without prior authorisation (such as use of informants, infiltrations and so forth)?

See previous answer to question 5.

Informant evidence is permitted in Irish courts, although it appears from case-law that such evidence should not be procured by straightforward remuneration for a witness (but such a witness may be provided money in the context of a witness protection program – on this, see the decision of the Court of Criminal Appeal in *The DPP v. John Gilligan*, 8th August 2003).

7. Is it possible for the prosecutor to take over, either in whole or in part, the investigation from the police or any other criminal investigating authority? If so, in what circumstances?

No, in general, the DPP has no investigative role. However, it is worth noting that, exceptionally, legislation gives the DPP a role of oversight of investigations into complaints against Gardaí. Section 6(7) of the Garda Síochána Complaints Board Act, 1986 provides that if a complaint against a Garda is being investigated, the Garda Síochána Complaints Board shall not issue directions to the investigating officer (the Board is permitted to issue directions under section 3 of the Act) without the consent of the DPP, and further provides that where the Board requests its chief executive to take over the investigation from the investigating officer under section 5 of the Act (the Board may so request where it believes the public interest requires it or where it believes the investigation is not being properly carried out), the chief executive of the Board shall consult with the DPP in relation to the manner in which the investigation is carried out.

8. Can the prosecution service set priorities as to the instigation of investigations?

No, this is a matter for Garda management and for the Minister for Justice, Equality & Law Reform.

9. May the prosecution service lay down general crime policy guidelines (priority targets) for the police? In what form? If not the public prosecutor, then who?

No, as for answer to 8.

10. Are the police in general obliged to report to public prosecutor all offences/some offences that came to their knowledge? Do they do this in practice?

See answer to question 4 above.

Ireland applies the opportunity principle under which a prosecution may be brought only if it is in the public interest, rather than the legality principle (or principle of mandatory prosecution). In cases where the Gardaí suspect that a serious/non-minor offence has been committed, the Gardaí should generally submit a file on the matter to the DPP. It is possible for a private citizen to initiate proceedings in a serious/non-minor matter, although the DPP then has control of them (see answer to question 4 above).

The Gardaí may prosecute summary offences without referring the matter to the DPP, but subject to both general and specific directions. In cases where a difficult legal issue arises, it is usually the practice in summary matters also to refer the matter to the DPP or seek advice from the DPP.

11. Can the police refuse an order of the public prosecutor to conduct an investigation or delay its execution? How does it work in practice?

In principle, yes. The prosecutor may request or suggest (but not order) an investigation. In practice, the DPP would respect the Gardaí's independence and would refer such a matter to the Gardaí with a request that they consider an investigation. The Office is not aware of any occasion on which the Gardaí have declined to carry out an investigation where a request to do so was made.

12. Which body deals with complaints against police involved in criminal investigation?

The Garda Síochána Complaints Board, as discussed in answer to question 2 above. This is an independent statutory body (established by the Garda Síochána Complaints Board Act, 1986) consisting of a chairperson and eight other members, only one of who is a Garda. It investigates complaints and must submit a file to the DPP where it suspects an offence has been committed, whether or not the offence is minor or serious in nature.

Although it is the Board that decides on what course of action to take against the Garda against whom a complaint has been made, the investigation upon which the decision of the Board is made is carried out by other members of the Garda Síochána. Section 6 of the 1986 Act provides that the Garda Commissioner shall appoint a Garda not below the rank of Inspector to investigate a complaint against a Garda.

13. In practice, do prosecutors or police provide the media with information about criminal investigations?

In practice, the Gardaí do.

The Office of the DPP has a policy of not commenting to the media on specific cases. In cases where a prosecution is brought, the views of the prosecution on relevant matters will in any event

be presented in open court. In cases where a file has been submitted to the DPP and no prosecution is brought, the Office of the DPP has a policy of not giving reasons for its decision (this policy is currently being reviewed).

14. If you have experiences with Joint Investigation Units between prosecutors and police, please describe advantages and disadvantages.

As the DPP in general does not have an investigative role in Ireland, the Office has not been involved in joint investigation teams. The DPP has, however, seconded a number of officers to work closely with the investigative officers in the Revenue Commissioners. The role of these seconded officers is, however, confined to giving advice, although the need for that advice may arise in the context of investigations.

Ireland has recently passed the Criminal Justice (Joint Investigation Teams) Act, 2004, to give effect to an EU Framework Decision in the area. This legislation relates primarily to the Garda Síochána, who have the main investigative function in the Irish criminal justice system.

If 'investigation' in this question is more broadly construed to include any form of cooperation in the criminal justice process, it may be worth noting that the Office of the DPP has a significant role to play in the area of mutual legal assistance between jurisdictions.

ITALY

1.

According to the Criminal procedure code, the PP is the responsible for the investigation after a “notitia criminis” is related to its Office or is elsewhere formally known by the PP’s Office. The Police, where informed about a “notitia criminis”, must submit the facts to the PP’s Office without any delay, transmitting all relevant information and document. The Police is empowered to continue its investigations but, after the intervention by the PP’s Office, shall coordinate its inquiring activity and wait for specific orders or general instructions by the PP’s Office.

2.

We have several Police Bodies, whose hierarchical organisation is related (through different Ministries) to the Government. The Police have an institutional duty which implies different functions and powers: where law and order are concerned, we are before administrative competencies; as for the detection (I prefer this word instead of fight) of crimes, the Police function is a judicial one, thereby connected to the Judiciary. All types of detention (beyond the criminal field, we have a sort of administrative detention according to the Immigration laws) are submitted to a judicial control; the Police have an arrest power, but the arrested person shall be presented within 48 hours to the Public Prosecutor and the arrest shall be confirmed by a Judge.

3.

See answer n. 1.

4.

After the coming into force of the present Criminal procedure code (in 1989), in the concrete practice, the Police Officers have a daily contact with Public Prosecutor, both the Office in itself and its members, each one for dealing with single cases. The Public Prosecutor service isn’t a hierarchical structure; thereby every one of the PP’s Offices is enabled to issue instructions.

5.

The searching, both of a person or of a place, must be authorised by the PP; every form of control of the communication (by mail, telephone, email) must be authorised by a Judge; the arrest is possible by the Police but only when someone is caught “red-handed”.

6.

The under cover operations are possible only for some hypothesis of serious crime and must be authorised by the PP.

7.

Yes, but it isn’t a very diffused practice.

8.

According to the law, theoretically it’s possible but in fact it’s something that happens seldom, as a sign of crisis.

9.

As provided for by article 112 of Italian Constitution, the public prosecution is submitted to the mandatory principle; consequently, where a police member is accused of a crime, the Public Prosecutor shall open an inquiry and then prosecute.

10.

See answers n. 2 and n. 4.

11.

If a policeman doesn't report to the PP's Office a "notitia criminis", this fact is considered as a crime.

12.

No, it can't refuse; a delay (ever possible) is considered an incorrect attitude.

13.

Every, officially or otherwise, provides by itself to the information.

14.

In my Country it's institutionally impossible to think in terms of Joint Investigation Units.

LATVIA

The functions of the public prosecutor in the process of supervision of the police (inquiry) offices

The pre – trial investigation of the criminal case from the moment of its institution until the moment when sufficient evidence has been gathered in order to call some person to criminal liability, takes place at the inquiry office. After the acquirement of evidence for the particular person to be called to criminal liability, the criminal case is forwarded to prosecutor's office for inception of the criminal prosecution. Therefore pre – trial investigation can be divided into two main stages – investigation inquiry office and the prosecutor's office of criminal prosecution.

The inquiry functions have been granted by the state law to the several institutions and the officials, for instance:

1. to the State police;
2. to the sea captains;
3. to the finance police of the State Revenue Service;
4. to the organised crime and anti corruption office and to others;

The investigation competence of the criminal cases to the particular inquiry office has been determined by the law, as well as by internal legislation of the office.

The legitimacy of the pre – trial investigation in the inquiry office is being supervised by the prosecutor's office. In order to ensure supervision of the public prosecutors in all the offices of the pre – trial investigation, and also to procure useful operation of the pre – trial investigation, the Prosecutor General has issued an order “about supervision of public prosecutors in the processing stage and pre – trial investigation stage of the criminal cases.” In the order mentioned there are regulated questions about the supervision competence division of the pre – trial investigation among prosecutor's offices. The inquiry office should immediately report to the prosecutor's office about each processed criminal case. About each processed criminal case inquiry office reports by submitting statistic card to the prosecutor's office.

While supervising the pre – trial investigation, the public prosecutor is rightful:

1. to inspect how the term and legality are being observed, by deciding the notifications of the processing criminal case;
2. to inspect the materials of the criminal case by giving indications for particular action performance of the investigation in order to clarify the person who is to be called to the criminal liability (indications can be presented both in written form and orally; indications can be either about further spirit of general investigation or about specific questions concerning investigation, including specific actions of the investigation, which need to be taken in the case, also giving indications of the public prosecutor, if the inquiry performer does not agree, can be appealed against the public prosecutor of a higher position);

3. to forward the criminal case for additional investigation to the inquiry office, if there is not sufficient cause of the inception of the criminal prosecution (calling particular person to criminal liability);
4. to abolish groundless and illegal decision acceptance of the inquiry office;
5. to take part in any action performance of the investigation, as well as to perform actions personally of the investigation;
6. to get acquainted with the results of the activity of the criminal investigation and to supervise so that those activities were performed in accordance with the law;
7. to withdraw from the inquiry office any criminal case and to institute individual investigation, as well as to transmit the investigation to other inquiry office (in practice the withdrawal of the criminal case from one inquiry office and transfer to other or its adoption to the record keeping of the prosecutor's office in most cases happens when the objective and independent investigation can not be provided by the inquiry office);
8. to inspect complaints and applications about inquiry performer action regarding investigation of the criminal case;
9. to resolve regarding notifications about inquiry performer refusal.

About committed offences of law while the pre – trial investigation, the public prosecutor is rightful to constitute application of the public prosecutor, which is submitted for consideration to the head of the inquiry office, bringing officials’ notice to the committed offences. In the case of exigency the public prosecutor can initiate to the head of the inquiry office to decide question about the adaptation of the summary punishment to the official, who has not observed the law, or to assign to perform other activities, which goal is to prevent further offences of similar nature.

The criminal prosecution is exclusive power of the public prosecutor. The criminal prosecution is initiated when adopting the decision about person's calling to the criminal liability. After the procession of the criminal prosecution, the public prosecutor continues to administrate and organise pre – trial investigation. The public prosecutor personally can perform necessary investigation actions, by obtaining additional evidence, regarding the verifying circumstances of the criminal case, as well as to assign to perform investigation actions to the inquiry office. However the investigation actions with the accused (interrogatory of the accused, confrontation with other persons¹²) only public prosecutor is rightful to perform. The public prosecutor forwards criminal case to the court.

The law determines no priorities and the public prosecutor has no right to choose for which criminal offences perform criminal prosecution. One of the goals of the criminal procedure is to

¹² Confrontation – simultaneous interrogatory of two such persons, in whose formerly given evidence there are relevant contradictions.

provide for every person, who has committed the criminal offence, just punishment. The prosecutor's office cannot determine general anti criminality policy indications (priority goals).

In the practice the public prosecutor and the inquiry performer (particular official of the inquiry office) give information to the mass media personally or via interposition of the special press expert of the prosecutor's office (inquiry office). However information can be presented in such an extent so it does not harm further investigation of the criminal case.

Conjoint investigation units between public prosecutors and police are established in investigation of separate serious crimes or especially serious crimes. Those units are established by the order of the Prosecutor General or by the order of the chief prosecutor of the Criminal law department.

Direction task for each process is to provide so that the main tasks of the criminal action would be observed – discover criminal offences, clarify culprits and to ensure legitimate adaptation of the law. However court is the institution that gives ultimate evaluation of the gathered evidence of the case and in the case of necessity court adopts collateral resolution together with decision making if material offences have been permitted while pre – trial investigation. The court with the collateral resolution draws official's and governmental authority's attention, as well as attention of inquiry office and prosecutor's office of the committed offences in the criminal case.

The sequence of the criminal procedural investigation actions performed at the inquiry office

According to the general principle the inquiry performer (particular official of the inquiry office) has right to perform criminal procedural investigation actions on his/her own initiative. The law does not stipulate that the inquiry performer must consult the public prosecutor in advance regarding investigation questions. However by observing the functions of the public prosecutor in the process of the pre – trial investigation, which are, to give indications for specific performance of the investigation actions in cases when the inquiry performer is requesting such assistance, the public prosecutor has to dispute the process of investigation and if necessary to give indications of the investigation actions to be performed.

Besides, especially in those cases, which last at the pre – trial investigation inquiry office, the public prosecutor has right to give indications of the investigation actions to be performed on his/her own initiative. Although it does not restrict the inquiry performer in such cases to perform other investigation actions.

The performance of the investigation actions with special intregation procedure (approval or decision) is mainly referred to the cases when it can relevantly influence human rights. In such cases the approval (decision) of the public prosecutor or the court is required. It applies to the following investigation actions:

1. The search can be performed based on the decision made by the judge. In the urgent cases, when the approval of the judge cannot be received immediately (for instance, during the night), the search can be performed by the consent of the public

prosecutor. In the latter case the public prosecutor has liability to announce about the fact to the judge with in the time of twenty-four (24) hours. Range of criminally punishable offences, when search can be applied during the investigation, is not limited.

2. To attach the correspondence and its collection from the post and telegraph offices can be performed based on the decision made by the court or the judge, when investigating serious crimes or particularly serious crimes².
3. To listen to the conversations of the suspect or the accused or to obtain an information via technical device can be performed based on the decision made by the court or the judge. This investigation action can be performed, when investigating less serious crimes, serious crimes or particularly serious crimes³.

There are also exemptions, which are not connected with the human rights:

1. To guarantee the confidentiality of the documents containing the state secret, there is a specific order for collecting and examining these documents. The collection and examination of the documents containing the state secret can be performed only based on the decision made by the judge and in the order that has been co-ordinated by the head of the respective office.
2. To traumatise the psyche of the person being under age as little as possible, when investigating criminal offences of separate degrees, witness who has not reached fourteen (14) years of age or victim who has not reached eighteen (18) years of age, direct interrogatory has to be performed, if the opinion of psychologist expert enables that. In case when psychologist expert declares that the direct interrogatory is not advisable, it can only be done with the authorisation of the judge.

Other criminal procedural coercive methods, which are not considered to be investigation actions, but at the same time can promote the performance of the investigation actions, the inquiry performer is rightful to enforce on his/her own initiative, and particularly:

1. The forced bringing of the witness (accused, suspect), if the persons mentioned have not appeared in accordance with the call;
2. To apply coercive methods to the suspects (with the exception of imprisonment, which only court is rightful to apply);

² Serious crimes and particularly serious crimes include deliberate offences for which in accordance with the Criminal Law in its particular assent of the section the penalty of deprivation of liberty for more than five years has been determined.

³ The investigation action mentioned in this case can apply for offences (not taking into consideration the form of intent), for which in accordance with the Criminal Law in its particular assent of the section the penalty of deprivation of liberty for more than two years has been determined.

3. The arrest of the person, who is being suspected for committing criminal offence.

In the latter case regarding the arrest of the person, the inquiry performer has liability to announce about the arrest to the public prosecutor within the time of twenty-four (24) hours from the moment of arrest. In the case of necessity the public prosecutor can get acquainted with the materials of the criminal case, as well as to decide the question about the validity of arrest.

The order of the execution of the operational activities at the inquiry office

Operational activities are actions, which one of the main goals is the discovery of criminal offences, clarification of the persons who have committed the criminal offences and clarification of the source of the evidence. The Operational activities are:

1. Operational inquiry (obtaining of the information of facts, persons and objects);
2. Operational observation (tracking of persons);
3. Operational examination (concerning only examination of publicly accessible areas and premises),
4. Obtaining and study of operational patterns (handwriting of a person, obtaining patterns of the voice and etc.);
5. Operational admittance (secret admittance in the premises, vehicle and in other publicly inaccessible objects);
6. Operational experiment (the goal – to examine the probability of the person and its goals; probable action of the patterned persons, to examine the existence of the matter or its process and etc.);
7. Operational detective operation and etc.

In contradistinction to information obtained in the result of the criminal procedural actions, information obtained in the result of the operational actions cannot automatically be used as evidence in the criminal case. The completion of this information as an evidence of criminal case occurs in the particular order, that is, news obtained in the undertakings of the operational action can be used as an evidence of the criminal case only then, if they can be inspected in the order determined in the Criminal Procedure Code of the Republic of Latvia, that is, using those criminal procedural actions and performance of such order that is determined by this law.

All undertakings of the operational actions can be divided into:

1. General(if they materially do not insult constitutional rights of the persons), which can be undertaken with the direct approval of the head of the office;

2. Specific (if they materially do insult constitutional rights of the persons), which require particular intregation procedure. The approval of the chairman of the Supreme Court or the approval of his specially authorised judge of the Supreme Court is required in order to perform following operational undertakings of the particular degree:
 - operational control of the correspondence;
 - operational obtaining of the information from the technical devices
 - operational interception of non public conversations (via telephone set or any other communication device);
 - operational admittance.

The approval of the public prosecutor is required for the performance of following operational undertakings:

1. for the operational experiment, the goal of which is to record the action of persons in the situation caused by criminal action or action that is otherwise illegitimate;
2. for the operational detective action, which is connected with the participation in the criminal environment.

LIECHTENSTEIN

Who is ultimately responsible for a proper investigation?

Pursuant to § 21 (1) StPO¹³ it is the public prosecutor who is competent to prosecute all criminal offences that render the accused liable to public prosecution; pursuant to § 20 (5) StPO, he may enlist the assistance of the police. Accordingly, it is the public prosecutor who is responsible and accountable for the correct investigation of punishable actions. In practice, the police does investigations on its own in routine cases and informs the public prosecutor only when a report has been filed. The relevant provisions state the following: Art. 12 (1) of the Ordinance on the Operation and Organization of the National Police (PolDOV, LGBl. 2000 no. 195) states that the National Police is headed and organized by the police chief. Pursuant to Art 12 (2)(1) PolDOV, he also holds disciplinary power. Art. 8 Police Act (PolG, LGBl. 1989 no. 48) states that the National Police is subordinate to the government, the latter carrying out supervision pursuant to Art. 9 Police Act. Pursuant to Art. 20 PolG, the courts of law are authorised to enlist the services of and issue instructions to the National Police in their proceedings and in the enforcement of decisions; under the provisions of the Code of Criminal Procedure, these powers are also due to the public prosecutor (Art. 20 (1), last sentence PolG). To the extent the National Police has to enforce court decisions, it is under the authority of the court (Art. 20 (2) PolG). § 20 (5) StPO (LGBl. 1988 no. 62) authorises the public prosecutor to directly contact the law enforcement authorities and other authorities and to enlist their services. However, § 21 (5) StPO states that it is only as an exception and in urgent cases that the public prosecutor may interrogate persons (not sworn) who are probably able to provide information on offences committed, carry out inspections or searches, or have such investigations carried out by the law enforcement authorities.

This has the following effects:

If the National Police carries out an investigation pursuant to Art 2 (1)(b) Police Act in accordance with the Code of Criminal Procedure without contacting the public prosecutor or the courts, it is also responsible for those investigations, being ultimately accountable to the government pursuant to Art 9 PolG. Generally, this is the case only in small cases and at an early stage of the proceedings.

If the office of the public prosecutor instructs the police to carry out a criminal investigation pursuant to § 20 (5) and § 21 (5) StPO, it is responsible as the instructing authority (Art. 20 (1) last sentence in connection with Art. 20 (2) PolG).

If, however, a judicial investigation is carried out pursuant to §§ 41 et sqq. StPO by an investigating magistrate of the Princely Court of Justice, the investigating magistrate is responsible for the correctness of the proceedings.

Pursuant to § 20 (2) StPO, the public prosecutor "shall ensure that all means to find out the truth are employed correctly."

¹³ Strafprozessordnung = Code of Criminal Procedure

Who has the task of ensuring that the police respect all statutory rules and procedures in criminal investigation with respect to the effectiveness of the fight against crime and to make sure they respect human rights (in particular where persons are deprived of their liberty)?

In criminal proceedings, a person may only be arrested on the basis of a judicial arrest warrant. A person may also be arrested without an arrest warrant if caught in or after the act of committing a misdemeanour or crime as well as in cases of imminent danger. The arrested person must be presented within 48 hours to a judge who will decide whether or not detention shall continue.

As the holder of disciplinary power, the police chief must ensure that the regulations are complied with, and in addition the office of the public prosecutor is authorised to initiate criminal proceedings in cases of unjustified arrest. As already mentioned, § 20 (2) StPO obliges the office of the public prosecutor to ensure that all means to investigate the truth are employed correctly. It may also inform itself about the status of current investigations by inspecting the files or demanding information and submit the suitable applications, without, however, causing undue delay to the criminal proceedings.

Are the police under an obligation of prior consultation with the public prosecutor on investigation matters? If so, does this apply to all criminal cases or to important cases only?

The police is not generally obliged to consult the public prosecutor in advance in matters concerning investigations. Measures of coercive power such as house searches pursuant to § 92 et seq. StPO or the monitoring of telephone conversations pursuant to § 103 StPO require a judicial order, which is issued by the court on application by the public prosecutor.

In practice, however, the National Police, public prosecutors and investigating magistrates work together very closely, so that the police informs the public prosecutor at a very early stage of an investigation in all major and sensational cases.

May the public prosecutor issue detailed instructions to the police? If so, please elaborate.

Pursuant to § 20 (5) StPO, the public prosecutor may directly contact law enforcement and other authorities and enlist their assistance. He may issue detailed instructions to the National Police.

In what type of cases do police officers need approval of, or co-operation with, the public prosecutor for the use of certain means of coercion?

The use of coercive measures is regulated in the Police Act, the Act on National Administration (LVG), and the Code of Criminal Procedure.

In criminal proceedings, the use of coercive measures requires a court order. Such an order is normally issued following an application by the public prosecutor. For example, § 93 (3) StPO states that a house search may only be carried out on the basis of an order by the investigating magistrate with grounds. If there is imminent danger, the search warrant may be carried out

immediately, but the search warrant must be presented to the parties concerned within twenty-four hours.

The monitoring of telephone conversations may be ordered by the investigating magistrate pursuant to § 103 (2) StPO, but he must obtain the approval of the President of the Court of Appeal forthwith. If approval is refused, the investigating magistrate must revoke the order immediately and have the recordings destroyed.

Normally, arrests may also be carried out only on judicial order. Pursuant to § 128 in connection with 127 StPO, the investigating magistrate has to issue an arrest warrant against a suspect if

1. the suspect has been caught in the act or is credibly accused of being the perpetrator immediately after a crime or misdemeanour has been committed or if he is found with weapons or other items that come from the crime or misdemeanour or otherwise indicate his involvement;
2. the suspect is fugitive or in hiding or if certain facts indicate a danger that he might flee or go into hiding because of the probable amount of the punishment awaiting him or for other reasons;
3. the suspect has tried to influence witnesses, experts or other accused persons; to remove the traces of the deed; or to inhibit the finding of the truth in any other way; or if certain facts indicate the danger that he will try to do so; or
4. it must be assumed because of certain facts that he will repeat the offence or carry out an offence he has threatened or attempted to commit.

As an exception, the police may carry out arrests pursuant to § 129 StPO without a court order if the suspect is caught in the act or is credibly accused of being the perpetrator immediately after a crime or misdemeanour has been committed, or if he is found with weapons or other items that come from the crime or misdemeanour or otherwise indicate his involvement, or if the other cases listed above apply, provided that obtaining the investigating magistrate's order preliminarily is undue because of imminent danger.

The arrested person must be turned over to the investigating magistrate within 48 hours after being arrested.

To counter dangers to public safety and order, the National Police has the power to employ the following coercive measures under the Police Act and the Act on National Administration in addition to the powers of the general police clause:

Establishment of identity:

The establishment of identity serves to establish the personal data of an unknown person or to check whether a certain person is identical to a wanted person (Art 24 (1) PolG). The authority of the National Police to establish the identity of person includes the right to stop the person to be

examined, to ask the person for his or her personal data, to ask him or her to present proof of identity, and for that purpose to open vehicles and other containers (Art 24 (2) PolG). If the identity of a person cannot be established with certainty on the spot or only with considerable difficulties, or if there are doubts as to the correctness of the information offered, as to the genuineness of the proof of identity supplied, or as to the lawful possession of vehicles or other items, the person may be taken to the police office (Art 24 (3) PolG). However, the principle of proportionality in administrative law must be observed in that context (cf. Herbert Wille, Verwaltungsrecht, LPS 38, p. 516 et seq.).

B. Measures for identification:

The taking of finger- and palmprints, the taking of comparative samples for the preparation of DNA profiles, the taking of pictures, the ascertainment of physical features, and the taking of handwriting samples are permitted pursuant to Art 91 PolDOV if they serve the purpose of prosecution, pre-emptive crime fighting or other special reasons stated in the law (cf. on this subject Herbert Wille, Verwaltungsrecht, LPS 38, p. 518). (At least with regard to the taking of comparative samples for the preparation of DNA profiles it is questionable whether Art 91 PolDOV is sufficient, in particular since the PolDOV is just an ordinance and not a law, and since the taking of a DNA sample is a major encroachment on a person's fundamental rights.)

C. Searching of persons

In addition to a search for the protection of the police officers, the persons concerned themselves, or other persons, that measure is admissible pursuant to Art 25 (1) PolG and Art 84 (1) PolDOV against persons who are or become highly suspect of a crime or misdemeanour, carry arms unlawfully, or against persons that are otherwise helpless if this is necessary to establish their identity, as well as against persons that have been preliminarily arrested or put into police custody. The manner of implementation is a matter of proportionality; it must therefore be done as considerately as possible. The search must be carried out by a person of the same sex. This principle may only be deviated from if the examination does not suffer any delay (Art 25 (2) PolG). Cavity searches must be done by a doctor (Art 84 (4) PolDOV).

D. Searching of movable objects

The searching of objects is only permitted with vehicles and other movable objects provided that these are held by a person that may be searched (see above) or if there is the suspicion that there is a person inside who is either held unlawfully or who may be preliminarily arrested or put into police custody, or if it is suspected that there is an item inside that may be secured (Art 85 (1) PolDOV). If possible, the search is carried out in the presence of the person who is in control of the object (Art 85 (2) PolDOV).

E. Searching of premises

The searching of premises is subject to the provisions of the Code of Criminal Procedure (see above). In administrative enforcement proceedings, however, administrative organs may - for the purpose of enforcing administrative decisions - search rooms to the extent it is indispensable to

enforce an official action against the holder of the rooms or special laws so allow (Herbert Wille, Verwaltungsrecht, LPS 38, p. 520 et seq.).

F. Securing

Securing removes the actual control of an item from the person authorised to hold it. The object must be returned as soon as the requirements for securing no longer exist. Securing is possible to avoid an offence or avert a danger or protect the owner or lawful possessor from loss or damage (Art. 87 PolDOV). Securing also concerns objects and assets that may be important for a criminal investigation or which are subject to forfeiture, seizure or absorption of enrichment provided that any delay to immediate securing cannot be suffered (Art 87 (2) PolDOV).

G. Police custody

Pursuant to Art 133 (1) of the Act on National Administration, police officers may take persons into police custody if this measure is necessary and indispensable for their own protection, for the protection of public morals, safety, health or peace and other permitted coercive measures would not suffice. Accordingly, there is a difference between safety custody, which is ordered for averting a danger to life and limb of the person taken into custody, and preventive custody for preventing an immediate disturbance of public safety and order. Safety custody requires danger for life and limb, in particular because the person is either in a state excluding free exercise of will or is otherwise helpless. In those cases, the National Police must check if medical assistance must be provided, in particular if there is a danger of suicide or the suspicion that reasons for custodial detention might apply (Art 83 (2) PolDOV). Safety custody must be discontinued as soon as the endangering state or the dangerous behaviour has ceased, the person is fully conscious and no liberty-depriving measures have been ordered by the competent authorities (Art 83 (3) PolDOV). It is a principle of police custody that the person taken into custody must be set free immediately if possible, or otherwise in the course of the following day. Otherwise, the legally possible transfer to the competent authority must be effected during that time (Art 133 (2) LVG). Art 83 PolDOV states other cases of police custody in addition to safety custody, but these are ancillary measures of administrative enforcements such as arrest for ensuring the enforcement of a temporary eviction ordered by the competent instance, an extradition, or a deportation (cf. Herbert Wille, Verwaltungsrecht, LPS 38, p. 523 et sqq.).

H. Temporary eviction and prohibition from entering

Temporary eviction and prohibition from entering mean that a person may be temporarily evicted from a place or may be temporarily prohibited from entering a certain place. Eviction and prohibition from entering are admissible to protect the persons concerned from serious and immediate danger, or to ensure the unhindered progress of a police operation.

In connection with protection from violence in the family, the National Police may - as a reaction to certain facts, in particular following a previous attack against the life, health or freedom of a family member - order the person from whom the danger emanates to leave the apartment and the immediate surroundings of where the endangered person lives, and if necessary issue a prohibition from entering a certain area (Art 30 a and 30 b PolG).

Can the police use special investigation methods without prior authorisation (such as use of informants, infiltrations and so forth)?

The use of special investigation methods such as the monitoring of telephone conversations must be ordered by the investigating magistrate (§ 103 et seq StPO). The use of informants or infiltrators is not expressly regulated in Liechtenstein law, but it is the prevailing opinion that it is not prohibited, either.

Is it possible for the prosecutor to take over, either in whole or in part, the investigation from the police or any other criminal investigating authority? If so, in what circumstances?

As already explained, the public prosecutor may directly contact the law enforcement authority or other authorities and claim their assistance pursuant to § 20 (5) StPO, which implies the authority to give instructions to the police in criminal cases. Also, he may enlist the services of the police pursuant to Art 20 (1) last sentence PolG and issue instructions to them. Accordingly, he may also take over an investigation as a whole or in part.

Normally, however, the public prosecutor only applies for the initiation of court proceedings so that it is the investigating magistrate who claims the services of and instructs the police pursuant to Art 20 PolG, also on application of the public prosecutor.

In relation to the investigating magistrate, the public prosecutor is just an applicant, in particular since § 19 (3) states that the public prosecutor is independent from the courts, which naturally also applies the other way round.

Can the prosecution service set priorities as to the instigation of investigations?

With very few exceptions, Liechtenstein criminal procedural law applies the principle of legality. Pursuant to § 53 StPO, the National Police must immediately report to the prosecutor all punishable acts it perceives or otherwise learns of which are not of the type only prosecuted at the request of an involved party. The public prosecutor cannot influence the behaviour of the National Police and cannot prescribe priorities to them.

May the prosecution service lay down general crime policy guidelines (priority targets) for the police? In what form? If not the public prosecutor, then who?

Pursuant to Art 8 PolG the National Police is subordinate to the government, which is responsible for security policy. Therefore, it is up to the government to issue guidelines for the National Police as to the fighting of crime. Politics is not part of the responsibilities of the Office of the Public Prosecutor. The Office of the Public Prosecutor is a pure investigation and indictment authority.

Are the police in general obliged to report to public prosecutor all offences / some offences that came to their knowledge? Do they do this in practice?

Pursuant to § 53 StPO all public authorities and offices must immediately report to the prosecutor all punishable acts they perceive or otherwise learns of which are not of the type only prosecuted at the request of an involved party. The police complies with this rule. The police reports facts, and judging them from the legal aspect is up to the public prosecutor. There are rarely any problems with this in practice. The law does not give the police any discretion whether or not punishable actions should be reported.

Can the police refuse an order of the public prosecutor to conduct an investigation or delay its execution? How does it work in practice?

Pursuant to § 20 (5) and § 21 (5) StPO, the National Police receives instructions, and the public prosecutor gives instructions. Should a police officer refuse to follow an instruction, the prosecutor will turn to the head of the department the officer belongs to, who will initiate disciplinary proceedings pursuant to Art 99 et sqq. PolDOV if appropriate. If the police officer in question is a department head, the prosecutor will turn directly to the police chief. Should the police chief also refuse the instructions of the prosecutor, the prosecutor will turn to the government, which supervises the police in accordance with Art 9 PolG. However, there are no such problems in practice. If there are capacity problems, in particular with large cases of white collar crime, agreement with the National Police is striven for.

Which body deals with complaints against police involved in criminal investigation?

Pursuant to Art 12 (1)(l) PolDOV, the police chief exercises disciplinary power. Disciplinary matters are regulated in Art 99 et sqq. PolDOV. Every police officer is responsible under the rules of discipline for negligent violations of his service duties. The department heads are responsible for controlling the compliance of their subordinates with the law, the service regulations, and the instructions given to them. If there are violations of service regulations and instructions, violations of the law, or a continuing situation that cannot be remedied, the police chief must be informed. The department head may apply to the police chief to issue disciplinary matters. Subject to the provisions of the Civil Servants Act and the relevant ordinances, the police chief may issue oral reprimands or written admonitions regardless of whether there is an application by a department head. Depending on the seriousness of the violation or if the violation of service obligations is repeated despite a reprimand or admonition, the police chief will file a report to the government for opening disciplinary proceedings. In any event, the head of the proper ministry must be informed. If due to the type and seriousness of the violation it seems insufferable or irresponsible towards citizens or co-employees that the officer in question continue to serve until the full clarification of the facts and the consequences, the police chief may suspend the police officer from office with immediate effect. The disciplinary proceedings are administrative proceedings and are subject to the normal instances of administrative law (government – Administrative Court – State Court). If it is alleged in such a complaint that an abuse or injury or other punishable offence has been committed by the police, the superior officer must immediately report the facts to the public prosecutor. The latter normally applies that the facts be investigated by the investigating magistrate, who is independent.

In practice, do prosecutors or police provide the media with information about criminal investigations?

The media are informed about investigations depending on the nature of the case. The police have their own press officer. The Prosecutor General does the press work for the office of the public prosecutor. The Court of Justice also has its own press officer. The giving of information to the press is coordinated between the office of the public prosecutor, the National Police, and the courts if applicable. Details are regulated in the Information Act (LGBI. 1999, no. 159), special emphasis being put on the presumption of innocence when informing the press. Although Art. 12 Information Act states that inquiries, questions and research by media people shall be supported if possible, information on pending proceedings is only provided if there is particular public interest in terms of Art. 23 Information Act, namely:

- if the co-operation of the public is required in solving an offence;
- if immediate information is appropriate in a particularly serious or sensational case;
- if this is appropriate in order to avoid or correct incorrect reports or in order to calm the public;
- if it is required for the sake of protecting the public.

If you have experiences with Joint Investigation Units between prosecutors and police, please describe advantages and disadvantages.

There are no joint investigation units in Liechtenstein. However, the office of the public prosecutor, the investigating magistrates, and the police often work in close cooperation. Experience is positive, there are hardly any problems.

LITHUANIA

Who is ultimately responsible for a proper investigation?

Article 2 of the Code of Criminal Procedure of the Republic of Lithuania (hereinafter referred to as CCP) obliges the prosecutor and the pre-trial investigation institution to detect criminal acts, i.e. whenever elements of a criminal act are discovered, the prosecutor and the institutions of pre-trial investigation must, within the limits of their competence, take all measures provided by the law that an investigation be conducted and the commission of a criminal act be established within the shortest terms possible.

Article 164 of CCP indicates the following pre-trial investigation entities: a) pre-trial investigation officers who conduct the investigation; b) the prosecutor who organizes and leads the pre-trial investigation; he may decide to conduct the whole pre-trial investigation or part of it himself. c) pre-trial judge who, in the cases specified by this Code, may conduct certain actions.

Under the provisions of Article 170 of CCP, the prosecutor is obliged to supervise the course of pre-trial investigation. Besides, the prosecutor gives instructions to the officers of pre-trial investigation institutions, and rescinds unlawful or ungrounded decisions made by them.

Articles 218-219 of CCP state that, in the event where the prosecutor is certain that during the pre-trial investigation sufficient information attesting to the culpability of the suspect for committing a criminal act, has been gathered, he decides to terminate the pre-trial investigation, drafts the bill of indictment, and transfers the said document (together with the case dossier) to the court.

Accordingly to Paragraph 5, Article 7 of the Guidelines for the Prosecutor's Activities While Organizing and Supervising the Pre-trial Investigation, approved by the order of the Prosecutor General of the Republic of Lithuania, both the prosecutor who organizes and supervises the pre-trial investigation and the pre-trial investigation institution shall be held liable for the results of the pre-trial investigation.

Who has the task of ensuring that the police respect all statutory rules and procedures in criminal investigation with respect to the effectiveness of the fight against crime and to make sure they respect human rights (in particular where persons are deprived of their liberty)?

Article 62 of CCP, which establishes the procedure of appealing against the procedural actions and decisions of the pre-trial investigation officer, determines that the parties to the proceedings may lodge complaints against the procedural actions and decisions of the pre-trial investigation officer with the prosecutor supervising the activities of the pre-trial investigation officer.

In the event of dismissal of the complaint by the prosecutor, his decision may be appealed against with the pre-trial judge.

Under the provisions of Article 170 of CCP, the prosecutor is obliged to supervise the course of pre-trial investigation. Besides, the prosecutor gives instructions to the officers of pre-trial investigation institutions, and rescinds unlawful or ungrounded decisions made by them.

Accordingly to Article 121 of CCP, arrest and house arrest may be imposed only pursuant to an order of a pre-trial judge or the court. Further to the provisions of Article 123 of CCP, in the cases when the prosecutor holds that it is necessary to impose arrest upon the suspect who is not in custody, he must file an application with the pre-trial judge of a district court of the place where investigation is being conducted. The judge shall then decide upon the imposition of arrest on the suspect.

Are the police under an obligation of prior consultation with the public prosecutor on investigation matters? If so, does this apply to all criminal cases or to important cases only?

Article 171 of CCP, which determines the actions of the officers of pre-trial investigation institutions prior to the commencement of a pre-trial investigation, provides as follows: ‘If a complaint, a statement or a report about a criminal offence is received by a pre-trial investigation institution, or if a pre-trial investigation institution itself establishes the elements of a criminal offence, the officer of the pre-trial investigation institution shall forthwith commence a pre-trial investigation and shall, at the same time, notify a prosecutor of it.

May the public prosecutor issue detailed instructions to the police? If so, please elaborate.

Under the provisions of Article 170 of CCP, which determines the prosecutor’s competencies within the sphere of conducting a pre-trial investigation, the prosecutor is obliged to supervise the course of pre-trial investigation. In addition, the prosecutor gives obligatory instructions to the pre-trial investigation officers.

Accordingly to Article 20 of the Guidelines for the Prosecutor’s Activities While Organising and Supervising the Pre-trial Investigation, approved by the order of the Prosecutor General of the Republic of Lithuania, the prosecutor may give verbal and written instructions.

In this way, the prosecutor, who supervises the course of pre-trial investigation and holds that it is necessary to conduct certain procedural actions during the investigation, notifies the officer conducting the pre-trial investigation of it.

In what type of cases do police officers need approval of, or co-operation with, the public prosecutor for the use of certain means of coercion?

Part III of CCP introduces the kinds of procedural measures of constraint. The Code of Criminal Procedure of the Republic of Lithuania lists procedural measures of constraint and, first of all, determines who (police officer, prosecutor, pre-trial judge) is entitled to apply them. Additionally, in individual cases, this Code establishes certain conditions for employing these measures by the above-listed subjects. Alongside with the necessary conditions established for the use of procedural measures of constraint, specific offences, for whose investigation these measures may be applied, are also separately indicated.

Article 120 of CCP enumerates all provisional measures as procedural measures of constraint, namely: arrest, house arrest, bail, seizure of documents, injunction to report periodically to the police, written pledge not to leave; provisional measure for a soldier may be observation/supervision by the command of the unit where he is doing his service, and for a minor – his committal to the supervision of his parents, guardians or other natural or legal persons who take care of children. Article 121 of CCP states that arrest and house arrest may be imposed only pursuant to an order of a pre-trial judge or the court (the prosecutor is obliged to apply to the judge); other provisional measures – pursuant to a prosecutor’s decision or an order of a pre-trial judge or the court.

While investigating any criminal act, the pre-trial investigation officers may independently (without a separate authorization) make a provisional arrest, bring in a person, conduct a superficial body search; they also have a right to take samples from the suspect for the comparative analysis, take photographs, film, measure the suspect, and take his fingerprints.

Other procedural measures of constraint may be applied only pursuant to an authorization of a pre-trial judge, which is granted upon the receipt of the prosecutor’s request.

While investigating serious, very serious crimes, or certain crimes that are pointed out separately, in cases when there is an order of the investigating judge made under the prosecutor’s request, the information transmitted via telecommunications networks may be intercepted, and recordings may be made.

While investigating serious, very serious crimes, or minor crimes specified in Sections XXVIII and XXXVII of the Criminal Code of the Republic of Lithuania (hereinafter referred to as CC), or certain crimes that are pointed out separately, in cases when there is an order of the investigating judge made under the prosecutor’s request, the officers of a pre-trial investigation institution may conduct investigation without disclosing their identity, and use a mode of conduct simulating a criminal act.

Can the police use special investigation methods without prior authorization (such as use of informants, infiltrations and so forth)?

The police uses informants as a method of investigation, however, the information obtained in this way may be used as evidence in the case only after it is confirmed in accordance with the procedure established by CCP (hearing of witnesses, review of exhibits, etc.).

While investigating serious, very serious crimes, or minor crimes specified in Sections XXVIII and XXXVII of the Criminal Code of the Republic of Lithuania (hereinafter referred to as CC), or certain crimes that are pointed out separately, in cases when there is an order of the investigating judge made under the prosecutor’s request, the officers of a pre-trial investigation institution may conduct investigation without disclosing their identity, and use a mode of conduct simulating a criminal act.

Is it possible for the prosecutor to take over, either in whole or in part, the investigation from the police or any other criminal investigating authority? If so, in what circumstances?

Under the provisions of Article 170 of CCP, which determines the prosecutor's competencies in the sphere of conducting a pre-trial investigation, the prosecutor is entitled to conduct the whole pre-trial investigation or separate acts of pre-trial investigation himself.

Accordingly to Article 23 of the Guidelines for the Application of Articles 169 and 171 of the new Code of Criminal Procedure, approved by the order of the Prosecutor General, it is recommended that, upon considering actual possibilities with respect to the performance of the prosecutors' functions in a particular prosecutor's office, the following criminal acts be investigated: criminal acts demanding a particularly high qualification level of investigators; criminal acts that are of particular public significance; criminal acts that were committed by the then: President of the Republic of Lithuania, members of Seimas (Parliament of Lithuania) or Government, the judges of the Constitutional Court, judges, prosecutors; criminal acts because of which the above-listed persons sustained damage; criminal acts involving the elements of corruption; criminal acts committed by organized groups or criminal organizations; criminal acts related to the pre-trial investigation officers' abuse of authorities while conducting a pre-trial investigation.

Can the prosecution service set priorities as to the instigation of investigation?

Pursuant to the Lithuanian legislation, the prosecutor's office has not been granted a right to set priorities as to the initiation of the investigation.

Articles 169 and 171 of CCP stipulate that, upon the receipt of a complaint, a statement, or a report about a criminal offence, both the prosecutor and the pre-trial investigation institution shall forthwith commence the pre-trial investigation.

May the prosecution service lay down general crime policy guidelines (priority targets) for the police? In what form? If not the public prosecutor, then who?

Further to the resolution of the Seimas of the Republic of Lithuania, activity priorities (with respect to specific criminal acts) of the prosecutor's office are set for a concrete year. However, pursuant to the Lithuanian legislation, the prosecutor's office has not been granted a right to set general crime policy guidelines.

Are the police in general obliged to report to public prosecutor all offences/some offences that came to their knowledge? Do they do this in practice?

Article 171 of CCP, which determines the actions of the officers of pre-trial investigation institutions prior to the commencement of a pre-trial investigation, provides as follows: 'If a complaint, a statement or a report about a criminal offence is received by a pre-trial investigation institution, or if a pre-trial investigation institution itself establishes the elements of a criminal offence, the officer of the pre-trial investigation institution shall forthwith commence a pre-trial investigation and shall, at the same time, notify a prosecutor of it.'

Similarly, the police, as all the other pre-trial investigation institutions, notifies the prosecutor of the commencement of the pre-trial investigation.

Can the police refuse an order of the public prosecutor to conduct an investigation or delay its execution? How does it work in practice?

The Code of Criminal Procedure does not provide for a statutory right and a possibility for the police not to conduct the pre-trial investigation because the prosecutor's instructions are obligatory (Paragraph 3, Article 170 of CCP), and only the prosecutor is entitled to terminate the pre-trial investigation (Subparagraph 2, Paragraph 4, Article 170 of CCP).

Which body deals with complaints against police involved in criminal investigation?

Article 62 of CCP, which establishes the procedure for lodging complaints against the procedural actions and decisions of the pre-trial investigation officer, stipulates as follows: 'Parties to the proceedings may lodge complaints against the procedural actions and decisions of the pre-trial investigation officer with the prosecutor supervising the activities of the pre-trial investigation officer. In the event of dismissal of the complaint by the prosecutor, his decision may be appealed against with the pre-trial judge.'

In practice, do prosecutors or police provide the media with information about criminal investigations?

Article 177 of CCP (Confidentiality of Information Concerning the Pretrial Investigation) provides that information concerning the pre-trial investigation shall not be made public. This information may be made public prior to the hearing of the case only subject to a prosecutor's leave and only to such an extent as is determined as permissible. The information related to the minor suspects and victims shall not be made public.

In practice, prosecutors and police provide the media with information about criminal investigations. Every effort is being made to provide the information without breaching the laws and without detriment to the investigation.

If you have experiences with Joint Investigation Units between prosecutors and police, please describe advantages and disadvantages.

Advantages: the investigation becomes more effective; while acting as the head of investigation unit, the prosecutor may give instructions directly to the police officer who is included in the make-up of the unit.

Disadvantages: as a rule, apart from being the members of investigation units, police officers are also given certain assignments with respect to other investigations by their direct chiefs, or participate in even several investigation units; as a result, their work in the investigation units becomes neither intensive nor efficient.

LUXEMBOURG¹⁴

Question 1

The question of responsibility for a proper investigation arises after the police stage, at the level of the Public Prosecutor, who does not send a case to court where the investigation appears to be incomplete or biased or where it has been conducted unfairly. It is for the Public Prosecutor to request the police to amend the investigation, so far as possible. Although primary responsibility is clearly borne by the police, it is borne in the second place by the Public Prosecutor. In any event, it is for the courts to penalise, directly or indirectly, the defects in an investigation.

Question 2

In cases involving a preliminary investigation, it is the Public Prosecutor who must ensure that the police respect all statutory rules and procedures.

In cases where the investigating judge conducts the investigation, which inevitably is always the case in Luxembourg law where a person is deprived of his or her freedom, the investigating judge must ensure that all the procedural laws are respected by the police.

It is important to note, however, that it is ultimately either the investigating courts or the trial courts that ensure that the police respect the procedural rules, since those courts may annul either certain procedural acts or entire procedures.

Question 3

The police are under no obligation of prior consultation with the Public Prosecutor on investigation matters. In practice, however, no important investigation is carried out without the Public Prosecutor being aware of it. As the police cannot carry out any coercive act without an order of the investigating judge, the question is more theoretical in the Grand Duchy of Luxembourg.

Question 4

The Public Prosecutor may issue detailed instructions to the police in cases in which a preliminary investigation is carried out, i.e. cases where neither the Public Prosecutor nor a complainant seeking civil damages has requested the investigating judge to initiate an investigation. In cases where the investigating judge has been requested to do so, it is he who is in charge of the investigation and who alone has the power to instruct the police to discharge the investigative duties which he deems appropriate.

Where there is a preliminary investigation, the Public Prosecutor may issue detailed instructions (concerning the witnesses to be heard, the technical checks to be carried out, the deadline for the end of the investigation) or quite simply transmit a case to the police for the purposes of the investigation.

¹⁴ Original reply received in French, see Appendix

Question 5

In a case in which an offence has been detected while in the process of being committed or immediately thereafter (“a case of *flagrant délit*”), the State Prosecutor may authorise a police officer to detain for not more than 24 hours any person against whom there is serious and corroborative evidence capable of founding an accusation.

The period of 24 hours begins to run when the person is actually detained by the law-enforcement agencies. At the end of the 24-hour period at the latest, the person detained must be brought before an investigating judge, failing which he or she must be released.

The State Prosecutor may order the operations necessary to identify the person detained, in particular the taking of his/her fingerprints and photographs. The Bill on the use of DNA also provides that in this case the State Prosecutor may authorise the taking of samples for the purpose of determining the DNA of the person detained.

In a case of *flagrant délit*, the State Prosecutor may also authorise searches and seizures. It should be noted, however, that during or in the immediate aftermath of the commission of the crime, these searches may be carried out by police officers without special authorisation by the Prosecution Service.

In Luxembourg law, certain coercive acts may only be ordered by the investigating judge (issue of an arrest warrant, issue of a detention warrant, telephone tapping, telephone tracing). Other than in cases of *flagrant délit*, only the investigating judge can order searches and seizures.

In a case of domestic violence, the State Prosecutor may authorise that the person responsible for the violence be expelled from the home for a period of 10 days.

Question 6

The use of informers is not governed by Luxembourg law. A degree of circumspection is therefore necessary in this situation. A Bill allowing the use of infiltration in certain circumstances is in the process of being drafted.

Question 7

There is no legal provision preventing the Prosecution Service from itself conducting an investigation. In reality, the police are always involved. For reasons of expediency, however, the case may be given to a different police service from the one initially responsible for conducting the investigation.

Question 8

The Prosecution Service can set priorities as to the instigation of investigations. It does so either by setting a deadline by which a specific investigation must be completed or by working with the

police authorities in order to determine together the priorities and the number of investigators indicated for the cases in question. This collaboration is recommended, moreover, if only because the police officers specialising in a specific area are limited.

Question 9

The Prosecution Service may, and does in fact, lay down general crime policy guidelines. The fact is, however, that certain problems arise, especially if the police see themselves as a police with responsibility for enforcing order and security and tend to neglect their general police powers. In reality, there are more or less permanent discussions between the police authorities, the investigating judges and the Prosecution Service about the balances that need to be struck.

Question 10

Under Article 12 of the Code of Criminal Procedure, police officers are required to inform the public prosecutor of serious offences, less serious offences and minor offences of which they are aware. Immediately their operations are closed, they must communicate their report directly to the Public Prosecutor.

Article 31 of the Code of Criminal Procedure further provides that where a serious offence or a less serious offence is detected while in the process of being committed or immediately thereafter, the police officer to whom it is reported must immediately inform the Public Prosecutor.

It should be noted, however, that in reality the Prosecution Service is advised forthwith only of offences which constitute a serious disruption of *ordre public* or where immediate intervention on the part of the Prosecution Service is required (for example, authorisation to detain a person). In many situations the representative of the Prosecution Service who is on duty is also counsel to a police department.

Question 11

It is difficult to imagine that the police should refuse to conduct an investigation ordered by the public prosecutor.

Police officers are subject to the supervision of the Principal State Prosecutor.

A police officer who has been negligent in the performance of his duties, or who has failed to fulfil the duties and obligations of his position, may receive a warning from the Principal State Prosecutor. If a warning is considered inadequate in the light of the facts alleged, the Principal State Prosecutor may bring the police officer before the Court of Appeal, sitting in chambers, which, independently of and without prejudice to any disciplinary proceedings, may deliver a reprimand, suspend the person concerned for two years or dismiss him from the police force.

Question 12

The Law on the Police and on the Inspectorate General of the Police conferred on the Inspectorate General of the Police powers to deal with complaints against the police in connection with a criminal investigation. The Inspectorate ensures that the laws and regulations are implemented and reports any breaches which come to its knowledge to the authority concerned.

The Prosecution Service may also instruct the Inspectorate General of Police to carry out judicial investigations into offences alleged to have been committed by a member of the police.

Question 13

By law, only the State Prosecutors are entitled to provide the press with information on the progress of proceedings, in conformity with the rights of the defence and the right to private life, and also the requirements of the investigation.

However, the police may provide information about any specific facts which have occurred in a public place.

In that regard, too, the police and the Public Prosecutors cooperate quite closely in order to ensure respect for the secrecy of the investigation, the needs of the investigation, the presumption of innocence and the right of the public to information. It hardly need be stated that it is not always an easy matter to respect those various rights.

Question 14

No experience.

MOLDOVA

First we want to stress, that in Republic of Moldova Prosecutor Office is an independent state organ that has the responsibility which are included in the Constitution of the Republic of Moldova, the Law on Prosecutor's Office, Criminal Proceeding Code and some others legislative acts.

In conformity with the new Criminal Proceeding Code (came into force on 12.06.2003), the prosecutor is the official person who conduct the prosecution in any case. So, prosecutor directs the work of the officers of criminal proceeding from police units, custom units, Information and security service and Center for Combating Economic Crimes and Corruption. Responsibilities of the prosecutor in carrying out the criminal prosecution are established in article 52 of the CPC.

Also, the prosecutors exercise the control on legality of representative of police units' actions, control on the legality of detained and arrested persons, control on operative - investigative operations.

MONACO¹⁵**QUESTIONS 1 AND 2**

The prosecution service.

In accordance with the provisions of Article 34 of the Code of Criminal Procedure:

"The Principal State Prosecutor shall direct the police force and conduct public action. He shall be specifically responsible for investigating and prosecuting crimes and offences".

In accordance with Articles 20 and 21 of the Order of 9 March 1918 on the organisation of the Directorate of Judicial Services:

"Article 20. The director of judicial services shall direct public action, without power either to conduct this himself or to halt or suspend the course thereof."

"Article 21. He shall, where necessary, issue his orders or instructions to officials of the prosecution service, who shall abide by these in their written information activities, freedom of speech being a matter for personal conscience."

In accordance with the provisions of Act No 783, of 15 July 1965, on Judicial Organisation:

"The Principal State Prosecutor shall be the head of the prosecution service. He shall be responsible for investigating and prosecuting crimes and offences; for supervising, demanding and maintaining, in the name of the Prince, the enforcement of laws, decisions and judgments; for ensuring ex officio their enforcement according to the provisions relating to public policy.

"He shall take care of all matters relating to public order."

The prosecution service shall ensure that investigators follow lawful procedures and respect human rights, particularly in the context of police custody.

QUESTION 3

The police are under an obligation of prior consultation with the public prosecutor on investigation matters.

In practice, under the provisions of Articles 31 and 32 of the Code of Criminal Procedure:

While *"the police shall note breaches of the criminal law, collect evidence of these and try to find the perpetrators"*, this obligation *"shall be fulfilled, under the authority of the Court of Appeal and under the direction of the Principal State Prosecutor, by the members of the police force, by the carabinieri, by the members of the public security service and, in the cases specified by special laws, by the officials designated in those laws"*.

¹⁵ Original reply received in French, see Appendix

In pursuance of Article 34 of the Code of Criminal Procedure, the Principal State Prosecutor receives *"complaints and reports of offences submitted directly to him, as well as any police reports, records and information about crimes and offences communicated to him by police officers or by any other means"*.

Finally, in accordance with Article 46 of the Code of Criminal Procedure, police officers *"shall send without delay to the Principal State Prosecutor any complaints and reports of offences which they have received and the police reports or records which they have written"*.

QUESTION 4

Yes, the prosecution service may issue detailed instructions to the police. For instance, it may order specific investigations according to a schedule set by it.

QUESTION 5

The approval of, or co-operation with, the public prosecutor for the use of certain means of coercion are not required prior to placement in custody, which may not exceed 24 hours.

In practice, the prosecution service asks to be informed as rapidly as possible.

QUESTION 6

No, the police have a duty to inform the public prosecutor when they make use of special investigation methods.

QUESTION 7

Yes, in theory the public prosecutor may take over an investigation from the police or any other criminal investigating authority, but there is, in practice, only one department which carries out criminal investigations.

QUESTION 8

Yes, the public prosecutor can set priorities as to the instigation of investigations. In practice, any report or discovery of an offence leads to the opening of an investigation.

QUESTION 9

Yes, the public prosecutor may lay down general crime policy guidelines for the police. He does this at joint meetings between the prosecution service and the police or through written or oral instructions.

QUESTION 10

Members of the police are under an obligation to report to the public prosecutor any offences which come to their knowledge.

More specifically, they must, in reports or records drawn up by them on the spot for this purpose, set down the nature and circumstances of crimes, offences or misdemeanours, the time and place of their commission, and the circumstantial and other evidence against the presumed perpetrators (Article 45 of the Code of Criminal Procedure).

QUESTION 11

The police may neither refuse nor delay the execution of an order of the public prosecutor to conduct an investigation. These rules are, in practice, strictly complied with.

QUESTION 12

Any police officer whose action is challenged may be the subject of an administrative inquiry conducted by his or her superiors.

Articles 48 et seq. of the Code of Criminal Procedure also lay down that *"the police officers who serve as auxiliaries to the Principal State Prosecutor shall be subject to the direction of the Principal State Prosecutor and under the authority of the Court of Appeal in respect of these duties, without prejudice to their subordination to their administrative superiors"*.

"Supervision of the activities of the police officers working in this capacity shall be exercised by the Court of Appeal in general assembly and in chambers."

"The court may have an investigation carried out. It shall give a hearing to the Principal State Prosecutor and the police officer, the latter assisted, if he or she so desires, by a lawyer."

"The court may, without prejudice to the administrative penalties likely to be imposed on the police officer by his or her superiors, address observations to him or her or temporarily or permanently prohibit him or her from performing his or her police duties, and, if applicable, order him or her to pay the prosecution costs".

According to the provisions of Article 78 of Act No 783, of 15 July 1965, on Judicial Organisation:

"In the event of negligence by police officers, the Principal State Prosecutor shall warn them and remind them of their obligations. This warning shall be recorded by him or her in a register kept for this purpose at the Principal State Prosecutor's Office".

QUESTION 13

It is in practice the prosecutors who provide information about certain criminal investigations to the media; in the most important cases, this is done by the director of judicial services him or herself.

QUESTION 14

No such participation in a Joint Investigation Unit has occurred.

NETHERLANDS

Question 1

Criminal investigations are usually conducted by the police. However, besides the police, other persons and organisations have been designated, such as, for example, the Fiscal Information and Investigation Service (FIOD) and the General Inspection Service (AID), as so-called special investigating officers. The Public Prosecutions Department has authority over investigations, also the investigative activities of special investigation officers. This means that the Public Prosecutions Department is responsible for investigation and prosecution. At the hearing, the Public Prosecutions Department renders account before the court. The Public Prosecutions Department acts under the full political responsibility of the Minister of Justice.

Question 2

The police come under the authority of the Public Prosecutions Department and must act in accordance with the prevailing rules of law. Principles of proportionality, subsidiarity, reasonableness and fairness apply as well. The Public Prosecutions Department is directly in charge of police investigations, monitors a careful and fair investigation and gives the necessary orders and instructions in this context. The Public Prosecutions Department is ultimately accountable to the court, also regarding the actions of the investigating agencies.

Question 3

Although the investigating agencies work under the direct responsibility of the Public Prosecutions Department, consultations are not held between the investigating agencies and the public prosecutor about all cases. The Public Prosecutions Department does not see many cases until the completed police report is received. However, agreements are made between the agencies, for example on which cases are to be tackled and what the relevant starting points are. These agreements can be found, for example in the various annual plans. There are also many agreements and guidelines on the form in which these things are to be submitted; sometimes on the target numbers as well. In the larger investigations, the aforementioned agencies get in touch with each other much sooner, and the public prosecutor will more clearly take charge of the matter already during the investigation. In the larger investigations, early contact is frequently necessary as well in connection with formal times at which the public prosecutor has to be engaged, for example when means of coercion are used.

Question 4

The public prosecutor is responsible for criminal enforcement (Section 13 of the Police Act 1993 (*Politiewet 1993*)). Under Section 141 of the Dutch Code of Criminal Procedure, (*Wetboek van Strafvordering [Rv]*), the public prosecutor is also the chief investigating officer and can also instruct the other investigating officers pursuant to Section 148 of the Dutch Code of Criminal Procedure. The public prosecutor is the formal leader of the investigation. However, because the Public Prosecutions Department is strongly dependent on the police in practice, and actual investigative knowledge and its management are in the hands of the police, close cooperation

between the investigation services and the public prosecutor is called for, certainly in complicated or large-scale investigations.

Question 5

The law prescribes which means of coercion require a permission/an order from the public prosecutor. The application of some means of coercion is related to certain categories of cases (for example Section 67 of the Code of Criminal Procedure). If investigative actions do not entail any violation of fundamental rights, these can be based on Section 2 of the Police Act 1993 and Sections 141 and 142 of the Code of Criminal Procedure. If this is the case, no consultation with the public prosecutor is necessary.

Because means of coercion can encroach deeply upon a citizen's legal rights, they must be (clearly) described in the law. This enables the investigating officer to know what his powers and corresponding obligations are, and the citizen to know the extent to which he must tolerate encroachments on his rights and freedoms. The Dutch Constitution also contains many provisions which are important for the application of means of coercion.

In cases sensitive to the impairment of rights, it is advisable for the police to contact the public prosecutor before using means of coercion. The police sometimes need permission from the public prosecutor before they are allowed to use a means of coercion. This is true for the exercise of special investigative powers, such as, for example, the collection of cell material for DNA testing.

Question 6

No. All legally regulated special investigative powers, as contained in the Special Investigative Powers Act (*Wet bijzondere opsporingsbevoegdheden*), require an order or demand from the public prosecutor. In a number of cases, an internal procedure must be followed within the Public Prosecutions Department. Under Section 140a of the Code of Criminal Procedure, the Board of Procurators General must approve an order to allow passage (Section 126ff Code of Criminal Procedure) and an agreement with a civilian infiltrator (Sections 126w and 126x Code of Criminal Procedure). Under Section 131, subsection 5, of the Judiciary (Organization) Act (*Wet op de rechterlijke organisatie*), in these cases, prior consultation must take place with the Minister of Justice. Under subordinate legislation, the following special investigative methods must be presented to the Central Assessment Committee, an advisory body of the Board of Procurators General, for assessment:

- long-term and project-based infiltration, including storefronts
- allowing harmful or dangerous goods to pass
- concessions to witnesses in criminal cases (“deals with criminals”)

Question 7

In Section 141, the public prosecutor is designated as the chief investigating officer. In Section 148, subsection 2, authority over the investigation is conferred on him. The public prosecutor has general investigative power, and would therefore be able to take over all or part of police

investigations. In practice, the public prosecutor would not actually do this. Not only because of the limited capacity at the Public Prosecutions Department, but also because the police generally have more expertise in investigative techniques and tactics than the public prosecutor.

Question 8

Yes. Subject to the national starting points and priorities set by the Minister of Justice in consultation with the Board of Procurators General in the fight against crime, the Chief Public Prosecutor is responsible for the quality and intensity (including priorities) of regional or national (National Public Prosecutor's Office, Dedicated Public Prosecution Service) investigation and prosecution policy to be pursued. The investigation policy must be coordinated with the prosecution policy. This policy must, for example, strike a balance between what is considered a national priority in the fight against crime and what is desired at local or regional level. The three-way consultation of the mayor, Chief Public Prosecutor and chief of police (or his deputy) is pivotal in this regard.

Question 9

Yes. Subject to the national starting points and priorities set by the Minister of Justice in consultation with the Board of Procurators General in the fight against crime, the Chief Public Prosecutor is responsible for the quality and intensity (including priorities) of regional or national (National Public Prosecutor's Office, Dedicated Public Prosecution Service) investigation and prosecution policy to be pursued.

Question 10

No. The capacity for investigation is finite, and choices will have to be made. Furthermore, the police cannot be expected to do the impossible: if investigative activities ultimately produce no results, this will eventually have to be accepted as a fact. There is a clear legal framework to indicate how the police should respond to individual offences that come to their attention. This is called the Investigation Instructions (*Aanwijzing opsporing*). Two criteria are important to indicate what may reasonably be expected of the police: the gravity of the offence, and the presence of clues that can result in clarification of the matter (the finding of suspects and evidence). The obvious rule of thumb is the graver the offence, the more has to be done to clarify the matter, so that suspects can be prosecuted and tried.

Question 11

No, not strictly speaking. In practice, there are consultations between the Public Prosecutions Department and the police: planning consultations and ad-hoc consultations in which account is taken of any relevant problems on the part of the police.

Question 12

If the police is accused of having committed an offence, this can and sometimes must be reported (Section 160 ff. of the Code of Criminal Procedure). This can be reported to either the public

prosecutor or the management of the police force. If a serious offence is suspected, the chief public prosecutor may decide to have an investigation conducted by the National Police Internal Investigation Department. If the alleged offence is not prosecuted, the interested party can lodge a complaint about this with the court of appeal (Section 12 Code of Criminal Procedure). Each reporting party or complainant is also at liberty to address the Board of Procurators General, the Minister of Justice or the Lower House (Standing Parliamentary Committee for Justice or Applications Committee).

On the basis of complaints or on its own initiative, the National Ombudsman, a High Institution of State established on the basis of the National Ombudsman Act (*Wet Nationale Ombudsman*), investigates acts of certain administrative bodies. An act by a public servant, performed in the exercise of his duties, is considered as an act of the administrative body on whose responsibility he is employed. In this way, the actions of an individual investigating officer can be assessed as well.

Question 13

Under Section 148, subsections 1 and 2 of the Code of Criminal Procedure, the Public Prosecutions Department is charged with the investigation and prosecution of offences. This encompasses all aspects of judicial actions. It follows from this that the Public Prosecutions Department is also responsible at all times for information provided to the media by the police, special investigation services and the Royal Netherlands Military Constabulary about judicial police actions.

The police communicates with the media passively and actively about offences and their investigation. In the earliest stage of a criminal investigation, from the time a criminal offence is ascertained or, for example, a report is made, in practice, the police inform the press under the responsibility of the Public Prosecutions Department. The more the Public Prosecutions Department intervenes in a case, the more input it has in the information provided to the press. There are times when information about a case is provided only by the Public Prosecutions Department. That time is different for each district public prosecutor's office. The nature of the case can be a reason for the Public Prosecutions Department to take sole charge of providing information to the press at an early stage. Agreements between each district public prosecutor's office and the regional police are made and recorded in a covenant, which regulates who is to do what and when. Separate consultations are held between the Public Prosecutions Department and police about sensitive and (possibly) sensational cases.

In principle, the Public Prosecutions Department informs the press of decisions to prosecute. In large and sensational cases, therefore, communication will often be active. This then concerns, for example decisions not to prosecute, the conclusion of transactions or the summoning of a suspect to appear in court. In cases in which the Public Prosecutions Department or the police have actively stated that a person is considered as a suspect, and a decision follows not to prosecute this person (further), the Public Prosecution will also actively inform the press about this. In reply to questions about a certain case, it will usually be candid about decisions regarding prosecution. In the event of high transactions (of more than 50,000 euros) and transactions in special cases, the issue of a press release is required.

Question 14

There has not yet been any actual experience with Joint Investigation Teams. On 1 July 2004, however, Instructions took effect which pertain to Joint Investigation Teams. These are the International Joint Investigation Teams Instructions (*Aanwijzing Internationale Gemeenschappelijke Onderzoeksteams*). These instructions set rules regarding the formation, scope, composition and powers of international joint investigation teams. They also deal with the possibilities for the use of foreign investigation results for the purposes of criminal prosecution in the Netherlands.

At present, a JIT has indeed been started between the United Kingdom and the Netherlands in the area of drugs.

NORWAY

The Director of Public Prosecutions (the DPP) has the ultimate responsibility for the investigation of criminal cases in Norway.

In principle, the DPP has the ultimate responsibility for ensuring that the police respect statutory rules and procedures and the basic human rights for persons held in police arrests etc.

In order to answer whether the police are under an obligation to consult with the public prosecutor on investigation matters, the unusual organisation of our prosecution service has to be briefly outlined. The Prosecuting Authority is organised on three levels: In addition to the DPP, there are 10 regional prosecuting authorities and a local level. As opposed to what is the case in many countries, the local level is integrated with the police (27 districts). Our local prosecutors have a police rank and, in principle, lead all criminal investigations.

As stated in no. 3 above, the local prosecutors are responsible for all investigations. Consequently, they may instruct police officers on how to carry out the investigation.

Moreover, also prosecutors on a higher level may instruct the police and ask for specific steps to be taken, e.g. further interviews with witnesses or suspects.

All decisions on the use of coercive measures has to be taken by a prosecutor unless in special circumstances where the police have to take immediate action.

As the investigation is led by a prosecutor, s/he will be involved in deciding whether special investigation methods are to be employed.

There is no need for the prosecutor to “take over the investigation” as s/he is always in charge of the investigation.

The decision whether to investigate a case is in principle a prosecutorial decision under our law.

The DPP annually issues a directive to the police setting out, in general terms, the aims and priorities for the police for the forthcoming year. The directive contains a list of crimes that shall be given the highest priority and it sets out a set of aims (high quality, high detection rate, rapid handling of cases and adequate sanctions). The aims are commented upon and guidelines as to how to achieve them are set out.

The regional prosecutor, taking into account the directives from the DPP, sets out more specific goals and priorities for the police districts in the region.

There is a report system in order to measure as to what extent the aims are met.

As the prosecution service is integrated in the police, the prosecutors will be informed of nearly all crimes. In some of the large police districts, however, the police officers do not always report on all the cases they are working on before they need consent to use coercive means.

No.

Until the end of this year, there is a special authority (“SEFO”) in every prosecutor region dealing with complaints against police officers and prosecutors. The authority is headed by a judge and has a lawyer in private practice and a police officer as members. SEFO conducts its own investigation. The regional prosecutor decides whether to prosecute or not, but may not instruct SEFO. Decisions taken by the regional prosecutor brought before the DPP as a complaint.

As from 1 January 2005 a national authority will be set up to deal with such cases. The central unit will decide whether to prosecute and handle the case before the courts. Complaints about the decisions taken by the national authority may, as before, be brought before the DPP. It is expected that there will be established some regional authorities carrying out the investigation.

As the local prosecutor is part of the police, it is always the “police” that give information to the media. However, it varies whether this is done by a police officer or a police prosecutor.

Not applicable. The local prosecutors work together with the police.

POLAND

1. Ultimately responsible for proper conduct of investigation and inquiry is the prosecutor, who is the accuser before all courts and exercises supervision over preliminary proceedings conducted by the police and other state bodies.

2. The duties of the Commander General include ensuring lawful performance of statutorily specified tasks of the police. The police are a formation operating by virtue of the Act of April 6, 1990 on the Police (Journal of Laws No. 7 of 2002, it. 58). The Commander General of the Police is a central body of government administration, proper in matters of protection of safety of persons and maintenance of security and public order, and is subordinate to the minister proper for internal affairs.

The scope of rights of the police and rights and obligations of policemen are regulated by the provisions of chapter 3 and 7 of the Act. In criminal proceedings (investigations and inquiries) the police perform specific actions by virtue of the provisions of the Code of Criminal Procedure.

3. The police do not have an obligation of prior consultation with a prosecutor in all criminal matters. The police are authorised to individually conduct investigations and inquiries specified in the provisions of the Code of Criminal Procedure. Supervision over the proceedings is exercised by a prosecutor. In case of important criminal matters a prosecutor may give guidelines to the police, take over proceedings for personal conduct or reserve for himself execution of specific actions in a given case.

Instructions of a prosecutor are binding on police officers.

4. A prosecutor may issue to the police detailed instructions in the scope of procedural actions performed or planned in given proceedings.

5. Police officers require consent of a prosecutor in case of application of operating techniques such as eavesdropping or controlled purchase.

6. The police may individually apply special methods of investigation consisting in carrying out operating actions, taken for the purpose of prevention, detection, establishment of culprits, and also obtaining and preserving evidence of publicly prosecuted deliberate offenses according to principles specified in the Law on the Police with exclusion of cases described in item 5.

7. A prosecutor may always take over – as he deems fit – for personal conduct in whole or in part specific criminal proceedings from the police or another body authorised for conduct of criminal proceedings.

8. The prosecution service may not set priorities in regard to institution of investigation and inquiries. In the Polish system of criminal law there prevails the principle of legalism, causing a necessity of prompt institution and conduct of criminal proceedings in all matters specified by the legislator as subject to prosecution by virtue of office.

9. The Prosecutor General – by virtue of the law on the prosecution service, has a right to issue guidelines in the scope of preliminary proceedings that are binding on all bodies authorised for conduct of preliminary proceedings, including the police.

General guidelines of criminal policy for the police are formulated by the Commander General of the Police and the Minister of Internal Affairs and Administration.

10. The police are generally obliged to report all offenses that it learned about, in line with the principle of legalism. Therefore they are obliged to observe principles connected with the necessity of institution and conduct of criminal proceedings prosecuted by virtue of office immediately after having obtained information about the same. Failure to observe these principles may cause disciplinary or criminal responsibility of a police officer.

11. The police may not decline execution of a prosecutor's instruction in the matter of institution of criminal proceedings. The law on the police specifies that in case of unjustified failure to execute an order in within the set time frame or scope, on demand of a court or a prosecutor the superior of the police officer institutes against him disciplinary proceedings.

12. Complaints on the police conducting criminal proceedings (investigation/inquiry) are dealt with – depending on the kind of complaint and official negligence – the Commander General of the Police, a prosecutor and a court. The police possesses its own structures, situated by the Commander General of the Police – responsible for conduct of proceedings connected with complaints against the actions of policemen. Complaints against policemen conducting investigations or inquiries may also be dealt with by a prosecutor in a situation, where an act of the policeman may cause his criminal responsibility, or by a court, when they concern actions of the police in preliminary proceedings supervised by a court (e.g. detention).

13. The police and the prosecution service have press services conducting appropriate activity in the scope of informing the society through the media. At the same time there occur cases of disclosure to media representatives of information from conducted criminal proceedings, which in the system of criminal law in Poland constitutes an offense and every time requires clarification by means of criminal proceedings.

14. In some important criminal cases joint teams are appointed of prosecutors and police officers or possibly officers of financial, customs, fiscal and other bodies. A doubtless benefit of such cooperation is rapid and comprehensive coordination of actions in proceedings and full utilization of the means of the bodies participating in a team. However, note should be taken that officers of the police and other services are not subordinate to a prosecutor, they are only obliged to follow his instructions related to the conducted proceedings.

PORTUGAL¹⁶

1. Who is ultimately responsible for a proper investigation?

Legal authority to initiate prosecution proceedings and oversee the investigation lies with the public prosecutor's office.

The public prosecutor is thus responsible for the proper conduct of the investigation, even if, in practice, the investigation is conducted in full or in part by the police acting under the public prosecutor's authority and direct guidance (Article 219-1 of the Constitution of the Portuguese Republic, Articles 1 and 3-1-c of the Statute of the Public Prosecutor, Sections 53-2-b, 262 and 263 of the Code of Criminal Procedure and Sections 1 and 2 of Law No. 21/2000 on the organisation of criminal investigations).

2. Who has the task of ensuring that the police respect all statutory rules and procedures in criminal investigation with respect to the effectiveness of the fight against crime and to make sure they respect human rights (in particular where persons are deprived of their liberty)?

In the investigation phase, both the public prosecutor and the criminal investigation judge (the judicial authorities), within their respective powers, ensure that the police operate within the confines of the law, particularly when they take preventive investigatory measures on their own initiative in search of evidence.

When made without prior judicial authorisation, arrests, searches of suspects in the event of imminent escape or of arrest, and searches of the premises where they are found – except searches carried out in the home -, as well as searches carried out by the police in cases of terrorism or violent or highly organised crime, with or without arrest or the likelihood of imminent escape, are subject to the appraisal and validation of the criminal investigation judge (Sections 251, 174-4-a and 174-5 of the Code of Criminal Procedure).

Seizures carried out by the police without prior authorisation are also subject to the appraisal and validation of the public prosecutor (Sections 178-3, 178-4 and 178-5 of the Code of Criminal Procedure).

Even in cases other than the above, where the work of the police must be verified and validated immediately, the public prosecutor must ensure that the police follow the proper legal procedures, with no omissions or defects likely to invalidate their action.

3. Are the police under an obligation of prior consultation with the public prosecutor on investigation matters? If so, does this apply to all criminal cases or to important cases only?

When a criminal offence is reported, the police are required to investigate and gather evidence, irrespective of any communication with, or instructions received from, the public prosecutor (Section 249 of the Code of Criminal Procedure).

¹⁶ Original reply received in French, see Appendix

The public prosecutor may instruct the police to conduct investigations in a general order stating the types of offence or the limits on the sentences applicable to the offences to be investigated (Section 270 of the Code of Criminal Procedure).

When the police are authorised to investigate, they must conduct their investigation independently and report their findings promptly to the public prosecutor (Section 2-3 the Criminal Investigation Act 21/2000, of 10 August 2000).

4. May the public prosecutor issue detailed instructions to the police? If so, please elaborate.

Although the police are answerable to and conduct their investigations under the guidance of the public prosecutor, the latter may only issue orders to carry out certain investigations, not instructions as to deadlines and the means and methods to be used, as there is no organisational or hierarchical link between the public prosecutor and the police (Section 2-4 of the criminal investigation Act).

5. In what type of cases do police officers need approval of, or co-operation with, the public prosecutor for the use of certain means of coercion?

The use of coercion and its authorisation by the competent judicial authorities depend more on the type of measures involved than on the type of investigation.

Generally speaking, the use of coercion is always subject to the prior authorisation or instructions of the judicial authorities, the public prosecutor or the investigating judge in their respective fields of competence; the police may use coercion of their own accord – other than in arrests or searches made *in flagrante delicto* – only when it is not possible to apply to the competent judicial authorities and important evidence may be at stake, or, in cases of terrorism, violent or highly organised crime, where there is evidence that a crime likely to seriously jeopardise people’s lives or safety is imminent (Sections 251, 249 and 174 of the Code of Criminal Procedure).

6. Can the police use special investigation methods without prior authorisation (such as use of informants, infiltrations and so forth)?

The police may use special investigation methods, with the authorisation of the judicial authorities, only in cases of violent crime.

Infiltration during the investigation phase requires the prior authorisation of the public prosecutor, which is also submitted to the investigating judge for validation (Section 3-3 of Act 101/2001, of 25 August).

Special investigation methods requiring the disclosure of otherwise confidential information, for example by the welfare authorities, credit institutions, finance companies or Inland Revenue

officers, require the authorisation of the public prosecutor (Section 2-2 of Act 5/2002, of 11 November, on measures against organised economic and financial crime).

Access to bank account details, on the other hand, is always subject to the authorisation or orders of the investigating judge (Section 4 of Act 5/2002), and audio and visual recordings may be made without the person's consent with the authorisation or under the instructions of the investigating judge (Section 6 of Act 5/2002).

7. Is it possible for the prosecutor to take over, either in whole or in part, the investigation from the police or any other criminal investigating authority? If so, in what circumstances?

The public prosecutor may take an investigation out of the hands of the police at any time, as their investigations, with the exception of preventive investigations, are generally conducted under authority delegated by the public prosecutor.

8. Can the prosecution service set priorities as to the instigation of investigations?

The prosecution service initiates investigations in strict compliance with the law. It has no power to set priorities but is obliged to open investigations, except in cases where the investigation can only be opened if the victim files a complaint and the victim fails to do so (Articles 1 and 3-1-c of the Statute of the Public Prosecutor's Office and Section 262 of the Code of Criminal Procedure).

9. May the prosecution service lay down general crime policy guidelines (priority targets) for the police? In what form? If not the public prosecutor, then who?

No. The Government lays down general crime policy guidelines and the prosecution service helps to implement that policy (Article 219-1 of the Constitution of the Portuguese Republic and Articles 1 and 3-1-b of the Statute of the Public Prosecutor's Office).

However, there is as yet no legislation governing the manner in which the prosecution service helps to implement crime policy. If there were, it would have to be in keeping with the principle of the rule of law, as enshrined in the Portuguese Constitution.

10. Are the police in general obliged to report to the public prosecutor all offences / some offences that come to their knowledge? Do they do this in practice?

The police must inform the public prosecutor as promptly as possible of any crimes which are reported to them or come to their attention; in an emergency this may be done using any available means of communication (Section 248 of the Code of Criminal Procedure)

In practice, the police tend to comply.

11. Can the police refuse an order of the public prosecutor to conduct an investigation or delay its execution? How does it work in practice?

Section 270 of the Code of Criminal Procedure provides for the delegation of power to conduct investigations to the police; furthermore, the laws governing the various branches of the police grant certain bodies exclusive powers to investigate certain types of crime.

The police may refuse to carry out an investigation ordered by the public prosecutor only when another police body has exclusive power to investigate the type of crime concerned.

Even then they may be instructed by the Principal State Prosecutor, having heard the authorities in charge of the respective police services, to investigate a crime that would normally fall within the remit of another branch of the police when this seems to suit the needs of the investigation or it is necessary to call on special expertise or technical means (Section 5 of the Criminal Investigation Act).

As the police do not depend organisationally or hierarchically on the public prosecutor, the police conduct their investigations as and when instructed by their superiors, who have the power to slow down or speed up this or that investigation rather than another. However, the public prosecutor may take over the case at any time.

12. Which body deals with complaints against police involved in criminal investigation?

Investigations of complaints about the police are generally conducted by the public prosecutor.

In the event that the public prosecutor's office delegates this task, although there is no legal obligation for it to do so it will usually delegate it to a branch of the police other than that to which the person or persons complained of belong.

13. In practice, do prosecutors or police provide the media with information about criminal investigations?

The Code of Criminal Procedure places time limits on the principle of confidentiality with reference to the different stages of judicial proceedings, Section 86-1 of the Code of Criminal Procedure stipulating that the proceedings must remain confidential throughout the investigation phase.

Although the media sometimes gain access to information which is meant to be confidential, it is often difficult to identify the source of the leak in so far as the information concerned is often known to a number of people involved in the investigation, including the investigating judge, other officials and even the persons under investigation and their lawyers, particularly when they make statements or appear for the purposes of procedural formalities.

However, Section 86-9 of the Code of Criminal Procedure mentions two specific situations where public announcements may be made while the proceedings are still confidential: a) when this is necessary to establish the truth, without prejudicing the investigation, at the request of persons against whom public accusations have been made; b) in exceptional cases, particularly high-profile cases, where and to the extent strictly necessary to establish the truth concerning facts that have been publicised, with a view to guaranteeing the security of persons and property and avoiding disturbances of the peace.

Although legally possible, such public statements are rarely made.

14. If you have experiences with Joint Investigation Units between prosecutors and police, please describe advantages and disadvantages.

There is no provision in Portuguese law for the existence of joint investigation units manned by prosecutors and police officers.

SERBIA AND MONTENEGRO

(REPLY FROM MONTENEGRO)

1. The investigation shall be conducted upon the request of the competent State Prosecutor. Court decides by a ruling or by similar act of equal power, about the request of the State Prosecutor. Persons who estimate existing of a reasonable suspicion, or enough evidences to render the ruling ordering conduct of investigation, are: a) State Prosecutor - when he/she submits the request; b) Investigative Judge - when he/she examines the request; c) the Panel of the Court – when deciding on disagreement of the investigative judge with the request of a State Prosecutor. The State Prosecutor is responsible for collection of evidences that supports the reasonable suspicion, but the Court leads the investigation and affects its regularity through the decision of the investigative judge and the Panel.
2. The Criminal Procedure Code strengthens the role of the State Prosecutor and the Investigative Judge in pre-trial proceedings. State Prosecutor is authorised to lead pre-trial proceedings, and an investigative judge also has an appropriate scope of competences in the pre-trial procedure. Aim of such authorizations is to limit some competences of the police during the performance of evidentiary actions, particularly the limitation of the freedom of movement of suspects.
3. Police and other authorities taking part in pre-trial proceedings are bound to notify the competent State Prosecutor before taking any action. The exceptions from this rule are the emergent cases. Therefore, in cases where the prosecution shall be conducted on line of duty, police authorities are obliged to proceed upon any request of the competent state prosecutor.
4. Since the State Prosecutor is the leader of a pre - trial proceeding, he/she can give detailed information to the police authorities. Operational activity of the State Prosecutor is shown through the coordination of activities of police and other authorities (inspections, banks etc) that work on discovering of perpetrators of criminal offences. It also reflects through the activities related to directing the pre-trial procedure, in order to ensure both a material-law and procedural conditions for conducting the investigation.
5. Co-operation between police authorities and the State Prosecutor, during the pre-trial procedure, is possible only regarding the criminal offences that are automatically prosecuted (in line of duty).
6. Police authorities cannot use special investigative methods without previous authorization. Measures of secret surveillance (special investigative methods), shall be **proposed** by the State Prosecutor, in a form of written motion containing a statement of reasons, **ordered** by the Investigative Judge - in a written order containing a statement of reasons, and only **executed** by the police. Thus, police cannot execute any measure of secret surveillance without written order of the investigative judge.
7. The State Prosecutor leads and directs the pre-trial procedure, but he/she cannot take over these procedures from the court or police authorities.

8. With regard to the competence of the State Prosecutor to direct the pre-trial proceeding, he/she can affect direction in which the investigation should be moved, by his/her proposals.

9. The State Prosecutor doesn't have any competences in this area. The Government of the Republic of Montenegro and competent ministries (Ministry of Interior, Ministry of Justice) are competent for issuing General Criminal Policy Guidelines for the police authorities.

10. The police authorities are bound to notify the competent State Prosecutor before taking any action in discovering the perpetrators of criminal offences. Our opinion is that the police respect this obligation in practice also.

11. The Criminal Procedure Code obliges the police authorities to proceed upon any request of the competent State Prosecutor in order to collect any necessary information. Therefore, a police is not competent to examine reasons of the State Prosecutor's request. In practice, police authorities respect this legal obligation. If a police authority fails to proceed upon the request of the State Prosecutor, the State Prosecutor is authorised to inform the head of this authority and if necessary, a competent Minister or the Government.

12. A person against whom, during the pre-trial procedure, police authorities have undertaken some of actions or measures in contrary to the law, is entitled to file a petition to the competent state prosecutor. If the State Prosecutor estimates the petition as reasonable, he/she shall have a right to inform head of this authority and if necessary, a competent Minister or the Government.

13. State Prosecutor informs the public about criminal investigations, in accordance with the Law on State Prosecutor and the Criminal Procedure Code, but we don't know does the police inform media about the criminal investigations.

14. We don't have any experiences with joint investigative units between state prosecutors and police.

SLOVAKIA

1. Who is ultimately responsible for a proper investigation?

First of all, a competent investigator or a policeman (in a summary investigation) is responsible for a proper, legal and timely investigation or a summary investigation within criminal proceeding; they usually execute the different acts of the investigation or of a summary investigation personally and in their own initiative in order to clear up every fact (factual circumstances) relevant for considering the facts of a case (criminal matter) as soon as possible and in a due extent including a perpetrator and consequences of an offence.

Within a preliminary proceeding, the powers and competencies of a prosecutor towards an investigator or a policeman are carried out by means of the entitlements under the section 174, par. 2, of the Code of Criminal Procedure.

Under the provision of the section 174, par. 2 of the Code of Criminal Procedure, the prosecutor is entitled to carry out the following steps while performing his/her duty to supervise the law observance in the period before the commencement of a criminal prosecution as well as in the period of a preliminary proceeding:

- to deliver binding instructions to investigate or summary investigate the offences,
- to require the investigator or policeman or a competent body (section 88c, par. 3 of the Code of Criminal Procedure, hereinafter CCP) to submit to him/her files including files concerning the matters in which the criminal prosecution has not yet been commenced, as well as the documents, materials and reports about the offences committed, for the purposes of checking and examining whether an investigator or a policeman commence a criminal prosecution in a due time as well as whether he/she proceeds properly,
- to participate in execution of the acts by an investigator or a policeman, to perform personally some act or a whole an investigation or a summary investigation, and to deliver a decision in any matter; while doing so, he/she has to follow the provisions in force under this law and applicable to the investigator or a policeman; the complaint is admissible against his/her decision, as well as against a decision of an investigator or a policeman,
- to refer the case back to the investigator or to a policeman together with his/her own instructions for completing the investigation,
- to cancel the illegal or ungrounded decisions and measures of an investigator or a policeman, and to replace them with his/her own decisions and measures; if it concerns a resolution under the section 159 of the CCP, the resolution on discontinuing or suspending the criminal prosecution or on transferring the matter, he/she can do so within 15 days since a delivery of a resolution; if he/she has replaced a decision of an investigator or of a policeman by his/her own decision/resolution otherwise than on the basis of a complaint by an entitled person against an investigator's or policeman's decision, the complaint is admissible against that resolution, and in the same extent as against a decision by an investigator or a policeman,
- to withdraw any matter from an investigator or policeman, and to take a measure in order to allocate that matter to another investigator or policeman,

- as for a matter in which a summary investigation is being carried out, he/she has the power to give an order to execute an investigation in that matter, if justified so by the circumstances.

In the event the prosecutor carries out personally the investigation or the summary investigation (see the provision of the section 174, par. 2 c), CCP), he/she is responsible himself/herself for its legal and timely course (in that event, the so-called supervisory entitlements do not belong to the superior prosecutor, under the section 54, par. 2 of the Act of the National Council of the Slovak Republic, no. 153/2001 Coll., as amended).

2. Who has the task of ensuring that the police respect all statutory rules and procedures in criminal investigation with respect to the effectiveness of the fight against crime and to make sure they respect human rights (in particular where persons are deprived of their liberty)?

It is the prosecutor who represents the law enforcement body in the criminal proceeding that is responsible for carrying out the competencies and powers within the preliminary proceeding (including the investigation, summary investigation) aimed to the law observance by the investigator and policeman while they perform the fact findings of the matter concerned.

As for the penal matters conducted in the custodial way, the investigator as well as the prosecutor is obliged – in the course of a preliminary proceeding – to examine whether the grounds of custody persist for the person accused of having committed an offence, or whether those grounds have changed. The cessation of grounds for custody in that stage of penal proceeding establishes an obligation for the prosecutor to release a perpetrator from custody. As for the custodial penal matters, the judge's power applies only to the decision-making about a motion by a prosecutor to prolong the term of custody, as well as to the alteration of grounds for custody, as well as to decision about an application by a perpetrator for the release from custody (section 72, par. 1, CCP).

3. Are the police under an obligation of prior consultation with the public prosecutor on investigation matters? If so, does this apply to all criminal cases or to important cases only?

The investigator neither the police is not obliged to consult with the prosecutor the criminal matters, neither – in that context – the different steps and evidence proceedings or decision-makings.

Under the provision of the section 164, par. 4, CCP, save the cases requiring the prosecutor's consent under the CCP, the investigator and the police decides independently any steps and proceeding of the investigation and on the execution of the different acts, and is fully responsible for their legal and timely performance.

From the procedural and legal points of view, the relationship between the investigator (or the police) and the prosecutor as the law enforcement bodies, is based – within a preliminary proceeding – on the principle of mutual co-operation while applying the prosecutor's supervision (control), and the goal of all of them is reaching the purpose of the penal procedure, i.e. clearing

up the offences and proper punishing of the perpetrators (see the first sentence of the provision of the section 1, par. 1 of the CCP).

In practice, the consultation of both prosecutor, investigator or a police is desirable even indispensable since it is aimed to the determination of the extent and content of the evidence proceeding, as well as to the selection of procedural acts, namely in the complex cases (from both legal and factual points of view).

4. May the public prosecutor issue detailed instructions to the police? If so, please elaborate.

Under the section 174, par. 2 a) of the CCP, the prosecutor is empowered to issue binding instructions (to investigate or to summary investigate the offences) to the investigator or policeman, as it belongs at the scope of the prosecutor's task to supervise the law observance in the stage before commencement of the criminal prosecution as well as after commencement of the criminal prosecution (in the course of the preliminary proceeding).

From the formal point of view, those instructions are usually given in written form. It depends on the character of the different penal matters; the issuing of an oral instruction is not excluded, it is done under the form of a measure having primarily a preventive nature, and its binding content is to be confirmed later with a written form for an investigator or a police.

The need is important to perform the prosecutor's power towards the investigator or a policeman in the extent above namely in factually complex and legally difficult penal cases.

5. In what type of cases do police officers need approval of, or co-operation with, the public prosecutor for the use of certain measures of coercion?

While a police has to carry out a particular police action (by the Police Forces of the Slovak Republic) and to use a coercive measures (sections 9-12, 50-68 of the Act of the National Council of the Slovak Republic, no. 171/1993 on the Police Forces as amended), the prosecutor's approval is not required, neither a co-operation with him.

The legality of the coercive measures used in the course of a police action is subject to examination by the superior police officer of the Slovak Republic, even at the event any doubts arise on the justification or adequacy of their use (see the provision of the section 64, par. 2, Act on the Police Forces).

In the event of illegitimate use by the police of coercive measures in the course of a police action, that use constitutes the possible criminal and legal responsibility of the police (a suspicion arises on having committed an offence of abuse of powers of a public official under the section 158 of the Penal Code, or possibly of having committed some other offence), the prosecutor is obliged to prosecute such offences he/she is aware of (under the section 2, par. 3 of the CCP).

The prior approval of a prosecutor is required for a detention of a suspect in the context of applying the securing procedural acts (detention of a person, seizure of a thing) in a preliminary proceeding, where there is a need to detain a suspect (not accused yet) if there is a ground for arrest (provision of the section 76, par. 1, first and second sentence of the CCP).

The law presumes some further cases for which the investigator or the policeman does need a prior consent of a prosecutor for executing a procedural act:

- issuing an order to seize a thing material for a criminal proceeding (a documentary evidence or a real evidence) under the section 79, par. 1 of the CCP,
- issuing an order to carry out a search of other premises and land (not for a home or dwelling premises search, or of an annexed premises) under the section 83 a, par. 1 of the CCP,
- issuing an order to detain a mail from/for an accused individual, under the section 76, par. 1 of the CCP, or for detaining a mail where there is a grounded suspicion that mail has been a mean to commit a criminal offence (under the Chapter 1 of the separate part of a Penal Code) namely extremely grave crime, corruption or abuse of power of a public official (section 158, Penal Code), or a mail suspected of being linked to such crimes (section 86, par. 2 CCP),
- opening of a mail seized (section 87, par. 1 of the CCP)
- requesting data subject to bank secret from a bank institution (section 8, par. 2, CCP).

The prosecutor's approval as a legal ground for executing a procedural act by an investigator or a policeman is required in the following cases:

for issuing an order to a body search (of a suspect, accused, arrested, detained or being taken into custody), under section 83 b, par. 1, CCP

for issuing an order to swap a content of mail seized, under the section 87, par. 1, CCP.

The investigator or the policeman are required to submit a written application to a competent prosecutor when they want to execute a sham transfer (section 88 c, CCP), to surveil persons and things (section 88 d, CCP), and to elaborate the image, sound or other sorts of records (section 88 e, CCP).

6. Can the police use special investigation methods without prior authorisation (such as use of informants, infiltrations and so forth)?

In the context of revealing criminal activities and finding the perpetrators, the members of the Police Forces of the Slovak Republic are entitled (outside the criminal proceeding) to apply the institutes regulated exclusively in the Act on Police Forces and in the Act no. 166/2003 on the Protection of Privacy against Unauthorised IT Means Use (hereinafter: "Act on Protection against Interception" API).

It concerns the IT means and intelligence means and device.

Under the section 2, par. 1 of the API, the IT means are primarily: electrotechnical, radiotechnical, phototechnical, optical, mechanic, chemical and other technical means or devices or the sets, and used in a undisclosed way when finding, opening, examining and evaluating the mail and other transported mail (letter a), when intercepting a taping the telecommunications (letter b), and when elaborating/establishing the respective records (letter c).

The provisions of the section 36 of the Act on Police Forces, and the sections 3-7 of the API regulate the conditions and extent of application of the IT means by the members of the Police Forces of the Slovak Republic.

The intelligence means and device are (under the section 39, par. 1 of the Act on Police Forces) are: surveillance of persons and things, controlled delivery, criminal intelligence (legalisant, agent), use of disguised documents, trap and alarm device, use of persons acting in favor of Police Forces, premises and places used under legend, and shame transfer of a thing.

The provisions of the sections 39, par. 2, 39 a-c, 40, 41, 41 a, of the Act on Police Forces regulate the legal conditions and extent of application of the intelligence means and device by the members of the Police Forces.

After the commencement of a criminal proceeding (on the basis of a report on a commission of a crime or on the basis of the results of operation of the members of the Police Forces) the investigator or the policeman executes the procedural acts exclusively in accordance with the provisions of the CCP (either independently, either in co-operation with a prosecutor, i.e. with his/her prior approval or with his/her approval).

7. Is it possible for the prosecutor to take over, either a whole or in part, the investigation from the police or any other criminal investigating authority? If so, in what circumstances?

Within the scope of his/her powers to supervise the law observance before the commencement of a criminal prosecution as well as in the pre-trial stage, the prosecutor is empowered to participate in the execution of the acts by the investigator or a policeman, to personally execute the different act or a whole the investigation or a summary investigation, and to issue a decision concerning any matter. In that event, the prosecutor proceeds in accordance with the provisions of the CCP that are in force for the investigators and the policeman, and there is a complaint admissible against his/her decision, in the same way as against a decision of an investigator or a policeman.

Save some complex and legally difficult penal matters, in the practice the prosecutor applies rather rarely the provision of the section 174, par. 2 c) of the CCP presuming the application of the said steps within a preliminary proceeding.

8. Can the prosecution service set priorities as to the instigation of investigations?

The prosecutor is obliged to receive any report on commission of a crime (report on facts indicating a commission of an offence), and he/she can also handle himself/herself a report on a commission of a criminal offence.

That means a facultative completion of a content of such a report with executing a questioning of the person who has reported a commission of an offence, possibly with providing/procuring of written documents (documentary evidence), and subsequently, with issuing a resolution (under the provisions of the sections 159 or 160 of the CCP) – either immediately, either within a period of 30 days at least since the reception of a report.

Otherwise, the prosecutor is entitled to forward/transfer the report on commission of an offence to the investigator or policeman for dealing - they also can complete the content of it and decide in the way and within the time limits as stated above.

The prosecutor in charge of dealing with a report of a commission of an offence has to determine the extent and way of finding the facts of a case according to the nature of elements contained in the report; as for the relationship with the investigator or a policeman to who he/she has forwarded the report, he/she proceeds according to the sections 157, par. 2, 174, par. 2 a), of the CCP.

9. May the prosecution service lay down general crime policy guidelines (priority targets) for the police? In what form? If not the public prosecutor, then who?

The Public Prosecution Service of the Slovak Republic as a constitutional state body is not entitled to lay down the basic (general) guidelines of the crime policy of the Slovak Republic within the scope of its powers and competencies defined by the law (Constitution of the Slovak Republic, Act on Public Prosecution Service).

The Slovak Prosecution participates in removing/eliminating of reasons and conditions of the criminal activities, in the prevention and suppression of crime (section 4, g of the Act on Public Prosecution Service).

The main guidelines of the crime policy are laid down by the Government of the Slovak Republic as a supreme executive body that decides about the principal issues of the internal and foreign policy (article 119, letter i, of the Constitution of the Slovak Republic).

The General Prosecutor of the Slovak Republic is entitled to participate in the sessions of the Government of the Slovak Republic with the advisory vote, and to submit (within a legislative initiative) to the Government the motions to adopt laws, to amend and complete them, also in the field of the state crime policy (section 12, Act on Public Prosecution Service).

When elaborating the main guidelines of the crime policy, there is also a relevant role of the different ministries as central state administration bodies, namely the Ministry of Interior of the Slovak Republic, and the Ministry of Justice of the Slovak Republic, as well as the National Council of the Slovak Republic.

The Ministry of Interior as well as the Ministry of Justice of the Slovak Republic participates in elaborating a uniform state policy of the Slovak Republic, they elaborate the projects for development of the respective fields of the state administration, and contribute to solve the basic issues submitting them to the Government of the Slovak Republic (section 35, par. 2, section 36

of the Act no. 575/2001 Coll. on the Organization of the Operation of the Government and central state administration, as amended).

The National Council of the Slovak Republic (as constitutional and legislative body of the Slovak Republic) discusses the basic issues of the internal, international, economic, social etc. policy (article 86, h of the Constitution of the Slovak Republic).

10. Are the police in general obliged to report to public prosecutor all offences/some offences that came to their knowledge? Do they do this in practice?

The investigator neither the police are not obliged (*ex lege*) to report to public prosecutor the reception of a report on suspicion of commission of an offence (regardless whether it has been done in written or oral way by the injured person, persons or by an unidentified perpetrator).

At the same time, the investigator or the police is obliged to deliver to the prosecutor any decision/resolution issued in relation to that report on suspicion of commission of an offence within the legally defined time period of 48 hours (see the provisions of the sections 159, par. 4, 160, par. 1 of the CCP).

In the practice, the investigator or the police proceed strictly under the quoted provisions of the CCP, save some rare cases of breaching the said legal time limit.

11. Can the police refuse an order of the public prosecutor to conduct an investigation or delay its execution? How does it work in practice?

The current legal framework regulated by the CCP does not allow to the investigator neither to the police to refuse or not to fulfill the order or the instruction given by the prosecutor within the criminal proceeding before the commencement of a criminal prosecution or in the course of the preliminary proceeding, when such an instruction or order has been issued to guide their steps in a particular criminal matter (e.g. the instruction establishing the extent and object of the evidence proceeding, instruction to modify the legal qualification of an act as criminal act, instruction how to deal with a matter etc.).

The instruction given by the prosecutor (regardless in what form) is binding for the investigator and for the police where it has been issued in the stage before the commencement of a criminal prosecution, as well as within a preliminary proceeding and in accordance with the section 174, par. 2 a) and b) or d) of the CCP.

12. Which body deals with complaints against police involved in criminal investigation?

Any complaint (oral or written petition) against the police in criminal investigation is always examined/considered according to its content.

According to the material elements of the petition, it could be a complaint as regular remedy against the decisions taken by the investigator or police, or an application for removing delays in investigation (filed either by an accused, either by an injured person), or for removing defects in

the investigator's or policeman's proceeding, or complaint against an investigator's or policeman's behavior towards a claimant.

There are different ways of considering and dealing with those complaints including the determination of a body competent to handle them.

The CCP regulates the way and determines the competent body to deal with those complaints as regular remedies and complaints (applications) by the accused or injured person as for removing delays in investigation, defects in proceeding of the investigator or a policeman.

Under the provision of the section 146, par. 1, first and second sentence of the CCP, the body against which the complaint has been filed can comply itself with it, if the alteration made to the original resolution would not affect the rights of the other party to criminal proceedings. If it concerns the resolution of the investigator or of a policeman, which has been issued with a prior approval of a prosecutor or upon his/her instruction, the investigator or a police can only comply with such a complaint with a prior consent of a prosecutor.

Under the provision of the section 146, par. 2 a) of the CCP, if the time limit for filing a complaint has already expired for all entitled persons, and the complaint has not been fulfilled in accordance with the par. 1, the investigator or the policeman has to submit the matter to the supervising prosecutor for decision; if it is a complaint against a resolution for which the prosecutor has given the approval or instruction, the matter is to be solved through that prosecutor and submitted to the superior prosecutor.

Under the provision of the section 167 of the CCP, the accused and the injured person have right (in any stage of an investigation) to request the prosecutor to remove the delays in investigation, or the defects in the proceeding by the investigator or policeman. That application is not bound by any time limit. It has to be submitted immediately to the prosecutor, and he/she is obliged to deal with it without delay. The applicant has to be informed about the result of such examination.

It is exclusively the Act no. 73/1998 Coll. on Civil Service of the Members of the Police Forces, Slovak Information Service, Corps of Prison and Judicial Guards of the Slovak Republic, and the Railway Police Forces, as amended, that determines both the way of considering and dealing with the complaints against the behavior of an investigator or a policeman, and the competent bodies to handle those complaints.

Under the provision of the section 48, par. 3 e) of the Act, while performing the tasks of a public service, the policeman is obliged to observe the standards of politeness and should behave decently towards the public officials as well as towards citizens.

Under the provision of the section 48, par. 3 g) of the Act, the policeman is obliged to abstain from such acting which could hinder the dignity and seriousness of the Police Forces, or to cause the breach to trust to the Police Forces.

Under the provision of the section 52 of the Act, the intentional breach of a duty of a policeman represents a disciplinary wrong, if it is not a criminal offence or an administrative delict (par. 1).

Under that law, the acting of a policeman is also to be heard if it has got the elements of an administrative delict.

Under the provision of the section 50 of the Act, the superiors may impose disciplinary measures and grant disciplinary rewards to the subordinate policemen, within the scope of their powers.

13. In practice, do prosecutors or police provide the media with information about criminal investigations?

The provision of the section 8 a, of the CCP regulates both the extent and the institutional competence of the bodies providing information about criminal prosecution (criminal offences and perpetrators), under that the adjudicating and prosecuting bodies (court, prosecutor, investigator and police) provide media with the information of their operation and activities. While doing so, they ensure for not hindering the clear up of facts relevant for considering the matter, for not publish data on persons participating in the criminal proceeding, as well as the facts that are not directly linked to the criminal activity, and not to breach the principle saying that it is not allowed to perceive as guilty any person against who a criminal proceeding is being conducted until a valid judgment on conviction has not been rendered (par. 1).

14. If you have experience with Joint Investigation Units between prosecutors and police, please describe advantages and disadvantages.

This is exclusively the Order of the Minister of the Interior of the Slovak Republic (no. 60/2003 of the December 11, 2003) on Determination of Competencies and Co-operation of the Police Forces Units in the Prevention, Revealing and Documentation of Criminal Acts, Identifying of the Perpetrators in the course of the investigation, summary investigation, as well as on Car Units and Specialized Teams, that regulates the creation, composition and material maintenance and support of the specialized teams.

Under the article 21, par. 1, of the Order mentioned, there is possible to establish a specialized team in the event of the criminal activity committed by an organized group or in the case of establishing, plotting or supporting of a criminal and terrorist group, since the revealing, identifying and investigating of such a group represents an extremely demanding extent and methods of investigation, needs an important effort, and is not possible to be carried out with using regular/common forms or methods.

Under the article 21, par. 2, of that Order, the creation and termination of operation of such a team is usually executed upon an order by the President of Police Forces of the Slovak Republic defining at the same time also a method of supervising the chief of a team (see first sentence).

Under the article 21, par. 3, of the Order quoted, the creation and termination of operation of such team is carried out in particular cases determined by the Minister of Interior of the Slovak Republic, and is usually executed upon an Order by the Minister of Interior of the Slovak Republic.

Under the article 22, par. 1 of the Order, the team is usually composed of chief of the team, deputy chief, chiefs of groups, analytic group, investigative group and operative group – taking into account the nature and extent of the criminal activity to be revealed and investigated, of the tasks to be fulfilled, and necessary forces and means.

Under the provision of the article 27, par. 2, of the Order, the chief of investigative group ensures the contact with supervising prosecutor and experts.

In the practice, the creation of specialized teams is exclusively under the competence of the Minister of Interior of the Slovak Republic as well as of the President of the Police Forces of the Slovak Republic. They issue orders without any co-operation with the competent prosecutor.

There is an increasing trend of justification of creation of specialized teams resulting from the categories of the criminal activities committed (economic and violent crime) as well as from the method of committing it (namely the participation of organized, criminal groups in committing criminal activities, that is characterized by high level of organization among its members, especially in vertical direction, as well as by professional methods of executing the criminal activities, while keeping strict secrecy of their members).

Taking into account the results achieved in the fight against the most serious forms of crime, both the creation and operation of the specialized teams could be evaluated positively.

SLOVENIA

1. Who is ultimately responsible for a proper investigation?

Under the Slovene legal system, the investigation of a criminal offence can have two phases: the police investigation within the pre-trial procedure which is not a part of the judicial criminal proceedings; and judicial investigation as the first part of judicial criminal proceedings. Responsibility for the investigation of a criminal offence is divided and depends on the institution performing the investigation and on the phase of the proceedings. The legal duties involved in the investigation of a criminal offence can be performed by three institutions: the police, the state prosecutor and the investigating judge. In the preliminary criminal proceedings, in which the police carry out the investigation and the state prosecutor directs their work, responsibility is divided between the police and the state prosecutor. Slovenian legislation has not clearly defined with whom primary responsibility for investigation rests in the pre-trial procedure. The judicial investigation is carried out by the investigating judge who is dominus litis of that part of the proceedings. In the first phase of judicial proceedings the state prosecutor **is a party to the proceedings**

2. Who has the task of ensuring that the police respect all statutory rules and procedures in criminal investigation with respect to the effectiveness of the fight against crime and to make sure they respect human rights (in particular where persons are deprived of their liberty)?

Responsibility is at first on the side of the police itself. As concerning the human rights and freedoms in the Republic of Slovenia the state prosecutor evaluates the evidence and the manner in which it was collected when he receives material from the police. In other words, no legal judgement can be based on evidence that has not been collected in accordance with the law or during which fundamental human rights have been violated and the state prosecutor cannot take such evidence into account.

As concerning the effectiveness it is necessary to stress that the police are a body attached to the Ministry of the Interior and are an agency of the executive branch of power, whereas the state prosecutor's office is an independent and autonomous judicial body and that in relation to the means used and personnel for obtaining data and evidence, the police are autonomous, and the prosecutor has only an advisory role, since this could be a professional matter of criminal investigation technique and tactics and the state prosecutor does not have jurisdiction over the allocation of police capacities, or those of the Ministry of Internal Affairs. The state prosecutor is not responsible for the police work.

3. Are the police under an obligation of prior consultation with the public prosecutor on investigation matters? If so, does this apply to all criminal cases or to important cases only?

The state prosecutor directs the work of the police usually in all important cases. Direction is compulsory for the state prosecutor when the criminal offence involves organised crime and when special methods and means are used. In other cases of crimes being dealt with by the

police, the prosecutor can decide that he will direct the police investigation and inform the police of this within the prescribed time limit but such activities of the prosecutor are not compulsory.

4. May the public prosecutor issue detailed instructions to the police? If so, please elaborate.

The state prosecutor directs the work of the police in the pre-trial procedure by giving instructions, proposals and expert opinions, in the course of the activities in which he takes part, in the procedural and other acts during the pre-trial procedure, and in connection with measures against a suspect who has been taken into custody. **The method of executing the police investigation belongs within the professional sphere of the police work.**

5. In what type of cases do police officers need approval of, or co-operation with, the public prosecutor for the use of certain means of coercion?

According to our legislation coercion measures are:

- apprehension
- detention
- custody
- house arrest
- forced production
- the suspect not leaving the residence
- prohibition of approach to certain person/place
- the checkout on the police station
- house search
- personal search
- seizure of object
- etc.

The activities of the state prosecutor depends on the type of measure not on the type of criminal offence. The state prosecutor can propose mostly all the measures when he deals with criminal offence prosecutable ex officio which can be ordered by investigating judge especially those which interfere into the basic human rights and freedoms of the defendant.

6. Can the police use special investigation methods without prior authorisation (such as use of informants, infiltrations and so forth)?

No.

Covert investigative measures that may be ordered and applied in the Republic of Slovenia include: surveillance of telecommunications by secret listening and recording, control of letters and other parcels, control of the computer system of a bank or another legal person engaging in financial and other economic activity, secret listening and recording of conversations with the consent of at least one person involved in the conversation, control of messages sent by electronic mail or by other forms of information technology, secret listening and visual

surveillance of another person's flat or other premises using technical means for documenting and, if necessary, secret entry into these premises, sham purchase, sham acceptance or giving of gifts or sham acceptance or giving of bribes, disclosure of confidential bank information, secret surveillance and undercover operations, imparting information on the participants, circumstances and other facts of specific telecommunications traffic, imparting information about the owner or user of a specific means of telecommunications traffic not published in the directories. In the application of covert investigative measures which do not encroach on fundamental human rights and freedoms, the state prosecutor has authority to issue orders and the police implement the measures. Such measures are, for example, sham acceptance or giving of gifts or sham acceptance or giving of bribe, secret surveillance and undercover operations in which documentation means are not used, etc. The application of measures that encroach on fundamental human rights and freedoms (the right to privacy, right to confidentiality of mail, right to inviolability of the dwelling, etc.) is ordered by the investigating judge on a motion from the state prosecutor.

7. Is it possible for the prosecutor to take over, either in whole or in part, the investigation from the police or any other criminal investigating authority? If so, in what circumstances?

No.

The police are an agency engaged in the detection of crime, and the state prosecutor is the only agency engaged in the *ex officio* prosecution of criminal offences.

The state prosecutor can (in case he or she cannot take those actions alone or in co-operations with other bodies) request from the police that they should gather the additional information and take other measures in the time he instructs in the direction of the disclosure of the criminal offence and the offender.

This request can be only issued in these situations: the state prosecutor can not judge only on basis of the facts from the criminal report whether those facts are probable; or those fact can not provide sufficient grounds for its decision for the investigation request; or he of she has just heard rumours of the criminal offence committed; or in particular, when the perpetrator is not known.

When executing their jurisdiction, a state prosecutor have the right to demand itself the data from state bodies, the bodies of local and other self-government organisations with public authorisations, legal persons and individuals to forward to them documents, records, objects or information, which it requires for acts within its jurisdiction if they have them on at their disposal.

8. Can the prosecution service set priorities as to the instigation of investigations?

The state prosecutor has no authority to decide, nor can he influence the police decision, regarding which criminal offence they will investigate or whether they will investigate it at all.

9. May the prosecution service lay down general crime policy guidelines (priority targets) for the police? In what form? If not the public prosecutor, then who?

No. The prosecution service hasn't the legal authorisation to create the crime policy. The State Prosecutor General has the legal authorisation to issues the general instructions to the work of the prosecutors for the unification of the prosecution policy. Above mentioned policy is on the hand of the Ministry of Internal Affairs.

10. Are the police in general obliged to report to public prosecutor all offences/some offences that came to their knowledge? Do they do this in practice?

The police should inform the state prosecutor of all cases in which well-founded reasons for suspicion that a crime has been committed exists. The state prosecutor must be informed even if the activity of the police does not result in a criminal complaint against a particular person for a particular crime.

11. Can the police refuse an order of the public prosecutor to conduct an investigation or delay its execution? How does it work in practice?

Instructions and proposals given by the state prosecutor are for the police binding. When it is objectively not possible to fulfil, the legislation resolve such situation with the possibility of changing instructions and directions given, or recording the situation created.

12. Which body deals with complaints against police involved in criminal investigation?

At first all complaints against the work of police are dealt in the scope of police squad involved. In the Ministry of Internal Affairs there are special panels consist of one representative of the minister and two persons from the citizens. This panel deals with the complaints. The procedure can go throught the prosecutors. There is a legal provision that the person against whom the police action and measure has been undertaken is entitled to lodge a complaint with the competent public prosecutor within three days after such an action.

13. In practice, do prosecutors or police provide the media with information about criminal investigations?

The original authorisation for providing the media about the work of the prosecutors is on the hands of the General State Prosecutor of the Republic of Slovenia. There are several possibilities.

The State Prosecutor General or, with his/her authorisation, another state prosecutor provides information on the work of the state prosecutors to the public to the media by dispatching written messages or by calling press conferences or in another appropriate manner, determined by the State Prosecutor General.

The State prosecutor General or, with his/her authorisation, a supreme state prosecutor, The Secretary of the Supreme State Prosecutor's Office, or Head of the state prosecutor's office may,

in accordance with the statute regulating the media, provide information to the public on the state of particular cases under consideration by the state prosecutor's office, if it does not jeopardise the interest of the proceedings, procedural secrecy or personal privacy.

In practice the general authorisation for giving information about the state of particular case is given to the chief prosecutors for giving information to the media.

The possibility to coordinate such activity with the police exists specially in the cases when the prosecutor direct the pre-trial procedure.

14. If you have experiences with Joint Investigation Units between prosecutors and police, please describe advantages and disadvantages.

No. Such Joint Investigation Units are not provided by our legislation.

SPAIN¹⁷

The judge and the public prosecutor, depending on who is responsible for the investigation in question.

The judge and the prosecutor.

No. There is no obligation of consultation in all cases. The police can begin the investigation themselves, but they can also consult the public prosecutor and as a rule they do so.

Yes, public prosecutors can issue instructions in all cases where they are responsible for the investigation and in all cases where there has not yet been a judicial investigation.

The judge's authorisation must be sought in all cases where fundamental rights may be restricted.

Yes, they can use any type of investigation method that does not entail the restriction of fundamental rights.

Yes, the public prosecutor may take over an investigation from the police in any case where there has been no judicial investigation.

Yes, the public prosecutor may give such instructions but only to police units assigned to the public prosecutor's office.

No, it is the government, not the public prosecutor's office, which is responsible for general crime policy.

Yes, they must report all offences to the courts or to the public prosecutor.

In practice the police report all offences that come to their knowledge to the courts or to the public prosecutor.

No, the police must conduct all investigations ordered by the public prosecutor.

The judge who is competent for such matters.

Yes but always in full compliance with the principle of the confidentiality of investigations.

No reply.

¹⁷ Original reply received in French, see Appendix

SWEDEN

Ultimate responsibility for the proper criminal investigation has the leader of the investigation. The leader of the investigation can be either a police officer or a public prosecutor. This means that if a police officer is the leader of the investigation he acts independently and the responsibility for ensuring all statutory rules and guarantees rests on him or her. If the leader of the investigation is a public prosecutor, the public prosecutor of course has the same responsibility. In principle the police lead investigations in cases of a simple nature, whereas public prosecutors lead investigations in more complicated cases. Some circumstances may cause the investigation to be led by a public prosecutor even if the case itself is of a simple nature.

The Police itself.

When the investigation has been instituted by the police and the case is not of a simple nature, then – as soon as a certain person for good reasons has become the suspect of a committed crime – responsibility for the investigation shall be taken over by the prosecutor. And also when there are special reasons to take over an investigation, the prosecutor can do so even before someone has become a suspect. Roughly, the following can be pointed out to characterise the main principles of the division of competence. The police handle offences of an everyday nature, whereas the public prosecutor should lead the investigation in more complicated cases, as well as in cases in which the expected sentence is higher than two years of imprisonment.

Yes. If the leader of the criminal investigation is a public prosecutor he is entitled to ask for assistance from the police and to give police officers instructions to perform some specific investigative measures. The law does not specify the kind of investigative measures that may be asked except that the instructions should be appropriate with respect to the nature of the measure required.

The public prosecutor shall take over the leadership of a criminal investigation if a necessity to use some means of coercion arises. However, the police as a leader of an investigation may carry out a minor house search, a personal search, seizures, and some other similar less encroaching coercive measures.

The conventional coercive measures are regulated in the Swedish Code of Judicial Procedure and as a principle it is the public prosecutor who takes all decisions upon the use of coercive measures. The police may in some cases decide upon the use of special investigation methods such as the use of direction finders to locate cars.

The public prosecutor can take over the leadership of an investigation whenever he considers it appropriate.

A public prosecutor can instigate an investigation whenever he considers it appropriate.

The Swedish Government formulates yearly general crime policy guidelines for the judicial authorities to observe. The National Police Board and the Office of the Prosecutor general, as

central authorities, implements the governmental policy through more concrete decisions and guidelines.

When a police officer learns of an offence liable to public prosecution he shall report the offence as soon as practicable. That is, he is obliged to inform a senior officer or to enter the crime in his daily report. However a police officer may refrain from reporting an offence if, in view of the circumstances in the specific case, the offence is of trivial nature and it is obvious that no other sanction than a fine would be imposed on the offender. When it comes to certain minor crimes the police officer is entitled to impose a penalty for the offence on the spot. This is however possible only if the offender has confessed to the offence and accepted the summary fine. In principle, the police lead investigations in cases of a simple nature, whereas prosecutors lead investigations in more complicated cases. The basic rules concerning division of competences might give the impression that in those cases, where the police are leader of the investigation, the role of the police is comparable to the position of the public prosecutor. However, in reality, the public prosecutor dominates the criminal investigation as a whole. Only prosecutors are empowered to bring a case to court and are, consequently, fully responsible for the case. It means, even if the police work independently as a leader of the investigation and have own responsibility for the investigation, the public prosecutor has to have the possibility to control the activity of the police. At some point the prosecutor takes over from the police in bringing the case to court and fulfilling all necessary requirements.

If a public prosecutor is in charge of the investigation it is he who decides what actions is to be done by the police during the investigation. In practice the collaboration between the public prosecutor and the police is carried out in such a close manner that there are in practice never any problems.

Special prosecuting agencies / prosecutors dealing only with suspected crimes committed by police officers in the line of duty or the Parliamentary Ombudsman (Justitieombudsmannen).

It is possible for either party to provide the media with information about criminal investigations.

Up to this day we don't have any experience on Joint Investigation Units based on the EU Council Framework decision of the 13th June 2002.

SWITZERLAND¹⁸**1. Who is ultimately responsible for a proper investigation?**

Principal public prosecutors, acting with complete independence, are responsible for police investigations. They may delegate this task to their deputies and representatives (Art. 15, 16, 17 para. 1 and 104 para. 1 of the Federal Act on Criminal Procedure of 15 June 1934; PPF, RS 312.0). The police service is run by the public prosecution service and monitored by the Complaints Court of the Federal Criminal Tribunal (Art. 17 para. 1 PPF; Art. 28 para. 2 of the Federal Act on the Federal Criminal Tribunal of 4 October 2002; LTPF, RS 173.71).

The police are responsible for carrying out administrative tasks that are separate from actual criminal investigations, which are led by the public prosecutors of the Confederation. These tasks include the creation and use of police databases, correspondence with Interpol and inter-cantonal and international police co-operation.

The following observations refer only to criminal investigations conducted by the federal public prosecutors.

2. Who has the task of ensuring that the police respect all statutory rules and procedures in criminal investigation with respect to the effectiveness of the fight against crime and to make sure they respect human rights (in particular where persons are deprived of their liberty)?

Appeals against the actions of the police may be lodged with the public prosecution service (Art. 105^{bis} para. 1 PPF). Furthermore, an accused party may, at any time, apply to the public prosecution service for their release (Art. 52, para. 1 PPF).

3. Are the police under an obligation of prior consultation with the public prosecutor on investigation matters? If so, does this apply to all criminal cases or to important cases only?

The police only carry out investigation activities of a purely police-related nature: research via Interpol, database searches, obtaining information from the cantons, police interrogation, police tactics. The police cannot use means of coercion, unless expressly provided for by law (see reply to question no. 5).

The police act alone until there is sufficient evidence to suggest that a crime has been committed, at which point they inform the public prosecution service. The latter checks whether the statutory conditions for prosecution have been met. If not, no investigation is opened (Art. 100, para. 3 PPF). Its decision is final. When the proceedings are formally opened by the federal public prosecutor, the police are obliged to consult the federal law officer.

4. May the public prosecutor issue detailed instructions to the police? If so, please elaborate.

¹⁸ Original reply received in French, see Appendix

See reply to question no. 3. Since the public prosecution service is in charge of the investigation, it may issue instructions concerning the objective pursued and the methods to be used, but has nothing to do with police tactics. The public prosecution service orders coercive measures, which are carried out by the police.

In sensitive cases, both authorities decide together how to proceed; the public prosecution service may lay down priority objectives.

5. In what type of cases do police officers need approval of, or co-operation with, the public prosecutor for the use of certain means of coercion?

The law stipulates which means of coercion can be ordered by the public prosecution service and which ones the police may, *in exceptional circumstances*, decide to use (eg arrest in order to prevent immediate danger). These procedural rules apply to all types of cases and procedures.

6. Can the police use special investigation methods without prior authorisation (such as use of informants, infiltrations and so forth)?

See reply to question no. 5. The police may independently approach informers, acquire information from them and carry out observation tasks. Furthermore, outside the investigation led by the public prosecution service, the police chiefs may, with a court's agreement, use undercover agents.

7. Is it possible for the prosecutor to take over, either in whole or in part, the investigation from the police or any other criminal investigating authority? If so, in what circumstances?

The public prosecution service and the federal police operate on their own initiative within the federal justice system. The law provides that, where necessary, the cantons may also have their own police force (Art. 17, para. 2 PPF).

In practice, a police investigation may be taken over if it concerns allegations against members of the police or if the authority of the police is challenged.

8. Can the prosecution service set priorities as to the instigation of investigations?

Concerning matters within its jurisdiction [see Art. 340 and 340^{bis} of the Swiss Criminal Code (CP; RS 311.0)], the national prosecution service must instigate investigations in accordance with the principle of legality enshrined in the PPF (Art. 101, para. 1 PPF). If possible, priorities may and in fact should be set out. The investigation and trial of a federal criminal law case that falls under federal jurisdiction may also be delegated to the cantonal authorities (Art. 18 and 18^{bis} PPF).

9. May the prosecution service lay down general crime policy guidelines (priority targets) for the police? In what form? If not the public prosecutor, then who?

With the agreement of the police, the public prosecution service may lay down priority objectives as part of an investigation (e.g. if there is a lack of resources); see the reply to question no. 8.

10. Are the police in general obliged to report to the public prosecutor all offences / some offences that come to their knowledge? Do they do this in practice?

Yes. If there is sufficient suspicion to suggest that offences within the federal jurisdiction have been committed, the police immediately notify the public prosecution service (Art. 101 PPF). The police do this in practice.

11. Can the police refuse an order of the public prosecutor to conduct an investigation or delay its execution? How does it work in practice?

As a general rule, the police cannot do this. If the police do not have sufficient personnel to conduct an investigation ordered by the public prosecution service, they notify the latter in good time. The public prosecution service confers with the chief of police in order to ensure that the necessary personnel are made available or that the priorities are amended. If there is a shortage of personnel, the public prosecution service may, inter alia, call upon members of the cantonal police (see Art. 17, para. 2 PPF).

12. Which body deals with complaints against police involved in criminal investigation?

Appeals against police actions may be lodged with the public prosecution service (Art. 105^{bis} para. 1 PPF); see reply to question no. 2.

13. In practice, do prosecutors or police provide the media with information about criminal investigations?

When the public prosecution service orders the opening of an investigation for which it is responsible, it or its substitutes must inform the media. In agreement with the courts, the police either inform the media on their own or do so in partnership with the national prosecution service.

14. If you have experiences with Joint Investigation Units between prosecutors and police, please describe advantages and disadvantages?

Both have the same level of information, are aware of the common strategy and can play their part; it is therefore possible to avoid duplication of effort (advantages). However, the system can be rather cumbersome (disadvantage).

THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA

Ultimately responsible for a investigation in pre-criminal proceeding are Public prosecutor and bodies responsible for discovering the crimes (Police, Customs service, Financial Police, Direction against money laundering and Direction for public finances). They are working under directions and control of Public prosecutor. In criminal proceeding investigation is led by the investigation judge by request from Public prosecutor.

Public prosecutor is responsible to ensure that the police respects all statutory rules and procedures in criminal investigation in cases about organized crime. Public prosecutor controls their activities and also Public prosecutor make sure that police respects the human rights.

Police has obligation to consult public prosecutor on investigation matters and Public prosecutor can ask from the police one or more persons from the police to work with him for 1 year of less under authority of Public prosecutor, this in cases of organized crime and corruption, but in other important criminal cases.

According to changes of Law of criminal proceeding, Public prosecutor may issue detailed instructions to the police about investigation and also Public prosecutor can order taking special investigation measures according to the law.

Police need approval from the Public Prosecution to use special investigation measures in criminal cases where the sentence for crimes is at least 4 years jail and for crimes where the sentence is at the most 5 years jail, where there is suspicion that the crime was committed by organized group, band or group or other crime association.

Police need approval from the public prosecutor to undertake this Special investigation measures:

- looking into and searching the computer system, taking the computer system or part of computer system or computer data.
- secret surveillance, tracing and visual recording of persons and objects with technical means.
- simulated ransom of things, simulated giving and taking bribe;
- controlled delivery and transport of persons and things; using persons with false identity for finding and for collecting an information;
- opening a simulated bank account and
- opening simulated companies or using existing companies, for collecting information.

Police cannot use special investigation measures without authorisation from public prosecution or court.

Public prosecution can take over the investigation from the Police, Customs service, Financial police, Direction for public finances and from Direction against money laundering, in whole or in a part, for all crimes.

Yes, Public prosecutor can set priorities about leading the investigations.

Yes, Public prosecutor can lay down general crime policy guidelines for the police. Public prosecution do this concrete when works on concrete criminal cases.

Police in general is not obligated to report to public prosecutor all offences that came to their knowledge, except for serious crimes for which they can agree not to undertake a proceeding against the member of the group if he agree to co-operate in order to find other perpetrators and to discover other crimes.

According to Changes of Law of criminal proceeding which come into force on 01.11.2004, police cannot refuse an order from Public prosecutor. Because this is a new law we have short experience, but for now the cooperation is successful.

The body which deals with complaints against the police is Commission for internal standards, which is founded in the police. Cases about violation of human rights conducts Public prosecutor, investigative judge and commissions and bodies which works as a part of Presidential office, Government and Ombudsman.

Yes, public prosecution and the police provide the media with information about criminal investigations, according to law and they take care not to violate human rights.

According the laws in Republic of Macedonia and in the Changes of Law of criminal proceeding which come into force on 01.11.2004, there is possibility of joint investigation between Public prosecution and the police. Because this is a new law we have short experience and we think that this kind of investigation will have positive effects in the future and will help in discovering and prosecuting the perpetrators of the crimes, especially crimes in organized crime.

TURKEY¹⁹

1. In Turkey, the prosecution service is ultimately responsible for a proper investigation.
2. Administrative supervision of the police is the responsibility of the Ministry of the Interior (the Ministry to which the police are answerable).

When a criminal investigation is carried out, however, the police have to work under the supervision of the prosecution service.

The system may thus be described as mixed.

3. Generally speaking, there is an obligation for the police to consult the prosecution service in advance on any investigation.

In other words, the police must, in principle, obtain the opinion and agreement of the prosecution service before starting to investigate a case. On the other hand, where an investigation is urgently necessary, it may be begun without the prosecution service having been consulted. Steps have to be taken to preserve the evidence. In such cases, the police have to ask the opinion of the prosecution service as soon as possible about a continuation of the investigation.

4. The prosecution service may issue detailed instructions to the police.

Under the current system in Turkey, the police carry out investigations on behalf of the prosecution service.

5. If the prosecution service wishes to carry out an investigation itself, it may do so. In both theory and practice, however, when a case is highly complicated and it is not easy for the police to obtain evidence, the police investigation has to be carried out under the supervision of the prosecution service.

6. The police may use special investigation methods without prior authorisation. They may, for instance collect evidence themselves; they may use police resources against a terrorist organisation; in urgent cases and to enable evidence to be preserved, the police may make use of special investigation methods, but they must give details about the continuation of the investigation to the public prosecutor as rapidly as possible.

7. Yes, it is possible for the public prosecutor to take over, either in whole or in part, the investigation from the police or any other criminal investigating authority. There are no clear provisions in this respect, but the prosecution service bears ultimate responsibility, in accordance with the Code of Criminal Procedure, for the proper conduct of an investigation, and the public prosecutor may take over, either in whole or in part, a criminal investigation. And, in practice, this situation is possible, such as when the police have misused their official authority or when serious or ordinary negligence has occurred.

¹⁹ Original reply received in French, see Appendix

8. Yes, the prosecution service may set priorities in respect of the instigation of investigations, because it is ultimately responsible for the proper conduct of investigations.

9. The prosecution service may give only specific crime policy guidelines to the police. It may not issue general crime policy guidelines, because the police operate under the administrative supervision of the Ministry of the Interior. Turkey does not yet have a criminal police force.

10. Members of the police must report all offences, without any exceptions, to the public prosecutor.

11. The police may not refuse to carry out, or delay the carrying out of, an investigation ordered by the public prosecutor. Police must carry out their investigations under the supervision of the prosecution service. The prosecution service itself, however, cannot deal directly with all such investigations, as it is overloaded with work. Public prosecutors deal with different matters, preparing charges, taking part in hearings, discharging administrative duties, helping with expert appraisals and autopsies, questioning witnesses and suspects (accused persons) and bearing responsibility for prison administration (remand prisons or other places of detention).

There are a few cases conducted by the public prosecutor alone. In such cases, to which special procedures apply, there is no police involvement. Such cases include juvenile delinquency and other cases covered by special laws, etc.

12. The police have a judicial role. Government servants in Turkey exercise either an administrative or a judicial function. Given that the role of the police is a judicial one, they are under the responsibility of the prosecution service.

13. There is no office responsible for providing information to the media. In practice, however, public prosecutors and police pass information about criminal investigations on to the media, provided that this is not detrimental to the investigation. There are occasions when the law is not complied with.

14. I have personally taken part in the activities of Joint Investigation Units between prosecutors and police.

The advantages of these are that, thanks to the presence of different specialists, we took all the necessary steps and were easily able to obtain evidence.

The disadvantages are that uncertainty remains, as investigation results vary greatly from one case to another.

UKRAINE

Who is ultimately responsible for a proper investigation?

Pursuant to the Code of Criminal Procedure of Ukraine, investigators of the bodies of prosecution service, interior affairs, security service, and tax militia may conduct pre-trial investigation.

The investigator carrying out criminal proceedings is responsible for its proper investigation. The public prosecutor exercises the supervision of pre-trial investigation. He or she also affirms an indictment and takes the decision on referral of a case to the court.

Who has the task of ensuring that the police respect all statutory rules and procedures in criminal investigation with respect to the effectiveness of the fight against crime and to make sure they respect human rights (in particular where persons are deprived of their liberty)?

The bodies of prosecution service of Ukraine exercise supervision of observance of laws by the bodies of internal affairs in the course of operative search activity, inquiry and pre-trial investigation.

The public prosecutor takes measures to ensure that the bodies of inquiry and pre-trial investigation:

- observe the lawful procedure of institution of criminal matters, investigation of criminal actions, conduct of operative search activities, use of technical means, suspense and closing of cases, as well as keep terms of investigation proceedings and holding in custody,
- in the course of criminal investigation meet strictly the requirements of law on comprehensive, full and objective examination of all circumstances of a case, clarify circumstances exposing or justifying the accused person, as well as attenuating or aggravating his or her guilt,
- detect causes of the commitment of crimes and conditions favouring it, take measures for their elimination.

The preventive measure of holding in custody is used only by a reasoned order of the court. In case if the investigating authority considers that there are grounds for holding in custody, it submits a proposal to the court with the consent of the public prosecutor. The public prosecutor may submit the same proposal.

The public prosecutor exercises supervision of observance of laws in the course of enforcement of coercive measures, connected with limitation of individual liberty of the citizens. In particular, the public prosecutor is entitled:

- at any time to visit places of detention of the detainees, places of preliminary confinement and familiarize himself/herself with documents, on the ground of which these persons are detained or arrested,
- to verify the legality of orders, resolutions and decisions of the administration of the above-mentioned institutions, stop the enforcement of such acts, appeal against or cancel them in case of their non-conformity with the legislation, demand from officials to bear responsibility for infringements committed by them,
- the public prosecutor is obliged to release immediately the person, who is illegally held in detention places or preliminary confinement places.

The decisions and instructions of the public prosecutor on observance of statutory rules and conditions of detention of the detainees or arrested are binding and subject to immediate execution.

Are the police under an obligation of prior consultation with the public prosecutor on investigation matters? If so, does this apply to all criminal cases or to important cases only?

In the course of pre-trial investigation proceedings the investigator takes himself/herself all decisions on the conduct of investigation and accomplishment of investigative acts, except cases, when the law provides for obtaining of the consent of the court or public prosecutor, and shoulders full responsibility for their lawful and timely carrying out. In case of disagreement of the investigator with instructions of the public prosecutor on bringing to responsibility as the accused, qualification of a crime and scope of an accusation, referral of a case on bringing of the accused before the court or closing of a case, the investigator has the right to submit the case to a higher public prosecutor with a written statement of his or her objections. In this case the public prosecutor overrules the instructions of a subordinate public prosecutor or entrusts another investigator with the task of carrying out the investigation into this matter.

Such practice is applicable to all criminal matters.

May the public prosecutor issue detailed instructions to the police? If so, please elaborate.

The public prosecutor has the right to issue instructions to the bodies of internal affairs, which exercise operative search activity, inquiry and pre-trial investigation, concerning institution of criminal matters and conduct of investigation, according to the legislation of criminal procedure. The above-mentioned instructions are compulsory.

In what type of cases do police officers need approval of, or co-operation with, the public prosecutor for the use of certain means of coercion?

In the course of investigation of all types of criminal matters the investigating authority needs approval of the public prosecutor for the use of certain means of coercion, in case of necessity: to choose a preventive measure of holding in custody, with approval of the public prosecutor, the investigating authority should submit a proposal to the court, which issues a relevant reasoned order.

- to conduct a search, according to a reasoned order of the investigator by a sanction of the public prosecutor (*except searches of the dwelling premises or other property of a person, that are conducted only by the court order*),
- to make a seizure of documents, which constitute a state or/and bank secret (*such investigative action is carried out only by a sanction of the public prosecutor*).
- to arrest correspondence and obtain information from communication channels, that requires submitting by the investigator, with approval of the public prosecutor, of a proposal to the president of the court of appeal, respectively to the place of conduct of the above-mentioned investigative action.
- to direct the accused person to the in-patient psychiatric examination.

Can the police use special investigation methods without prior authorization (such as use of informants, infiltrations and so forth?)

The bodies of internal affairs can use special investigation methods within the Law “On Operative Search Activity”. Operative search activity is the system of open and secret search measures, which are taken with the use of operative and operative technical means.

While performing tasks of operative search activity, the operative units are entitled, in particular:

- to interrogate persons by their approbation, using their voluntary assistance,
- to effect a control and operative buying and delivery of goods, objects and matters, including those prohibited for turnover,
- to raise legally a question on verification of financial economic activity of enterprises,
- to request, gather and examine documents and data concerning activity of enterprises and organizations,
- to conduct operations with a view to capture criminals and repress crimes,
- to visit dwelling and other premises by approbation of their owners or inhabitants for the purpose of clarification of circumstances of a committed or imminent crime,
- to detect and fix secretly trace of a serious and particularly serious crime, documents and other things, that may be evidence of preparation or commitment of such crime, or obtain intelligence information, including by way of penetration of the operative officer into the premises, transportation means, lands.
- to effect infiltration into a criminal group of a secret officer of the operative unit or a person co-operating with the latter,
- to take information from communication channels, use other technical means of data organization,
- to check telegraph transmissions and postings by means of selection by certain signs,
- to exercise a visual supervision in public places with utilization of photography, video filming and filming, as well as other technical means,
- to have ordinary and secret officers, which are permanent or not of the permanent staff,
- to establish a confidential co-operation with persons on the voluntary basis.

Secret penetration into the dwelling premises or other property of a person, taking of information from communication channels, control of correspondence, telephone conversations, telegraph

and other transmissions, use of other technical means of data organization are exercised by the court order, issued by a proposal of the head of a relevant operative unit or his deputy.

The above-mentioned persons inform the public prosecutor within 24 hours about obtaining of such authorization of the court or its refusal to grant it. The use of such methods is made exclusively for the purpose of prevention of a crime or clarification of the truth in the course of criminal investigation, if it is impossible to obtain information otherwise. According to results of the afore-mentioned operative search measures, they draw up a report with relevant annexes, which is subject to utilization as the source of evidence in criminal proceedings.

Is it possible for the prosecutor to take over, either in whole or in part, the investigation from the police or any other criminal investigating authority?

In the course of supervision over enforcement of laws by the bodies of inquiry and pre-trial investigation, the public prosecutor, within his or her competence, in particular:

- demands from the bodies of inquiry and pre-trial investigation to provide criminal matters, documents, materials and other data on committed crimes, course of inquiry, pre-trial investigation and identification of persons, which committed crimes, for verification,
- countermands unlawful and unfounded orders of investigators and persons, which conduct inquiry,
- gives instructions on taking of necessary measures with a view to solve crimes, identify persons, which committed them, in matters investigated by the public prosecutor or the investigator of prosecution service.
- takes part in the conduct of inquiry and pre-trial investigation and, if necessary, personally accomplishes certain investigative actions or investigations in whole in any case,
- returns criminal matters to the bodies of pre-trial investigation with his of her instructions on the conduct of an additional investigation,
- takes from the body of inquiry and refers to the investigator any case, refers a case from one body of pre-trial investigation to another, as well as from one investigator to another with a view to ensure the most comprehensive and impartial investigation.

Can the prosecution service set priorities as to the instigation of investigations?

Criminal matters are instituted on the ground of:

- application or report of enterprises, institutions, organizations, officials, representatives of authorities, community or individuals,
- report of representatives of authorities, community or individuals, which caught the suspect *flagrante delicto* or red-handed,
- giving oneself up,
- press reports,
- direct detection by the body of inquiry, investigator, public prosecutor or the court of elements of crime.

The matter can be instituted only in the cases when there is sufficient evidence concerning elements of crime.

The public prosecutor, investigator, body of inquiry or judge are required to issue an order instituting a criminal matter.

The public prosecutor exercises supervision of legality of the institution of a criminal matter. If the matter is instituted groundlessly, the public prosecutor closes it, and in cases, when no investigative actions were accomplished in this matter, countermands the order on institution of a criminal matter.

In case of a groundless refusal of the investigator or the body of inquiry to institute a matter, the public prosecutor countermands the order of the investigator or the body of inquiry and institutes the matter.

May the prosecution service lay down general crime policy guidelines (priority targets) for the police? In what form? If not the public prosecutor, then who?

General crime policy guidelines are laid down by legal rules, based on constitutional grounds, which include laws and dispositions of the Verkhovna Rada of Ukraine, decrees and ordinances of the President of Ukraine, resolutions and orders of the Cabinet of Ministers of Ukraine, rulings of the Plenary Session of the Supreme Court of Ukraine.

The General Prosecutor of Ukraine and his subordinate prosecutors coordinate the anti-crime activity of the bodies of internal affairs, security service, tax militia, customs and other law-enforcement agencies.

With a view to ensure such coordination, the public prosecutor calls coordinating meetings, organizes working groups, requires statistics and other information.

Are the police in general obliged to report to public prosecutor all offences / some offences that came to their knowledge? Do they do this in practice?

The bodies of militia register all offences that came to their knowledge. The public prosecutor, who supervises observance of laws by the bodies of internal affairs, verifies regularly the lawful procedure of crime record.

In case of decision on institution of a criminal matter, the investigator or the body of inquiry are obliged to send within 24 hours to the public prosecutor a copy of the order on institution of a criminal matter or refusal to institute such matter.

Can the police refuse an order of the public prosecutor to conduct an investigation or delay its execution? How does it work in practice?

Instructions of the public prosecutor to the bodies conducting operative search activity, inquiry and pre-trial investigation on institution of criminal matters and conduct of criminal investigations are binding for these bodies.

Refutation of the above-mentioned instructions before the higher public prosecutor does not impede their execution.

Which body deals with complaints against police involved in criminal investigation?

The bodies of prosecution service and court deal with complaints against militia officers.

In practice, do prosecutors or police provide the media with information about criminal investigations?

Information about pre-trial investigations is confidential and can be made public only by authorization of the investigator or the public prosecutor to the extent they deem possible. Guilty of disclosure of information about pre-trial investigations bear criminal responsibility.

If you have experiences with Joint Investigation Units between prosecutors and police, please describe advantages and disadvantages.

Investigation of a particularly difficult matter can be commissioned to several investigators. It is stated in the order on institution of the matter or in a separate order. One of these investigators is appointed the chief of the investigative group; he or she takes over the matter and controls directly actions of others.

With a view to investigate difficult criminal matters of financial fraud, corruption and other official crimes, investigative groups, consisting of representatives of different institutions of inquiry and investigation are set up. The most experienced investigators of prosecution service head such groups.

UNITED KINGDOM**(REPLY FROM NORTHERN IRELAND)****1. Who is ultimately responsible for a proper investigation?**

Conduct of investigations is an operational matter for police. The Director of Public Prosecutions may request police to conduct an investigation and to report to him. The manner in which the investigation is conducted is a matter for police.

2. Who has the task of ensuring that the police respect all statutory rules and procedures in criminal investigation with respect to the effectiveness of the fight against crime and to make sure they respect human rights (in particular where persons are deprived of their liberty)?

The Police Service is a public authority and is such is required to comply with all the requirements of the ECHR. A breach of human rights would be subject to sanction by the court or to the exclusion of evidence as the case may be.

3. Are the police under an obligation of prior consultation with the public prosecutor on investigation matters? If so, does this apply to all criminal cases or to important cases only?

There is no obligation on police to consult the prosecutor about investigations. However arrangements exists for police to receive, upon request, prosecutorial advice from the public prosecutor in respect of any particular case.

4. May the public prosecutor issue detailed instructions to the police? If so, please elaborate.

In this jurisdiction public prosecutors cannot direct a police investigation. See also the answer to Q1.

5. In what type of cases do police officers need approval of, or co-operation with, the public prosecutor for the use of certain means of coercion?

See the answers to question 4 and question 1.

6. Can the police use special investigation methods without prior authorisation (such as use of informants, infiltrations and so forth)?

The Regulation of Investigatory powers Act 2002 provides a statutory scheme under which police must operate to obtain permissions in respect of certain matters, for example bugging of telephones. The prosecutor is not involved in these investigative steps.

7. Is it possible for the prosecutor to take over, either in whole or in part, the investigation from the police or any other criminal investigating authority? If so, in what circumstances?

No.

8. Can the prosecution service set priorities as to the instigation of investigations?

Whilst the Prosecution Authority may request police to investigate any facts or circumstances which may amount to a crime contrary to the law of Northern Ireland the Prosecution Authority cannot set priorities as to the investigation by police.

9. May the prosecution service lay down general crime policy guidelines (priority targets) for the police? In what form? If not the public prosecutor, then who?

No.

10. Are the police in general obliged to report to public prosecutor all offences / some offences that came to their knowledge? Do they do this in practice?

Currently police investigations into all serious crimes and into some pre-determined minor crimes are sent to the Prosecution Authority for decision as to the institution or otherwise of criminal proceedings. This will soon change to a requirement that the police will send all investigations of crime to the Prosecution Authority for decision as to the institution or otherwise of prosecutions. Police cannot instruct the Prosecution Authority as to the nature of the proceedings which may be brought to trial. That is a matter entirely for the Prosecution Authority.

11. Can the police refuse an order of the public prosecutor to conduct an investigation or delay its execution? How does it work in practice?

When requested to conduct an investigation police must do so and report to the prosecutor. In practice this was always done. How the investigation is carried out is a matter for police.

12. Which body deals with complaints against police involved in criminal investigation?

The Office of the Police Ombudsman for Northern Ireland is responsible for the investigation of all complaints against police. The Police Ombudsman is entirely independent of police.

13. In practice, do prosecutors or police provide the media with information about criminal investigations?

The Prosecution Authority does not provide information to the media about criminal investigations. The police may provide some bare details of an investigation. It would be very unusual to go into details of a current investigation.

14. If you have experiences with Joint Investigation Units between prosecutors and police, please describe advantages and disadvantages.

We have no such experience.

APPENDIX I

Site Web de la Conférence:²⁰
www.coe.int/prosecutors



Strasbourg, 19 octobre 2004

CPGE-BU (2004) 07

Conférence des Procureurs Généraux d'Europe

Bureau de Coordination

8ème réunion
 Strasbourg, 13 – 15 octobre 2004

RAPPORTS ENTRE LE MINISTÈRE PUBLIC ET LA POLICE

QUESTIONNAIRE (French version)

1. Qui en dernier ressort est responsable de la bonne conduite d'une enquête?
2. Qui est chargé de veiller à ce que la police respecte toutes les règles et procédures légales dans une enquête pénale s'agissant de l'efficacité de la lutte contre le crime, et du respect des droits de l'homme (en particulier lorsqu'il s'agit de personnes privées de leur liberté)?
3. La police a-t-elle une obligation de consultation préalable du ministère public en matière d'enquête ? Si oui, cette obligation s'applique-t-elle à toutes les affaires pénales ou aux affaires importantes uniquement ?
4. Le ministère public peut-il émettre des instructions détaillées à l'intention de la police? Si oui, veuillez expliciter votre réponse.
5. Dans quel type d'affaire les membres de la police doivent-ils obtenir l'accord ou la coopération du procureur pour le recours à certains moyens coercitifs ?
6. La police peut-elle recourir à des méthodes spéciales d'enquête sans autorisation préalable (par exemple, recours à des informateurs, infiltrations et autres ...) ?

²⁰ Le Bureau remercie le Professeur Peter Tak d'avoir accepté que ce questionnaire soit partiellement basé sur celui qui figure dans son étude « *Tasks and powers of the Prosecution Services in the EU Member States* » publiée en 2004 par *Wolf Legal Publishers*, Courriel : wlp@hetnet.nl.

7. Est-il possible pour le procureur de dessaisir la police ou toute autre autorité chargée de mener une enquête pénale de tout ou partie de celle-ci ? Si oui, dans quelles circonstances ?
8. Le ministère public peut-il établir des priorités dans l'ouverture d'enquêtes ?
9. Le ministère public peut-il donner à la police des orientations générales (cibles prioritaires) en matière de criminalité? Sous quelle forme ? S'il ne le peut pas, qui le peut ?
10. Les membres de la police sont-ils tenus de signaler au procureur tous les délits / certains délits dont ils ont eu connaissance ? Le font-ils, en pratique ?
11. La police peut-elle refuser de mener une enquête ordonnée par le procureur ou retarder son exécution ? Comment cela se passe-t-il dans les faits ?
12. Quel est l'organe qui traite les plaintes visant la police impliquée dans une enquête pénale ?
13. En pratique, les procureurs ou la police communiquent-ils aux médias des informations sur des enquêtes pénales ?
14. Si vous avez déjà participé aux travaux d'Equipes Communes d'Enquête comprenant des procureurs et des membres de la police, pouvez-vous en décrire les avantages et les inconvénients ?

REPLIES RECEIVED IN FRENCH**ANDORRA****1. Qui est, en dernière instance, responsable de la bonne conduite d'une enquête ?**

Le responsable, en dernière instance, de la bonne conduite de l'enquête est, respectivement, le responsable de l'institution qui la dirige en fonction du stade où elle se trouve. Ainsi, si l'enquête se trouve uniquement au stade policier, le responsable en dernière instance est le directeur du Service de Police ; s'il s'agit d'une enquête du Ministère Public, le responsable est le Procureur Général ; et si les actions sont en phase judiciaire, le dernier responsable est le juge instructeur du procès qui lui aura été attribué à son tour.

Dans ce sens, l'article 93 de la Loi qualifiée de la Justice, du 3 septembre 1.993, dispose que « Les juges (Batlles) et le Ministère Public dirigent l'action de la police en matière judiciaire, conformément à ce que stipule la présente Loi » : l'article 94 de cette même loi précisant en outre que « La Police Judiciaire agit sous les ordres des juges et des tribunaux, les aide dans toutes leurs tâches et dans l'exécution des décisions de tous ordres juridictionnels. En particulier, la Police Judiciaire donne exécution aux missions que les juges disposent quant à l'instruction de mesures préparatoires et procédures d'instructions. De même, et sous le même rapport de dépendance, elle réalisera les enquêtes ordonnées par le Ministère Public en vue de la découverte de délits et de l'obtention de preuves. Le tout sans préjudice des tâches générales de prévention de l'ordre public et de la sécurité qui reviennent à la Police ».

Néanmoins, l'article 32 du Code de Procédure pénale, du 10 décembre 1998, stipule que «L'intervention du Service de Police dans l'instruction préparatoire cesse dès que le juge à qui revient l'instruction prend en charge les diligences. Toutefois, le Service de Police peut poursuivre en tant qu'auxiliaire.»

En outre, l'article 3 de la Loi sur le Ministère Public du 12 décembre 1996, stipule que «Dans le domaine de la mission qui lui est confiée, le Ministère Public . (...) 3. Dirige l'action de la Police dans la découverte de faits susceptibles de constituer une infraction pénale, peut ordonner des enquêtes en vue d'obtenir des preuves et peut contrôler l'opportunité et la durée de la garde à vue. A cet effet, il transmet les instructions au directeur de la Police qui désigne les fonctionnaires chargés de les exécuter et veille à leur application. Ces fonctions cessent, dans chaque cas, lorsque le juge instructeur initie les mesures préparatoires ou les mesures d'instruction.»

Toutefois, le paragraphe III de l'Exposé des motifs de la Loi qualifiée sur le Corps de Police, du 27 mai 2004, remarque que « Conformément à l'article 94 de la Constitution, les juges et le Ministère Public dirigent l'action de la Police en matière judiciaire conformément à la loi. Ce concept embrasse une série de fonctions comprises dans le cadre de l'action policière, dont le but est de découvrir le délit, découvrir le délinquant et assurer qu'il se trouve sous la dépendance fonctionnelle des juges et tribunaux et du Ministère Public. Ceci implique une spécialité dans la fonction générique policière de garantir la sécurité citoyenne et le libre exercice des droits et libertés.

La Constitution ne recueille nullement un modèle concret de Police Judiciaire, et elle renvoie à un développement législatif postérieur qui est contenu, de manière générale, dans le chapitre premier du titre VII de la Loi qualifiée de la Justice, du 3 septembre 1993 et, plus concrètement, dans la Loi sur le Ministère Public du 12 décembre 1996, et dans la Loi qualifiée portant modification du Code de procédure pénale, approuvée par le Parlement lors de sa séance du 10 décembre 1998. Comme le stipule l'article 95 de la Loi qualifiée de la Justice, la fonction de Police Judiciaire revient à tous les membres du Corps de Police, pour autant qu'ils soient requis pour la prêter par les juges et tribunaux et par le Ministère Public conformément à ce qui est stipulé dans la susdite Loi et dans les postérieures la développant. Dans sa structure, le Corps de Police peut créer et organiser des unités affectées à Police Judiciaire.

En Andorre, donc, le modèle de Police Judiciaire apparaît comme l'une des tâches ou des fonctions confiées à la Police, exercées sous la dépendance organique du pouvoir exécutif et sous la subordination fonctionnelle des juges, des tribunaux et du Ministère Public dans la forme que stipulent les lois.

La Police Judiciaire exécute deux grandes catégories de besognes ou de travaux : l'enquête des délits avant même que n'intervienne l'autorité judiciaire, et la réalisation des missions spécifiques que les juges et les tribunaux ou le Ministère Public lui confient dans chaque cas concret, conformément à ce que stipule le Code de procédure pénale.

C'est pour cela que l'aide apportée aux juges, tribunaux et Ministère Public dans l'enquête des délits et dans la détection et l'arrestation des délinquants, à la demande d'autrui ou à leur propre initiative, constitue une activité essentielle, prioritaire et permanente de la Police. Et c'est la raison pour laquelle la présente Loi prévoit la création d'unités spéciales de Police Judiciaire ainsi que la formation des fonctionnaires correspondants, en vue de les affecter fonctionnellement aux organes juridictionnels cités et au Ministère Public.»

Enfin, l'article 11 de la Loi qualifiée sur le Corps de Police du 27 mai 2004, stipule que «Sans préjudice des fonctions de Police Judiciaire qu'exécutent tous les services ordinaires du Corps, y compris celles de recevoir les plaintes des citoyens, le Gouvernement peut créer des unités de Police Judiciaire formées par des membres du Corps de Police instruits à cet effet, sous la dépendance organique que stipule l'article 95 de la Loi qualifiée de la Justice et les articles 32, 38 et 41 de cette Loi, et la dépendance fonctionnelle des juges, des tribunaux et du Ministère Public dans l'exercice et en application des fonctions qu'ils leur confieront.»

2. Qui est chargé de veiller à ce que la Police respecte toutes les règles et procédures légales au cours d'une enquête pénale s'agissant de l'efficacité de la lutte contre le crime et du respect des droits de l'homme (en particulier lorsqu'il s'agit de personnes privées de liberté) ?

La fonction garantissant que l'action judiciaire est menée à terme en respectant les règles et procédures légales revient aussi bien au Ministère Public qu'au juge instructeur et aux tribunaux de l'ordre pénal.

L'article 13 de la Loi qualifiée sur le Corps de Police, du 27 mai 2004, stipule comme facultés des supérieurs fonctionnels que «Les juges, les tribunaux et le Ministère Public possèdent, à l'égard des membres des Unités de Police Judiciaire, les facultés suivantes:

- a) Ils leur donnent les ordres et les instructions nécessaires, en exécution de ce que stipulent la Loi qualifiée de la Justice, le Code de procédure pénale et la Loi sur le Ministère Public.
- b) Dans ces ordres ou instructions, ils déterminent le contenu et les circonstances des actions intéressant lesdites unités.
- c) Ils contrôlent l'exécution de ces actions, au niveau de la forme et des résultats.
- d) Il peuvent demander l'exercice du pouvoir disciplinaire, et dans ce cas ils établissent les rapports que saurait exiger l'instruction des dossiers correspondants, ainsi que les autres qu'ils estimeront opportuns. Dans ces cas, ils reçoivent témoignage des résolutions adoptées.

3. La Police est-elle tenue de consulter préalablement le Ministère Public en matière d'enquête? Si oui, cette obligation s'applique à toutes les affaires pénales ou seulement aux affaires importantes ?

Non.

4. Le Ministère Public peut-il remettre des instructions détaillées à l'attention de la Police ? Si oui, veuillez préciser votre réponse.

Le Ministère Public a la faculté de remettre des instructions détaillées au Service de Police, pouvoirs que recueille l'article 3 de la Loi sur le Ministère Public du 12 décembre 1996 qui précise « Dans le domaine de la mission qui lui est confiée, le Ministère Public: (...) 3. Dirige l'action de la Police en vue de découvrir des faits susceptibles de constituer une infraction pénale, il peut ordonner des enquêtes en vue d'obtenir des preuves et peut contrôler l'opportunité et la durée de la garde à vue. À cet effet, il donne les instructions au directeur de la Police qui désigne les fonctionnaires responsables de les exécuter, et il veille à leur application. Ces fonctions cessent, dans chaque cas, dès que le juge instructeur entame des mesures préparatoires ou d'instruction.»

En outre, l'article 4 de la loi mentionnée prévoit que lorsque le Ministère Public demande aux autorités et aux organismes officiels de coopérer, et parmi eux au Service de Police, cette coopération doit être prêtée dans les limites légales, sans excuse ni retard.

5. Pour quel genre d'affaire les membres de la Police doivent-ils obtenir l'accord ou la coopération du Ministère Public à l'heure de faire appel à certaines mesures coercitives?

Conformément aux préceptes du Code de procédure pénale, toute mesure visant à restreindre les droits fondamentaux devant être adoptée par le Service de la Police, autre que la propre garde à vue, doit être préalablement accordée par le juge de permanence ou le juge instructeur connaissant de la cause, moyennant une décision motivée (perquisitions à domicile, écoute téléphoniques, etc.).

L'autorisation préalable du Ministère Public n'est requise que lorsque la Police, exceptionnellement et pour des raisons de gravité du délit et par nécessité de protéger l'enquête, décide de retarder jusqu'à un maximum de 24 heures la notification aux membres de la famille ou à la personne désignée par le détenu, le fait de l'arrestation.

6. La Police peut faire appel à des méthodes d'enquête spéciales, sans autorisation préalable (par exemple, recours à des indicateurs, infiltrations et autres.) ?

Non. Toute intervention concernant la mise sous surveillance d'objets délictuels ou la participation d'agents infiltrés et couverts, se trouve réglementée par les articles 122 *bis*, 122 *ter* et 122 *quater* du Code de procédure pénale, qui stipulent que le Directeur du Service de Police en fait la demande au juge instructeur ou de permanence qui préalablement devra en autoriser l'exécution.

7. Le Ministère Public peut-il relever, totalement ou en partie, la Police ou toute autre autorité chargée de diriger l'enquête pénale ? Si oui, en quelles circonstances ?

Non.

8. Le Ministère Public est-il autorisé à stipuler des priorités dans l'ouverture d'enquêtes?

Non.

9. Le Ministère Public peut-il faciliter à la Police des orientations générales (objectifs prioritaires) en matière de criminalité ? Sous quelle forme ? En cas de réponse négative, qui est en mesure de le faire ?

Oui, le Ministère Public peut donner à la Police des orientations générales en matière de criminalité, sous la forme d'instructions ; mais en s'assujettissant toujours à la légalité et aux critères de politique criminelle stipulés par le Gouvernement, à qui revient la fonction d'orientation de la politique pénale de l'État.

Le commandement suprême de la Police appartient au Gouvernement à travers du chef du Gouvernement (cap de Govern) et il est exercé par la personne titulaire du Ministère à qui les compétences en matière d'Intérieur ont été attribuées.

10. Les membres de la Police sont-ils tenus d'informer le Ministère Public de tous les délits/certains délits dont ils ont eu connaissance? Le font-ils en pratique?

Oui, toujours conformément à ce que stipule l'article 96 de la Loi qualifiée de la Justice du 3 septembre 1993, « La Direction de la Police remettra, tous les jours, un rapport des procédures et incidences au Tribunal (Batllia) et au Ministère Public.»

L'article 3 de la Loi sur le Ministère Public du 12 décembre 1996 stipule également que «Dans le domaine de la mission qui lui a été confiée, le Ministère Public : (...) Reçoit quotidiennement, de

la Direction du Service de Police et de la Direction du Centre pénitencier, le rapport d'actions et incidences, ainsi que la liste des mises sous écrou et des levées d'écrou.»

En outre, l'article 22 du Code de procédure pénale du 10 décembre 1998, stipule que «Lorsque les fonctionnaires de police ont connaissance qu'un délit punissable a été commis, ils doivent en informer le Ministère Public et procéder à l'enquête immédiate, tout en procédant aux démarches nécessaires. »

Finalement, l'article 28 du Code de procédure pénale stipule que «Lorsque les agents du Service de Police arrêtent une personne, en vertu de ce que stipule l'article précédent, ils doivent la mettre en liberté ou la remettre au juge correspondant dans un délai de 48 heures.

Le Service de Police doit informer immédiatement le Ministère Public des arrestations et des mises en liberté effectuées.»

En pratique, le Service de Police exécute le contenu des préceptes susmentionnés.

11. La police peut-elle refuser de réaliser une enquête ordonnée par le Ministère Public ou en retarder son exécution ? Comment ceci se passe-t-il ?

La police ne peut pas refuser de réaliser une enquête ordonnée par le Ministère Public, ni en retarder l'exécution. Bien au contraire, elle est tenue de la réaliser sans excuse ni retard.

12. Quel est l'organe qui traite les plaintes déposées contre la Police impliquée dans une enquête pénale?

Le Service de Police même, le Ministère Public ou le juge instructeur.

13. En pratique, le Ministère Public ou la Police communique aux médias les informations ayant trait aux enquêtes policières?

Le Ministère Public, non; le Service de Police, oui.

14. Si vous avez déjà participé à des travaux d'équipes communes d'enquête composées de membres du Ministère Public et de ceux de la Police, pourriez-vous en décrire les avantages et les inconvénients?

Jusqu'à présent nous n'avons pas participé à des travaux d'équipes communes entre Ministère Public et membres de la Police, en vue de mener à terme une enquête. Toutefois, habituellement, il existe un contact direct et personnel entre le Ministère Public et les agents de Police chargés de l'enquête ce qui en facilite la coordination et le développement.

BELGIUM

1. Qui en dernier ressort est responsable de la bonne conduite d'une enquête ?

Article 28 bis du code d'instruction criminelle dit que *l'information est conduite sous la direction et l'autorité du procureur du Roi compétent. Il en assume la responsabilité.*

2. Qui est chargé de veiller à ce que la police respecte toutes les règles et procédures légales dans une enquête pénale?

Sauf les exceptions prévues par la loi, les actes d'information ne peuvent comporter aucun acte de contrainte ni porter atteinte aux libertés et aux droits individuels. C'est le procureur du Roi qui veille à la légalité des moyens de preuve ainsi qu'à la loyauté avec laquelle ils sont rassemblés. (Art 28 bis §3 du code d'instruction criminelle).

Dans l'exercice de ses missions de police administrative ou judiciaire tout fonctionnaire de police peut, en tenant compte des risques que cela comporte, recourir à la force pour poursuivre un objectif légitime qui ne peut être atteint autrement. Tout recours à la force doit être raisonnable et proportionné à l'objectif poursuivi.

En plus article 131 § 1 du code d'instruction criminelle prescrit que la Chambre du conseil peut prononcer, s'il y a lieu, la nullité de l'acte et de tout ou partie de la procédure subséquente lorsqu'elle constate une irrégularité, une omission ou une cause de nullité affectant un acte d'instruction ou l'obtention de la preuve.

C'est également à la chambre du conseil de décider tous les mois s'il convient de maintenir le prévenu en détention préventive (entre autre elle contrôle/vérifie si les droits de l'homme sont respectés), de l'internement des déséquilibrés mentaux et de la suspension (probatoire) du prononcé de la condamnation. Les décisions de la chambre du conseil, appelées ordonnances, peuvent être contestées en appel devant la chambre des mises en accusation.

3. La police a-t-elle une obligation de consultation préalable du ministère public en matière d'enquête ? Si oui, cette obligation s'applique-t-elle à toutes les affaires pénales ou aux affaires importantes uniquement ?

Parce que le procureur du Roi mène l'enquête, la police reçoit ces ordres du ministère public. Sauf dans les cas où la police est autorisée d'agir de manière autonome, c'est le concept de Traitement Policier Autonome (TPA). Quand la police ouvre un TPA dossier, elle a quinze jours pour informer le ministère public. Ceci doit donner au ministère public l'opportunité d'intervenir.

La police a quarante jours pour conclure le dossier.

4. Le ministère public peut-il émettre des instructions détaillées à l'intention de la police ? Si oui, veuillez expliciter votre réponse.

Comme le procureur du Roi conduit l'information, il est évident qu'il peut donner des instructions détaillées à la police. Le procureur du Roi a le droit de requérir les services de police visés à l'article 2 de la loi sur la fonction de police (Annexe 5) et tous les autres officiers de police judiciaire pour accomplir, sauf les restrictions établies par la loi, tous les actes de police judiciaire nécessaires à l'information. Les services de police requis sont tenus d'obtempérer aux réquisitions et de prêter le concours des officiers et agents de police judiciaire nécessaire à leur exécution (art 28 ter § 3 du code d'instruction criminelle). Le procureur du Roi peut désigner le ou les services de police chargés des missions de police judiciaire dans une enquête particulière, et auxquels les réquisitions seront, sauf exception, adressées. Si plusieurs services sont désignés, le procureur du Roi veille à la coordination de leurs interventions.

Les fonctionnaires de police informent immédiatement l'autorité judiciaire compétente des informations et renseignements en leur possession et de toute recherche entreprise selon les modalités fixées par le procureur du Roi.

5. Dans quel type d'affaire les membres de la police doivent-ils obtenir l'accord ou la coopération du procureur pour le recours à certains moyens coercitifs ?

Hors le cas de flagrant crime ou de flagrant délit, la police ne peut que prendre des mesures conservatoires. La décision de privation de liberté ne peut être prise que par le procureur du Roi (art 2 Loi relative à la détention préventive (Voyez Annexe 2)).

6. La police peut-elle recourir à des méthodes spéciales d'enquête sans autorisation préalable ?

Non. L'information s'étend à l'enquête proactive. Celle-ci, dans le but de permettre la poursuite d'auteurs d'infractions, consiste en la recherche, la collecte, l'enregistrement et le traitement de données et d'informations sur la base d'une suspicion raisonnable que des faits punissables vont être commis ou ont été commis mais ne sont pas encore connus, et qui sont ou seraient commis dans le cadre d'une organisation criminelle, telle que définie par la loi, ou constituent ou constitueraient un crime ou un délit tel que visé à l'article 90ter, §§ 2, 3 et 4 (art 28 bis § 2 du code d'instruction criminelle).

Pour entamer une enquête proactive, l'autorisation écrite et préalable du procureur du Roi, de l'auditeur du travail, ou du procureur fédéral, dans le cadre de leur compétence respective, est requise.

Les méthodes particulières de recherche sont réglées dans la loi de 6 janvier 2003 (Annexe 3).

7. Est-il possible pour le procureur de dessaisir la police ou toute autre autorité chargée de mener une enquête pénale de tout ou partie de celle-ci ?

Oui, le procureur conduit l'enquête, donc il peut classer des dossiers. Mais toute personne qui se prétendra lésée par un crime ou délit pourra en rendre plainte et se constituer partie civile devant le juge d'instruction compétent (art. 63 du code d'instruction criminelle). Donc le fait que le procureur du Roi a classé le dossier ne veut pas dire que c'est la fin de l'enquête. Se constituer partie civile devant le juge d'instruction amène ipso facto à l'entrée en vigueur de la procédure pénale.

8. Le ministère public peut-il établir des priorités dans l'ouverture d'enquêtes ?

Article 28 ter § 1 prescrit que "dans le cadre de la politique de recherche déterminée conformément aux articles 143bis et 143ter du Code judiciaire, le procureur du Roi détermine les matières dans lesquelles les infractions sont prioritairement recherchées dans son arrondissement."

On doit aussi noter les plans zonaux de sécurité (PZS).

Ces plans zonaux de sécurité (trisannuel) comprennent : les missions et objectifs prioritaires déterminés par les bourgmestres et le procureur du Roi, chacun en ce qui concerne ses compétences.

Le PZS, en ce qu'il vise la planification de l'activité policière au niveau local, fait partie d'un processus plus large, conçu dans le cadre d'une approche intégrale et intégrée de la sécurité et est dès lors nécessairement élaboré en tenant compte de différents autres instruments de planification prévus tant au niveau fédéral (lignes politiques des ministres, plan national de sécurité (quadriennal) que local (lignes politiques des bourgmestres).

Le Conseil zonal de sécurité détermine les choix de politique et un projet de plan zonal est élaboré. Celui-ci doit alors être agréé par le Conseil zonal de sécurité et comporte au minimum les signatures des autorités locales (bourgmestre(s) et Procureur du Roi).

Une fois approuvé par les Ministres de la Justice et de l'Intérieur, le Plan zonal de Sécurité doit être mis à exécution. Pour ce faire, la zone dispose de quatre ans. Les choix fixés dans le plan zonal de sécurité doivent, soit, être traduits en projets ou points d'attention particulière (au moyen des plans d'action), soit, être intégrés au travail régulier.

La phase d'exécution dure quatre ans, les plans d'action restent cependant annuels (Annexe 4).

9. Le ministère public peut-il donner à la police des orientations générales en matière de criminalité ?

Oui, il le peut. Si on regarde les articles 26 du code d'instruction criminelle, 143 bis du code judiciaire et 5 § 2 de la loi sur la fonction de police (Annexe 5), on constate que le ministère public peut donner des orientations générales à la police. Par exemple, le procureur peut donner des directives générales nécessaires à l'exécution des missions de police judiciaire dans son arrondissement. Ces directives demeurent d'application, sauf décision contraire du juge d'instruction dans le cadre de son instruction. Elles sont communiquées au procureur général.

10. Les membres de la police sont-ils tenus de signaler au procureur tous les délits/certains délits dont ils ont eu connaissance?

Les services de police, dans l'exercice de leurs missions de police judiciaire, ont pour tâche de rechercher les crimes, les délits et les contraventions et informent immédiatement l'autorité judiciaire compétente des ces faits. (Art. 28 ter § 4 du code d'instruction judiciaire et art. 15 de la loi sur la fonction de police (Annexe 5))

11. La police peut-elle refuser de mener une enquête ordonnée par le procureur ou retarder son exécution ?

Non. La police requise ne peut discuter l'opportunité de la réquisition. Elle doit l'exécuter. Cependant, si la réquisition lui paraît manifestement illégale, elle ne peut pas l'exécuter. Dans ce cas, elle en informe par écrit sans délai l'autorité requérante en indiquant les motifs (art 8/2 Loi sur la fonction de police (Annexe 5)).

Lorsqu'un service de police ne peut donner au procureur du Roi les effectifs et les moyens nécessaires, celui-ci peut communiquer le dossier au procureur général en l'informant de la situation. Le procureur général peut soumettre le dossier au collège des procureurs généraux qui prend les initiatives qui s'imposent (par exemple détacher plus de personnel) (art 28 ter § 4 du code d'instruction criminelle).

12. Quel est l'organe qui traite les plaintes visant la police impliquée dans une enquête pénale ?

Le comité permanent de contrôle des services de police (dénommé le Comité P).
Voyez la loi organique de 18 juillet 1991 sur le contrôle des services de police et de renseignements (Annexe 6.).

13. En pratique, les procureurs ou la police communiquent-ils aux médias des informations sur des enquêtes pénales ?

Seulement le procureur du Roi peut (de l'accord du juge d'instruction pour les enquêtes qui lui sont confiées) lorsque l'intérêt public l'exige, communiquer des informations à la presse. Il veille au respect de la présomption d'innocence, des droits de la défense des inculpés, des victimes et des tiers, de la vie privée et de la dignité des personnes. Dans la mesure du possible, l'identité des personnes citées dans le dossier n'est pas communiquée (art 57 § 3 du code d'instruction criminelle).

14. Si vous avez déjà participé aux travaux d'Equipes Communes d'Enquête comprenant des procureurs et des membres de la police, pouvez-vous en décrire les avantages et les inconvénients ?

On travaille de tout près en équipe et on maîtrise directement la capacité des enquêteurs et en même temps l'utilité de certains devoirs ordonnés. Je ne vois pas des inconvénients, seulement des avantages.

FRANCE

1. Qui en dernier ressort est responsable de la bonne conduite d'une enquête ?

Le Procureur de la République, dès lors qu'il détient de la loi le pouvoir de dériver l'activité des officiers de Police Judiciaire pour la recherche et la poursuite des infractions (article 41 du code de procédure pénale).

Cela n'exclut pas évidemment la possibilité de mettre en cause l'Officier de Police Judiciaire en charge de l'enquête s'il apparaît qu'il a commis des négligences graves ou méconnu des instructions qui lui auraient été données par le Procureur de la République.

2. Qui est chargé de veiller à ce que la police respecte toutes les règles et procédures légales dans une enquête pénale s'agissant de l'efficacité de la lutte contre le crime, et du respect des droits de l'homme (en particulier lorsqu'il s'agit de personnes privées de leur liberté) ?

Plusieurs niveaux de compétence sont à distinguer:

- le Procureur de la République veille au respect des règles de procédure dans le cadre d'une enquête préliminaire (contrôle de la garde à vue par exemple)
- le juge d'instruction doit exercer ce contrôle dans le cadre d'une information judiciaire,
- le juge des libertés et de la détention doit intervenir dans le cadre de procédures dérogatoires ou droit commun ; ainsi en matière de lutte contre la criminalité organisée, il appartient au Juge des Libertés et de la Détention d'autoriser une prolongation exceptionnelle de la durée de garde à vue au-delà de 48 heures, des perquisitions en dehors des heures légales, ainsi que l'interception de correspondances émises par voie de télécommunication, la sonorisation de certains lieux ou véhicules et la fixation d'images ou de paroles de personnes ou de certains lieux).

3. La police a-t-elle une obligation de consultation préalable du ministère public en matière d'enquête ? Si oui, cette obligation s'applique-t-elle à toutes les affaires pénales ou aux affaires importantes uniquement ?

Non, pas spécialement. Cependant, il est d'usage et de recommandation qu'une concertation préalable ait lieu pour les affaires les plus sensibles ; il n'y a pas de catégorie spécifique d'affaires pour une concertation préalable; cela relève de la libre appréciation de l'enquêteur.

4. Le ministère public peut-il émettre des instructions détaillées à l'intention de la police? Si oui, veuillez expliciter votre réponse.

Oui, en fonction de ce qu'il estime nécessaire dans le cadre des investigations à mener pour le succès de l'enquête entreprise. Ces instructions portent en général sur des opérations de perquisitions, auditions de témoins, mises en garde à vue de suspects, prélèvements biologiques sur témoins ou suspects...

5. Dans quel type d'affaire les membres de la police doivent-ils obtenir l'accord ou la coopération du procureur pour le recours à certains moyens coercitifs ?

La question se pose dès lors que des moyens de procédure exceptionnels sont envisagés dans des affaires de grande criminalité (infiltration de réseaux de malfaiteurs par exemple) de façon plus large, l'accord du Procureur de la République peut-être sollicité dès lors que l'enquêteur se pose une question sur l'opportunité de la mesure envisagée (perquisition, garde à vue, saisie de documents ; en cas de perquisitions et saisie, il existe en outre des domaines réservés pour lesquels l'enquêteurs ne peut agir de sa seule initiative et hors présence d'un magistrat).

6. La police peut-elle recourir à des méthodes spéciales d'enquête sans autorisation préalable (par exemple, recours à des informateurs, infiltrations et autres...)?

Il faut distinguer entre les méthodes d'investigations précisément prévues par des textes qui fixent des règles spéciales (infiltrations, écoutes téléphoniques, sonorisation...) et des méthodes policières "classiques" telles que recours à informateur qui relève de la seule initiative du policier.

7. Est-il possible pour le procureur de dessaisir la police ou toute autre autorité chargée de mener une enquête pénale de tout ou partie de celle-ci ? Si oui, dans quelles circonstances ?

Le procureur peut toujours dessaisir un service d'une enquête en cours. En règle générale, la décision est prise en raison de difficultés à continuer l'enquête et le Procureur de la République peut alors estimer préférable de saisir un autre service qu'il estimera "mieux placé" (par exemple saisine d'un service de police au lieu d'un service de gendarmerie ou l'inverse).

8. Le ministère public peut-il établir des priorités dans l'ouverture d'enquêtes ?

Il appartient en effet au procureur de la république d'établir dans son ressort "une politique pénale", ce qui induit des choix prioritaires d'enquêtes. Mais l'Officier de Police Judiciaire peut aussi décider d'ouvrir une enquête de sa seule initiative, à charge pour lui d'en rendre compte au procureur de la république.

9. Le ministère public peut-il donner à la police des orientations générales (cibles prioritaires) en matière de criminalité ? Sous quelle forme? S'il ne le peut pas, qui le peut?

La question recoupe en partie la précédente. L'élaboration d'une "politique criminelle" en France relève prioritairement de la volonté du Ministre de la Justice qui peut adresser aux procureurs généraux des directives générales, à charge pour ceux-ci de les relayer auprès du Procureur de la République et de veiller à leur bonne application.

10. Les membres de la police sont-ils tenus de signaler au procureur tous les délits / certains délits dont ils ont eu connaissance? Le font-ils, en pratique ?

Oui, il entre dans les obligations professionnelles des officiers de police judiciaire (policiers ou gendarmes) de signaler au procureur de la république tous les crimes ou délits dont ils ont connaissance. Cette règle impérative est par principe respectée. En cas de violation de cette règle de principe, des poursuites disciplinaires peuvent-être engagées.

11. La police peut-elle refuser de mener une enquête ordonnée par le procureur ou retarder son exécution ? Comment cela se passe-t-il dans les faits?

Non. En principe, la police se doit d'exécuter les instructions qui lui sont données dans le déclenchement ou la conduite d'une enquête. Le principe se heurte parfois à une question de moyen qui peut alors expliquer certains retards dans l'exécution des instructions données. Mais ces retards ne doivent pas être justifiés par des raisons de pure opportunité. En pratique, une concertation s'établit entre le procureur de la république et le chef de service chargé de l'enquête afin de définir les conditions d'exécution de la mission, dès lors que celle-ci présente un caractère particulièrement sensible.

12. Quel est l'organe qui traite les plaintes visant la police impliquée dans une enquête pénale ?

Le Procureur de la république dispose de la possibilité de saisir un organe de contrôle interne à la police (ou à la gendarmerie) ; il s'agit de l'Inspection Générale de la Police Nationale à laquelle peuvent se joindre des membres de l'Inspection Générale des Services Judiciaires. Cet organisme procède à une enquête sur les faits et en communique le contenu et les conclusions au Procureur de la république à qui il appartient de prendre une décision sur la suite à réserver à la plainte.

Mais le Procureur de la république peut ainsi décider de saisir un juge d'instruction pour procéder aux investigations souhaitables.

13. En pratique, les procureurs ou la police communiquent-ils aux médias des informations sur des enquêtes pénales ?

Le principe est celui du secret en matière d'enquête, secret auquel sont tenus les enquêteurs. Mais si l'enquête donne lieu à des informations contestables, le procureur de la république dispose du pouvoir d'adresser un communiqué de presse. Enfin, lorsque des faits ont particulièrement troublé l'ordre public, il peut arriver que le procureur de la république ou son substitut, assisté du chef de service en charge de l'enquête, communique le résultat de l'enquête tout en préservant l'identité du ou des mis en cause en vertu de la présomption d'innocence.

14. Si vous avez déjà participé aux travaux d'Equipes Communes d'Enquête comprenant des procureurs et des membres de la police, pouvez-vous en décrire les avantages et les inconvénients ?

La question de mise en oeuvre d'équipes communes d'enquête est de grande actualité en FRANCE mais aussi de grande acuité dans la mesure où il n'est pas permis pour l'instant aux

autorités judiciaires locales de prendre l'initiative de constituer de telles équipes. La Chancellerie se réserve en effet le pouvoir de décision sur ce plan.

LUXEMBOURG

Question 1

La question de la responsabilité de la bonne conduite d'une enquête se pose après le niveau policier au niveau du ministère public lequel ne soumet pas à une juridiction une affaire soit parce que l'enquête semble incomplète, partielle ou encore qu'elle a été menée de manière déloyale. Il appartient au ministère public de demander à la police, dans la mesure du possible de rectifier l'enquête. Si la responsabilité première revient évidemment à la police elle revient en second lieu au ministère public. Il appartient en tout état de cause aux juridictions de sanctionner directement ou indirectement les défauts d'une enquête.

Question 2

Dans les affaires où l'on procède à une enquête préliminaire c'est le ministère public qui doit veiller à ce que la police respecte toutes les règles et procédures légales.

Dans les affaires où le juge d'instruction mène l'instruction, ce qui est en droit luxembourgeois forcément toujours le cas lorsqu'une personne est privée de sa liberté, le juge d'instruction doit veiller à ce que toutes les lois procédurales soient respectées par la police.

Il importe toutefois de noter que ce sont en fin de compte, soit les juridictions d'instruction, soit les juridictions de fond qui veillent au respect des règles procédurales par la police en ce sens que ces juridictions peuvent, soit annuler certains actes de procédures ou encore des procédures entières.

Question 3

La police n'a pas d'obligation de consultation préalable du ministère public en matière d'enquête. En fait cependant aucune enquête importante n'est effectuée sans que le ministère public n'en ait connaissance. La police ne pouvant en dehors d'une ordonnance d'un juge d'instruction procéder à aucun acte coercitif, la question est d'ailleurs au Grand-Duché de Luxembourg de nature plutôt théorique.

Question 4

Le ministère public peut émettre des instructions détaillées à l'intention de la police pour toutes les affaires qui relèvent de l'enquête préliminaire, c'est-à-dire les affaires où ni le ministère public, ni un plaignant se constituent partie civile, n'a requis le juge d'instruction d'ouvrir une information. Dans les affaires où le juge d'instruction est saisi c'est lui qui est le maître de l'enquête et a seul pouvoir de charger la police des devoirs d'enquête qu'il estime indiqués.

En cas d'enquête préliminaire le ministère public peut donner des instructions détaillées (témoins à entendre, vérifications techniques à faire, fixer un délai pour la fin de l'enquête) ou bien transmettre un dossier à la police tout simplement aux fins d'enquête.

Question 5

En cas de flagrant délit le Procureur d'Etat peut autoriser un officier de police judiciaire à retenir pendant un délai qui ne peut excéder vingt-quatre heures les personnes contre lesquelles il existe des indices graves et concordants de nature à motiver leur inculpation.

Le délai de vingt-quatre heures court à partir du moment où la personne est retenue en fait par la force publique. Au plus tard à la fin des vingt-quatre heures en question la personne retenue doit être présentée devant un juge d'instruction, à défaut de quoi il y a lieu de le libérer.

Le Procureur d'Etat peut ordonner les opérations nécessaires d'identification et notamment de prise d'empreintes digitales et de photographies de la personne retenue. Le projet de loi relatif à l'utilisation de l'ADN prévoit également que dans ce cas de figure le Procureur d'Etat peut autoriser des prélèvements en vue de l'établissement ADN de la personne retenue.

En cas de flagrant délit le Procureur d'Etat peut encore autoriser des perquisitions et saisies. Il convient toutefois de noter que ces actes de perquisitions peuvent pendant le flagrant délit être accomplis par les officiers de police judiciaires sans autorisation spéciale du ministère public.

En droit luxembourgeois certains actes coercitifs peuvent uniquement être ordonnés par le juge d'instruction (délivrance d'un mandat d'amener, délivrance d'un mandat de dépôt, écoutes téléphoniques, repérages téléphoniques). En dehors de flagrant délit seul le juge d'instruction peut ordonner des perquisitions et saisies.

En matière de violences domestiques le Procureur d'Etat peut autoriser l'expulsion du domicile de l'auteur des violences pour une durée de 10 jours.

Question 6

Le recours à des informateurs n'est pas réglé en droit luxembourgeois. Aussi une certaine circonspection est-elle de mise en l'occurrence. Un projet de loi permettant dans certaines hypothèses le recours à la procédure d'infiltration est en élaboration.

Question 7

Aucune disposition légale n'empêche le ministère public de mener lui-même une enquête. En fait on a toujours recours à un service de police. Il arrive cependant que pour des raisons d'opportunité on charge un autre service de police que celui initialement en charge de la poursuite de l'enquête.

Question 8

Le ministère public peut établir de priorités dans l'ouverture d'enquêtes. Ceci se fait soit en fixant un délai endéans lequel une enquête déterminée doit être déterminée soit en se concertant avec les responsables de la police pour déterminer ensemble les priorités et le nombre

d'enquêteurs indiqué pour les affaires en question. Ces concertations se recommandant d'ailleurs ne fût-ce que parce que les effectifs spécialisés de la police dans un matière donnée sont limités.

Question 9

Le ministère public peut donner, et donne en fait, des orientations générales en matière de criminalité. Le fait est toutefois que certaines difficultés se font jour surtout si la police se voit davantage comme une police d'ordre et de sécurité et néglige quelque peu ses attributions en matière de police judiciaire. En fait il y a des discussions plus ou moins permanentes entre les responsables de la police, les juges d'instruction et le ministère public sur les équilibres à trouver.

Question 10

Aux termes de l'article 12 du code d'instruction criminelle les officiers de police judiciaires sont tenus d'informer le Procureur d'Etat des crimes, délits et contraventions dont ils ont connaissance. Dès la clôture de leurs opérations ils doivent lui faire parvenir directement les procès-verbaux qu'ils ont dressés.

L'article 31 du même code prévoit encore qu'en cas de délit ou crime flagrant l'officier de police judiciaire qui en est avisé informe immédiatement le Procureur d'Etat.

Il convient toutefois de noter qu'en fait le ministère public est uniquement avisé sur-le-champ des faits qui constituent un trouble grave à l'ordre public ou encore en cas de nécessité d'une intervention immédiate de la part du ministère public (par exemple autorisation de la rétention d'une personne). Dans bien des situations le représentant du ministère public qui est de service est également le conseiller d'un service de police.

Question 11

Il paraît difficilement concevable que la police refuse de mener une enquête ordonnée par le Procureur d'Etat.

Les officiers de police judiciaire sont soumis à la surveillance du Procureur Général d'Etat.

En cas de négligence dans l'exercice de sa fonction, ou en cas de manquement aux devoirs et obligations de sa fonction l'officier de police judiciaire peut faire l'objet d'un avertissement de la part du Procureur Général d'Etat. Si l'avertissement est considéré comme inadéquat au regard des faits reprochés le Procureur Général d'Etat peut traduire l'officier de police judiciaire devant la chambre du conseil de la cour d'appel qui peut, indépendamment et sans préjudice d'éventuelles poursuites disciplinaires prononcer une réprimande, une suspension temporaire de deux ans ou même le retrait définitif de la qualité d'officier de police judiciaire.

Question 12

La loi sur la Police et l'Inspection Générale de la Police a attribué à l'Inspection Générale de la Police compétences pour traiter les plaintes visant la police dans une enquête pénale. L'Inspection veille à l'exécution des lois et règlements et rend compte à l'autorité concernée des manquements qui parviennent à sa connaissance.

Le ministère public peut également charger l'Inspection Générale de la Police d'enquêtes judiciaires à propos de faits délictueux qui auraient été commis par un membre de la police.

Question 13

D'après la loi seuls les Procureurs d'Etat ont le droit de donner à la presse des informations sur le déroulement d'une procédure, en respectant les droits de la défense et de la vie privée ainsi que les nécessités de l'instruction.

Le police peut cependant communiquer sur tous les faits concrets qui se sont déroulés sur la place publique.

Dans cette matière encore il y a une collaboration assez étroite entre la police et le ministère public afin de respecter le secret d'instruction, les nécessités de l'instruction, la présomption d'innocence et le droit du public à l'information. Il est à peine besoin de souligner qu'il n'est pas toujours facile de respecter ces différents droits.

Question 14

Pas d'expérience.

MONACO**QUESTIONS 1 ET 2 –**

Le ministère public.

Selon les dispositions de l'article 34 du Code de procédure pénale :

« Le procureur général a la direction de la police judiciaire et l'exercice de l'action publique. Il est chargé spécialement de la recherche et de la poursuite des crimes et délits ».

Selon les articles 20 et 21 de l'ordonnance du 9 mars 1918 organisant la Direction des Services Judiciaires :

« Article 20 – Le directeur des services judiciaires dirige l'action publique, sans pouvoir ni l'exercer lui-même, ni en arrêter ou suspendre le cours. »

Article 21 – Il donne, quand il y a lieu, ses ordre ou instructions aux officiers du ministère publics. Ces derniers, sont tenus d'y conformer leurs actes d'information écrite, l'indépendance de la parole demeurant réservée aux droits de la conscience.

Selon les dispositions de l'article de la loi n° 783 du 15 juillet 1965 portant organisation judiciaire :

« Le procureur général est le chef du ministère public. Il est chargé de rechercher et de poursuivre les crimes et délits; de surveiller, requérir et maintenir, au nom du Prince, l'exécution des lois, des arrêts et jugements; d'assurer d'office cette exécution dans les dispositions qui intéressent l'ordre public. Il veille à tout ce qui concerne l'ordre général ».

Le ministère public doit veiller au respect par les enquêteurs de la légalité des procédures et du respect des droits de l'homme, notamment dans le déroulement des gardes à vue.

QUESTION 3

La police a une obligation de consultation préalable du ministère public en matière d'enquête.

Selon les dispositions des articles 31 et 32 du Code de procédure pénale en effet :

Si « La police judiciaire constate les infractions à la loi pénale, en rassemble les preuves et en recherche les auteurs, elle « est exercée, sous l'autorité de la cour d'appel et sous la direction du procureur général, par les officiers de police judiciaires, les carabiniers, les agents de la sûreté publique et, dans les cas qu'elles déterminent, les fonctionnaires désignés par les lois spéciales ».

Selon l'article 34 du code de procédure pénale, le procureur général reçoit : « *les dénonciations et les plaintes qui lui sont portés directement, ainsi que tous rapports, procès-verbaux, renseignements qui lui sont transmis par les officiers de police judiciaire ou par toute autre voie, sur les crimes et les délits* ».

Enfin selon l'article 46 du code de procédure pénale, les officiers de police judiciaires « *envoient sans délai, au procureur général les dénonciations et les plaintes qu'ils ont reçues et les rapports ou procès-verbaux qu'ils ont rédigés* ».

QUESTION 4

Oui, le ministère public peut émettre des instructions détaillées à l'intention de la police. A titre d'exemple, il peut ordonner des investigations particulières selon une chronologie qu'il fixe lui-même.

QUESTION 5

L'accord et la coopération du procureur pour le recours à certains moyens coercitifs ne sont pas requis préalablement au placement en garde à vue lequel ne peut excéder 24 heures.

En pratique, le ministère public exige d'être informé dans le meilleurs délais possibles.

QUESTION 6

Non, la police a le devoir d'informer le procureur lorsqu'elle a recours à des méthodes spéciales d'enquêtes.

QUESTION 7

Oui, en théorie le procureur peut dessaisir la police ou toute autre autorité en charge d'une enquête pénale mais en pratique il n'existe qu'un seul service susceptible de conduire des enquêtes pénales.

QUESTION 8

Oui, le ministère public peut établir toutes priorités dans l'ouverture d'enquêtes. En pratique toute dénonciation ou découverte de faits délictueux entraîne l'ouverture d'une enquête.

QUESTION 9

Oui, le ministère public peut donner à la police des orientations générales en matière de lutte contre la criminalité. Il le fait à l'occasion de réunions conjointes Ministère public / police ou par instructions écrites ou orales.

QUESTION 10

Les membres de la police ont l'obligation de signaler au procureur tous les délits dont ils ont connaissance.

Plus précisément ils doivent consigner, dans des rapports ou des procès-verbaux qu'ils rédigent à cet effet sur le champ, la nature et les circonstances des crimes, des délits et des contraventions, le temps et le lieu où ils ont été commis, les preuves et les indices à la charge de ceux qui en sont présumés les auteurs (Article 45 du Code de procédure pénale).

QUESTION 11

La police ne peut refuser de mener une enquête ordonnée par le procureur, ni retarder son exécution. Dans la pratique ces règles sont scrupuleusement respectées.

QUESTION 12

Une enquête administrative peut être diligentée par les supérieurs hiérarchiques à l'encontre de tout policier mis en cause.

Les articles 48 et suivants du code de procédure pénale énoncent également que « *Les officiers de police judiciaire auxiliaires du procureur général sont, quant à ces fonctions, sous la direction du procureur général et sous l'autorité de la cour d'appel, sans préjudice de leur subordination à l'égard de leurs supérieurs dans l'Administration* ».

« Le contrôle des activités des officiers de police judiciaire, pris en cette qualité, est exercé par la cour d'appel en assemblée générale et en chambre du conseil ».

« La cour peut faire procéder à une enquête. Elle entend le procureur général et l'officier de police judiciaire, celui-ci assisté, s'il le désire, d'un avocat.

« La cour peut, sans préjudice des sanctions administratives susceptibles d'être infligées à l'officier de police judiciaire par ses supérieurs hiérarchiques lui adresser des observations ou lui interdire soit temporairement, soit définitivement, d'exercer ses fonctions de police judiciaire et le cas échéant, le condamner aux frais de la poursuite ».

Selon les dispositions de l'article 78 de la loi n° 783 du 15 juillet 1965 portant organisation judiciaire :

« *En cas de négligence des officiers de police judiciaire, le procureur général les averti et les rappelle à leur devoirs. Cet avertissement est consigné par lui sur un registre tenu à cet effet au parquet général.*

QUESTION 13

En pratique ce sont les procureurs qui communiquent aux médias les informations sur certaines enquêtes pénales et pour les affaires les plus importantes le directeur des services judiciaires lui-même.

QUESTION 14

A ce jour aucune participation à une équipe commune d'enquête n'est intervenue.

PORTUGAL

1. Qui en dernier ressort est responsable de la bonne conduite d'une enquête?

C'est au ministère public que la compétence pour déclencher l'action publique et pour diriger la phase procédurale d'investigation (enquête) se trouve légalement octroyée.

Ainsi, la responsabilité de la bonne conduite de l'enquête repose sur le ministère public, même lorsque l'investigation est matériellement menée, le tout ou en partie, par les organes de police criminelle agissant sous la dépendance fonctionnelle et sous la directe orientation de celui-là (article 219-1 de la Constitution de la République Portugaise, articles 1 et 3-1-c du Statut du ministère public, articles 53-2-b, 262 et 263 du Code de procédure pénale et articles 1 et 2 de la Loi n° 21/2000 portant sur l'organisation de l'investigation criminelle).

2. Qui est chargé de veiller à ce que la police respecte toutes les règles et procédures légales dans une enquête pénale s'agissant de l'efficacité de la lutte contre le crime, et du respect des droits de l'homme (en particulier lorsqu'il s'agit de personnes privées de leur liberté)?

A la phase d'enquête, autant le ministère public que le juge d'instruction criminelle (les autorités judiciaires), selon leurs respectives compétences, veillent à ce que la loi soit respectée par les organes de police criminelle, en particulier lorsque ceux-ci exécutent d'office des mesures préventives d'investigation en vue d'assurer les moyens de preuve.

Lorsque opérées sans autorisation préalable de l'autorité judiciaire, autant les arrestations, les fouilles de suspects en cas de fuite imminente ou d'arrestation, et les perquisitions des lieux où ils se trouvent – sauf en cas de perquisitions à domicile -, que les fouilles et perquisitions effectuées par les organes de police criminelle en cas de terrorisme, criminalité violente ou fort organisée, indépendamment d'arrestation ou de fuite imminente, sont soumises à l'appréciation et validation du juge d'instruction criminelle (articles 251, 174-4-a et 174-5 du Code de procédure pénale).

Sont aussi assujetties à l'appréciation et validation du ministère public les saisies opérées par les organes de police criminelle sans autorisation préalable (article 178-3, 178-4 et 178-5 du Code de procédure pénale).

Indépendamment de la nature spécifique des cas en espèce, dont l'appréciation et la validation doivent être immédiates, le ministère public vérifie si les actes procéduraux effectués par les organes de police criminelle sont conformes aux procédures légales, devant écarter toute manifestation de nullité et irrégularité.

3. La police a-t-elle une obligation de consultation préalable du ministère public en matière d'enquête? Si oui, cette obligation s'applique-t-elle à toutes les affaires pénales ou aux affaires importantes uniquement?

A la suite de la notice d'une infraction pénale, les organes de police criminelle doivent exécuter tous les actes préventifs d'investigation nécessaires pour assurer les moyens de preuve,

indépendamment de la communication au ministère public et des instructions d'en reçues (article 249 du Code de procédure pénale).

Le ministère public peut octroyer aux organes de police criminelle la charge de mener des démarches d'investigation à travers une ordonnance à nature générique indiquant les types d'infractions ou les limites des peines privatives de liberté applicables aux infractions investiguées (article 270 du Code de procédure pénale).

Pour ce qui est des infractions à l'égard desquelles la compétence pour mener l'investigation leur fut octroyée, les organes de police criminelle doivent mener l'enquête indépendamment d'instructions en ce sens, désormais le devoir de communication au ministère public dans le plus bref délai (article 2-3 de la Loi 21/2000, du 10 août, portant sur l'Organisation de l'investigation criminelle).

4. Le ministère public peut-il émettre des instructions détaillées à l'intention de la police? Si oui, veuillez expliciter votre réponse.

Bien que les organes de police criminelle agissent, lors de l'enquête, sous la dépendance fonctionnelle et sous l'orientation du ministère public, celui-ci ne peut qu'émettre des instructions à caractère fonctionnel, c'est-à-dire il peut déterminer quelles démarches d'investigation il désire de voir menées, mais il ne peut pas émettre des instructions ayant trait au temps et au moyen selon lequel telles démarches auront lieu face à l'absence de dépendance organisationnelle et hiérarchique entre le ministère public et les organes de police criminelle (article 2-4 de la Loi portant sur l'investigation criminelle).

5. Dans quel type d'affaires les membres de la police doivent-ils obtenir l'accord ou la coopération du procureur pour le recours à certains moyens coercitifs?

Le recours à des moyens coercitifs et leur respective autorisation par les autorités judiciaires compétentes sont assujettis plutôt au type de mesures qu'au type d'investigation en cours.

En tant que règle générale, on peut dire que les mesures coercitives restent toujours assujetties à l'autorisation préalable ou aux instructions de l'autorité judiciaire, du ministère public ou du juge d'instruction criminelle, d'après les respectives compétences, et que les organes de police criminelle ne peuvent agir d'office – au-delà des arrestations, fouilles et perquisitions en flagrant – que lorsqu'il ne soit pas possible de recourir à l'autorité judiciaire compétente et que l'obtention de preuve risque de périr, ou encore, en cas de terrorisme, criminalité violente ou fort organisée, lorsqu'il y ait des indices portant sur la commission imminente d'une infraction pénale passible de porter grave atteinte à la vie ou à l'intégrité physique de toute personne (articles 251, 249 et 174 du Code de procédure pénale).

6. La police peut-elle recourir à des méthodes spéciales d'enquête sans autorisation préalable (par exemple, recours à des informateurs, infiltrations et autres...)?

N'étant prévu que pour les cas de criminalité violente, le recours à des méthodes spéciales d'enquête par les organes de police criminelle relève de l'autorisation des autorités judiciaires.

Le recours à des actions d'infiltration en phase d'investigation dépend d'autorisation préalable du ministère public, laquelle est aussi communiquée au juge d'instruction en vue de sa validation (article 3-3 de la Loi 101/2001, du 25 août).

Le recours au régime spécial de recueil de preuve, traduit dans la rupture autant du secret professionnel par les membres des organes sociaux des institutions de crédit et sociétés financières et des respectifs fonctionnaires, que du secret auquel les fonctionnaires de l'administration fiscale sont assujettis dépend, à la phase d'enquête, d'instruction en conformité du ministère public (article 2-2 de la Loi 5/2002, du 11 novembre, sur les mesures visant au combat de la criminalité organisée et à nature économique et financière).

Mais, par contre, le recours au contrôle d'un compte bancaire est toujours autorisé ou ordonné par le juge d'instruction criminelle (article 4 de la Loi 5/2002), et le recours à l'enregistrement de la voix et de l'image par tout moyen, sans le consentement de la personne concernée, dépend toujours d'autorisation ou d'ordonnance du juge d'instruction criminelle (article 6 de la Loi 5/2002).

7. Est-il possible pour le procureur de dessaisir la police ou toute autre autorité chargée de mener une enquête pénale de tout ou partie de celle-ci? Si oui, dans quelles circonstances?

Le ministère public peut dessaisir les organes de police criminelle, à tout moment, de mener une investigation compte tenu que ces organes interviennent dans l'enquête à l'abri d'une délégation de compétence octroyée par le ministère public, sauf pour les actes préventifs d'investigation.

8. Le ministère public peut-il établir des priorités dans l'ouverture d'enquêtes?

Le ministère public déclenche l'action publique en stricte conformité avec la légalité. Au-delà de ne pas pouvoir établir des priorités dans l'ouverture de certaines enquêtes, il est obligé à ouvrir l'enquête, sauf s'il s'agit d'une infraction pénale dépendant de plainte de la part du lésé et celui-ci ne l'a pas produit face à la notice autour d'une infraction (articles 1 et 3-1-c du Statut du ministère public et article 262 du Code de procédure pénale).

9. Le ministère public peut-il donner à la police des orientations générales (cibles prioritaires) en matière de criminalité? Sous quelle forme? S'il ne le peut pas, qui le peut?

Le ministère public ne peut pas donner des orientations générales aux organes de police criminelle en matière de criminalité, nommément des cibles prioritaires.

La définition de la politique criminelle à suivre est faite par le Gouvernement, et le ministère public prend part dans l'implémentation de la politique criminelle ainsi définie (article 219-1 de la Constitution de la République Portugaise et articles 1 et 3-1-b du Statut du ministère public).

Cependant, la forme suivie par le ministère public pour participer à l'implémentation de la politique criminelle, à laquelle se rapportent les articles mentionnés ci-dessus, n'a pas encore fait

l'objet de réglementation. Toutefois, une telle réglementation aura toujours à se conformer au principe de la légalité prévu à la Constitution de la République Portugaise.

10. Les membres de la police sont-ils tenus de signaler au procureur tous les délits/certains délits dont ils ont eu connaissance? Le font-ils en pratique?

Lorsque les organes de police criminelle acquièrent de la connaissance d'une infraction pénale, d'office ou à travers de dénonciation, ils d'en signalent le ministère public dans le plus bref délai, pouvant tel signalement être fait aussi, en cas d'urgence, à l'aide de tout moyen de communication disponible (article 248 du Code de procédure pénale)

En pratique, les organes de police criminelle se conforment à cette imposition légale.

11. La police peut-elle refuser de mener une enquête ordonnée par le procureur ou retarder son exécution? Comment cela se passe-t-il dans les faits?

La possibilité de délégation de la compétence pour mener des investigations sur les organes de police criminelle est consacrée à l'article 270 du Code de procédure pénale; de plus, les lois organiques de divers organes de police criminelle leur commettent de la compétence exclusive, face à d'autres organes de police criminelle, pour mener l'investigation de certaines infractions pénales.

Le refus de mener une investigation dont la compétence leur fut octroyée par le ministère public ne peut avoir lieu qu'en cas d'infractions pénales dont la compétence pour mener la respective investigation prouve être légalement octroyée à un autre organe de police criminelle.

Même dans ces cas, ils peuvent être chargés par le procureur général de la République, ouïes les autorités de police criminelle qui dirigent les respectifs organes, de mener l'investigation d'une infraction dont la respective compétence repose sur un autre organe lorsque cela semble plus adéquat pour la bonne conduite de l'investigation ou lorsqu'il soit nécessaire de faire usage d'expertises ou moyens techniques spéciaux (article 5 de la Loi portant sur l'investigation criminelle).

A défaut de dépendance organisationnelle et hiérarchique entre le ministère public et les organes de police criminelle, ceux-ci mènent les investigations lorsque et comment il est déterminé par leurs supérieurs hiérarchiques qui ont, en pratique, le pouvoir de retarder ou accélérer certaines enquêtes au détriment d'autres. Toutefois, le ministère public peut, à tout moment, se faire saisir de l'affaire.

12. Quel est l'organe qui traite les plaintes visant la police impliquée dans une enquête pénale?

Les investigations de plaintes visant un organe de police criminelle sont, en règle, menées par le ministère public.

En cas de délégation de l'investigation, bien qu'il ne s'agisse pas d'une imposition légale, le ministère public d'en incombe un organe de police criminelle autre que celui auquel appartient la personne visée à la plainte.

13. En pratique, les procureurs ou la police communiquent-ils aux médias des informations sur des enquêtes pénales?

Le Code de procédure pénale délimite l'étendue temporelle du secret de justice à travers la référence aux différentes phases procédurales, étant conclu a contrario de l'article 86-1 du Code de procédure pénale que le secret de justice reste en vigueur pendant toute la phase de l'investigation.

Bien que, à quelques reprises, les médias aient accès à des informations relatives à l'investigation lorsque celle-ci se trouve encore en secret de justice, on ne peut pas identifier sûrement qui a violé ce secret dans la mesure où la teneur des pièces mentionnées par les médias est aussi souvent de la connaissance d'autres intervenants procéduraux tels que le juge d'instruction, les fonctionnaires et même l'accusé et son défenseur, en particulier s'il s'agit de déclarations prêtées par lui ou de la teneur d'un acte procédural à lequel il a comparu.

Cependant, le Code de procédure pénale admet, à son article 86-9, que bien que l'affaire soit en secret de justice, il est possible de fournir des éclaircissements publics en deux situations spécifiques : a) lorsqu'ils soient nécessaires à la reposition de la vérité et sans préjudice de l'investigation, sur demande de personnes publiquement mises en cause ; b) en cas exceptionnels, en particulier en cas à répercussion publique spéciale, lorsque et dans la mesure strictement nécessaire pour la reposition de la vérité sur des faits portés à la connaissance publique, en vue de garantir la sécurité de personnes et biens et d'échapper au dérangement de la tranquillité publique.

Bien que prévus à la loi, ces éclaircissements ne sont prêtés que très rarement.

14. Si vous avez déjà participé aux travaux d'Equipes communes d'enquête comprenant des procureurs et des membres de la police, pouvez-vous en décrire les avantages et les inconvénients?

La législation portugaise ne prévoit pas l'existence d'équipes communes d'enquête englobant des magistrats du ministère public et des organes de police criminelle.

SPAIN**1. Qui en dernier ressort est responsable de la bonne conduite d'une enquête ?**

Le juge et le procureur. Ça dépend de qui est le responsable de l'enquête particulière.

2. Qui est chargé de veiller à ce que la police respecte toutes les règles et procédures légales dans une enquête pénale s'agissant de l'efficacité de la lutte contre le crime, et du respect des droits de l'homme (en particulier lorsqu'il s'agit de personnes privées de leur liberté)?

Le juge et le procureur

3. La police a-t-elle une obligation de consultation préalable du ministère public en matière d'enquête ? Si oui, cette obligation s'applique-t-elle à toutes les affaires pénales ou aux affaires importantes uniquement ?

Non. Il n'y a pas de obligation de consultation dans tous les cas. D'abord, la police peut réaliser elle-même les débuts de l'enquête, mais il y a la possibilité de faire la consultation et il est habituel que la police fasse cette consultation

4. Le ministère public peut-il émettre des instructions détaillées à l'intention de la police ? Si oui, veuillez expliciter votre réponse.

Oui, le procureur peut donner des instructions dans tous les cas où c'est le procureur qui mène l'enquête et dans tous les cas où il n'y a pas encore des enquêtes judiciaires.

5. Dans quel type d'affaire les membres de la police doivent-ils obtenir l'accord ou la coopération du procureur pour le recours à certains moyens coercitifs ?

Dans tous le cas où il y a limitation des droits fondamentaux, il faut demander l'autorisation du juge.

6. La police peut-elle recourir à des méthodes spéciales d'enquête sans autorisation préalable (par exemple, recours à des informateurs, infiltrations et autres ...) ?

Oui, ils peuvent utiliser tout type de méthode d'enquête qui ne suppose pas de limitations de droits fondamentaux.

7. Est-il possible pour le procureur de dessaisir la police ou toute autre autorité chargée de mener une enquête pénale de tout ou partie de celle-ci ? Si oui, dans quelles circonstances ?

Oui, dans tous les cas que il n'y a pas encore d'enquête judiciaires, le procureur peut dessaisir la police d'une enquête.

8. Le ministère public peut-il établir des priorités dans l'ouverture d'enquêtes ?

Oui, le ministère public peut donner des instructions mais seulement aux unités de la police judiciaire qui sont affectées au parquet.

9. Le ministère public peut-il donner à la police des orientations générales (cibles prioritaires) en matière de criminalité ? Sous quelle forme ? S'il ne le peut pas, qui le peut ?

Non, la politique criminelle est du ressort du Gouvernement, pas du Parquet.

10. Les membres de la police sont-ils tenus de signaler au procureur tous les délits / certains délits dont ils ont eu connaissance ? Le font-ils, en pratique ?

Oui, ils ont l'obligation de communiquer tous les délits au juge ou au procureur.

Dans la pratique la police communique tous les délits dont ils ont eu connaissance au juge ou au procureur.

11. La police peut-elle refuser de mener une enquête ordonnée par le procureur ou retarder son exécution ? Comment cela se passe-t-il dans les faits ?

Non la police doit mener toute enquête ordonnée pour le procureur.

12. Quel est l'organe qui traite les plaintes visant la police impliquée dans une enquête pénale ?

Le juge compétent

13. En pratique, les procureurs ou la police communiquent-ils aux médias des informations sur des enquêtes pénales ?

Oui, mais toujours avec le respect du secret des enquêtes.

14. Si vous avez déjà participé aux travaux d'Equipes Communes d'enquête comprenant des procureurs et des membres de la police, pouvez-vous en décrire les avantages et les inconvénients ?

SWITZERLAND

1. Qui en dernier ressort est responsable de la bonne conduite d'une enquête ?

Le procureur général dirige, en toute indépendance, les recherches de la police judiciaire. Il peut se faire représenter par ses substituts et ses représentants (art. 15, 16 et 17, al. 1, 104, al. 1 de la loi fédérale du 15 juin 1934 sur la procédure pénale; PPF, RS 312.0). La police judiciaire est dirigée par le procureur général; elle est sous la surveillance de la Cour des plaintes du Tribunal pénal fédéral (art. 17, al. 1 PPF; art. 28, al. 2 de la loi fédérale du 4 octobre 2002 sur le Tribunal pénal fédéral; LTPF, RS 173.71).

Nous attirons votre attention sur les travaux administratifs que la police exécute sous sa propre responsabilité et en dehors de l'enquête judiciaire proprement dite menée par le ministère public de la Confédération (ex. installation et exploitation de banques de données policières, correspondance avec Interpol, assistance policière intercantonal et international).

Les observations suivantes se limitent aux enquêtes judiciaires du parquet fédéral.

2. Qui est chargé de veiller à ce que la police respecte toutes les règles et procédures légales dans une enquête pénale s'agissant de l'efficacité de la lutte contre le crime, et du respect des droits de l'homme (en particulier lorsqu'il s'agit de personnes privées de leur liberté)?

Les actes de la police judiciaire peuvent faire l'objet d'un recours auprès du procureur général (art. 105^{bis}, al. 1 PPF). En outre, l'inculpé peut demander en tout temps au procureur général d'être remis en liberté (art. 52, al. 1 PPF).

3. La police a-t-elle une obligation de consultation préalable du ministère public en matière d'enquête? Si oui, cette obligation s'applique-t-elle à toutes les affaires pénales ou aux affaires importantes uniquement?

La police judiciaire n'exécute que les actes d'enquête de nature purement policière: recherches via Interpol, interrogations de banques de données, recherches d'informations auprès des cantons, interrogatoires de police, tactique policière. La police ne peut pas user de mesures coercitives, à moins qu'elles ne soient expressément prévues par la loi (voir réponse à la question no 5).

La police agit d'office jusqu'au point où il y a des soupçons suffisants qui laissent présumer qu'une infraction a été commise, et elle en informe le procureur général. Ce dernier vérifie si les conditions légales de la poursuite sont réunies, faute de quoi il renonce à ouvrir une enquête (art. 100, al. 3 PPF). Sa décision est définitive. Dès que la procédure est formellement ouverte par le parquet fédéral, la police est obligée de consulter le magistrat fédéral.

4. Le ministère public peut-il émettre des instructions détaillées à l'intention de la police? Si oui, veuillez expliciter votre réponse.

Voir la réponse à la question no 3. Etant donné que le procureur général dirige l'enquête, il peut émettre des instructions concernant le but à atteindre et les moyens à engager, mais il n'intervient pas dans le domaine de la tactique policière. Le procureur général ordonne les mesures coercitives et la police les exécute.

Dans les cas sensibles, les deux autorités définissent la marche à suivre ; le procureur général peut fixer des objectifs prioritaires.

5. Dans quel type d'affaire les membres de la police doivent-ils obtenir l'accord ou la coopération du procureur pour le recours à certains moyens coercitifs?

La législation définit les mesures coercitives ordonnées par le procureur général et celles qui relèvent, *exceptionnellement*, de la compétence de la police (ex. : arrestation provisoire quand il y a péril en la demeure). Ces règles procédurales valent pour tous les types d'affaires ou de procédures.

6. La police peut-elle recourir à des méthodes spéciales d'enquête sans autorisation préalable (par exemple, recours à des informateurs, infiltrations et autres ...)?

Voir la réponse à la question no 5. La police peut, de façon indépendante, recourir à des informateurs, recueillir auprès d'eux des informations et procéder à des observations. En outre, en dehors de l'enquête dirigée par le procureur général, la direction de la police peut, avec l'accord d'un juge, engager des agents sous couverture.

Est-il possible pour le procureur de dessaisir la police ou toute autre autorité chargée de mener une enquête pénale de tout ou partie de celle-ci? Si oui, dans quelles circonstances?

Le procureur général et la police judiciaire fédérale agissent d'office dans le domaine de la juridiction fédérale. En cas de nécessité, la loi prévoit que la police judiciaire est également exercée par les cantons (art. 17, al. 2 PPF).

Dans la pratique, il est possible de dessaisir la police d'une enquête contre ses propres effectifs ou à la suite d'une récusation.

8. Le ministère public peut-il établir des priorités dans l'ouverture d'enquêtes?

Dans les domaines relevant de sa compétence [voir art. 340 et 340^{bis} du Code pénal suisse (CP; RS 311.0)], le ministère public de la Confédération doit ouvrir l'enquête, en respectant le principe de la légalité prévu par la PPF (art. 101, al. 1 PPF). Selon les capacités à disposition, on peut et on doit même établir des priorités. Il existe également la possibilité de déléguer aux autorités cantonales l'instruction et le jugement d'une affaire de droit pénal fédéral relevant de la juridiction fédérale (art. 18 et 18^{bis} PPF).

9. Le ministère public peut-il donner à la police des orientations générales (cibles prioritaires) en matière de criminalité ? Sous quelle forme? S'il ne le peut pas, qui le peut?

Dans le cadre de l'enquête et en se mettant d'accord avec la police, le procureur général peut fixer des objectifs prioritaires (ex: en cas de pénurie de ressources); voir la réponse à la question no 8.

10. Les membres de la police sont-ils tenus de signaler au procureur tous les délits / certains délits dont ils ont eu connaissance? Le font-ils, en pratique?

Oui. Lorsque des soupçons suffisants laissent présumer que des infractions relevant de la juridiction fédérale ont été commises, la police en informe sans délai le procureur général (art.101 PPF). La police le fait en pratique.

11. La police peut-elle refuser de mener une enquête ordonnée par le procureur ou retarder son exécution? Comment cela se passe-t-il dans les faits?

En règle générale, la police ne le peut pas. Si la police ne dispose pas du personnel suffisant pour mener l'enquête ordonnée par le procureur général, elle l'en informe à temps. Ce dernier confère avec le chef de la police judiciaire fédérale pour que les effectifs nécessaires soient mis à disposition ou que les priorités soient changées. En cas de manque de personnel, entre autres, le procureur général peut recourir aux effectifs des cantons (analogue à l'art. 17, al. 2 PPF).

12. Quel est l'organe qui traite les plaintes visant la police impliquée dans une enquête pénale?

Les actes de la police judiciaire peuvent faire l'objet d'un recours auprès du procureur général (art. 105^{bis}, al. 1 PPF); voir la réponse à la question no 2.

13. En pratique, les procureurs ou la police communiquent-ils aux médias des informations sur des enquêtes pénales?

Au moment où le procureur général ordonne l'ouverture de l'enquête et la dirige, il appartient à lui ou à ses substituts d'en informer les médias. D'entente avec le magistrat fédéral, la police informe seule les médias ou le fait en commun avec le ministère public de la Confédération.

14. Si vous avez déjà participé aux travaux d'équipes communes d'enquête comprenant des procureurs et des membres de la police, pouvez-vous en décrire les avantages et les inconvénients?

Chacun dispose du même niveau d'information, connaît la stratégie commune et peut fournir sa contribution; on évite ainsi des recherches menées en parallèle (avantages). Il peut en résulter une certaine pesanteur (inconvénient).

TURKEY

1. Le ministère public est responsable, en Turquie, en dernier ressort de la bonne conduite d'une enquête.

2. Du point de vue administratif, l'autorité de contrôle de police est le ministère de l'intérieur (la police travaille sous le contrôle du ministère de l'intérieur).

Mais, dans le cas de la présence d'une enquête pénale, la police doit travailler sous le contrôle de l'autorité du ministère public.

On peut dire qu'il y a un système mixte sur ce sujet.

3. D'une façon générale, la police doit obligatoirement consulter préalablement le ministère public en matière d'enquête.

En d'autres termes et en principe, la police doit obtenir l'avis et l'accord du ministère public avant de commencer à ouvrir une information en la matière. Par contre, en cas urgents, elle peut commencer une information sans consulter le ministère public. Parce qu'elle doit prendre des mesures pour la conservation de la preuve. Dans ce cas aussi, la police doit dans les meilleurs délais, doit demander l'avis du ministère public concernant la poursuite de l'enquête.

4. Le ministère public peut émettre des instructions détaillées à l'intention de la police.

D'après le système existant en Turquie, la police procède à une instruction au nom du ministère public.

5. Si le ministère public veut procéder à une instruction de lui-même, il peut le faire. Mais en pratique et en théorie, si l'événement est très compliqué et la police ne peut pas recueillir des preuves facilement, la police doit réaliser sous la conduite du ministère public.

6. La police peut recourir à des méthodes spéciales d'enquête sans autorisation préalable. Par exemple, la police peut recueillir des preuves elle-même; elle peut utiliser les ressources de la police contre une organisation terroriste ; ou cas d'urgence et pour permettre la conservation des preuves, la police peut recourir à des méthodes spéciales d'enquête. Mais elle doit informer le procureur, dans les plus brefs délais, des détails sur la poursuite de l'enquête.

7. Oui, il est possible pour le procureur de dessaisir la police ou toute autre autorité chargé de mener une enquête pénale de tout ou partie de celle-ci. Il n'y a pas une disposition claire sur ce sujet, mais d'après le Code de procédure pénale, le ministère public est responsable de la bonne conduite d'une enquête en dernier ressort en Turquie, le procureur peut prendre charge tout ou une partie afin de mener une enquête pénale. En pratique aussi, cette situation est possible. Par exemple, si la police a abusé de son autorité ou s'il y a eu une négligence grave ou simple sur ce sujet.

8. Oui, le ministère public peut établir des priorités dans l'ouverture d'enquêtes. Parce que, le ministère public est responsable de la bonne conduite d'une enquête en dernier ressort en Turquie.

9. Le ministère public peut donner à la police des orientations particulières seulement en matière de criminalité. Il ne peut pas donner à la police des orientations générales sur ce sujet. Parce que la police travail sous le contrôle du ministère de l'intérieure du point administratif. Il n'y a pas encore de police judiciaire en Turquie.

10. Les membres de la police doivent signaler au procureur tous les délits sans exception.

11. La police ne peut pas refuser de mener une enquête ordonnée par le procureur ou retarder son exécution. Dans les enquêtes, la police doit travailler l'autorité de contrôle le ministère public. Mais le ministère public ne peut pas directement s'occuper de toutes ces enquêtes en raison de la surcharge de travail. Les procureurs s'occupent des affaires différentes, par exemple, ils préparent des accusations, ils participent aux audiences, ils ont des responsabilités d'administratifs, ils participent aux expertises et aux autopsies, ils interrogent les témoins et les suspects (accusés), ils s'occupent des administrations pénitentiaires (la maison d'arrêt, de détentions etc.).

Il y a quelques affaires qui sont conduit seulement par le procureur, la police n'intervient pas à ces affaires, lesquelles ont des procédures spéciales. Par exemple, les délinquances juvéniles et autres dispositions dans les lois spéciales etc.

12. La police fait fonction du acte judiciaire ici. La responsabilité de la police est la fonction judiciaire. Dans notre système pour les fonctionnaires, il y a deux situations. Première la fonction est administratif, deuxième la fonction est judiciaire. Etant donné que la police fonctionne ici comme police judiciaire, elle est sous la responsabilité du ministère public.

13. Il n'y a pas un bureau pour communiquer avec les médias. Mais en pratique, les procureurs et la police communiquent aux médias des informations sur des enquêtes pénales à condition de ne pas nuire l'instruction. Mais parfois, la loi n'est pas respectée.

14. J'ai participé aux travaux d'équipes Communes d'enquête comprenant des procureurs et des membres de la police.

Les avantages : grâce aux différents spécialisations des fonctionnaires, nous avons pris toutes les mesures nécessaires et nous avons recueilli les preuves facilement.

Les inconvénients : On ne peut pas dire les choses de façon certaine, parce que les résultats de l'instruction sont très variables d'une enquête à l'autre.