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“Supervision by the prosecution services of the activity of the police and other law enforcement agencies”

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1. Introduction

Supervision (*surveillance*) of the police and of other law enforcement agencies is a question which cannot be addressed without first enquiring what we mean by it. Robert's French dictionary tells us that *surveillance* is all the acts whereby consistent oversight is exercised.

So there is verification of the conformity of police action for example, and it is not performed at random and on occasion but in a methodical, consistent way.

Going a stage further, let us ask to what extent this supervision might not simply be another way to present the fact that the police or other law enforcement agencies are managed by the prosecution department.

In day-to-day work, this distinction will be of minimal importance as close supervision differs but slightly from a type of management allowing considerable freedom of manoeuvre.

On the legal plane, and from the standpoint of whoever undergoes the supervision, the distinction may be appreciable or become so. Management presupposes constant subordination whereas supervision ensures some independence. To illustrate this, we might say that a managed child is forbidden to leave the park where his mother can keep an eye on him, whereas a supervised child may move away provided he returns from time to time.

2. The Swiss model

2.1. The present procedural system

My country, Switzerland, a small nation with 7.5 million inhabitants, currently has 26 codes of criminal procedure, one for each administrative entity of our State, that is one per canton. The cantons' judicial organisation is highly differentiated, but by and large it is found that the prosecution can at the very least issue directives to the criminal investigation department in its inquiries, when not actually directing it.

2.2. The new model

In line with the revolution which has occurred in Russia or France, but admittedly much later, Switzerland has decided to unify its criminal procedure system and henceforth to have a single code of criminal procedure for the cantons (local entities) and for the federal level.

The code will assign to the prosecution department, whether federal or cantonal, the management of the activities of the police which will be "under the supervision and instructions of the prosecution department."¹

The police for its part will be able and required to act independently in order to:

- secure the clues,
- identify and question the victims and suspects
- apprehend the suspects and place them under arrest, or trace them if necessary.

Nothing more may be done on its own initiative.

2.3. What should we infer from this?

It is first of all a "normal" development of the law seeking to give the persons charged more rights under the criminal procedure. We went through a period when it was important to give the victims of offences rights, and now the pendulum has swung back towards more rights for persons when charged, then when on trial, to the "detriment" of the police.

The police do not necessarily inspire trust, and the ordinary citizen wants his case to be dealt with by an independent judicial authority. As a consequence of this way of thinking, the law transcribes this subjection to independent authority in terms of management and supervision, so that the police are only meant to perform their task under the orders of a judicial authority, the prosecution department.

¹ Art. 15 of the Swiss Code of Criminal Procedure (CPP), likely to come into force on ...

In our country, the prosecution department is not shielded from all criticism; thus, although the new procedural law entrusts to it the entire investigative phase then that of bringing and pressing charges, it must refer its principal coercive measures to an independent tribunal. Does this impair the effectiveness of the procedure; does it influence the success rate of the judicial authorities? I think not. The effectiveness of police and justice lies more in the operators of a given system than in the system's perfection.

3. What freedom of manoeuvre do the police and other law enforcement agencies have?

As has been mentioned, supervision may be exercised more or less stringently. The relevant provisions, which as read would seem to limit drastically the freedom of action of the police, ought not to be overestimated. The police, even under this new system, will have enough freedom of manoeuvre to carry out its assignment properly.

4. The other parties concerned in supervision

4.1. The role of barristers in proceedings

The new code gives persons charged and on trial more rights, particularly the right to be assisted, from the earliest police interviews, by a lawyer of their choice.

You may tell me that I am outside the context of my statement, which concerned the prosecution's supervision of the police and law enforcement agencies.

On the contrary, it is at the core of the subject; barristers, somewhat in spite of themselves, play a far from insignificant part here.

Their presence at police interviews often receives criticism from the law enforcement authorities, wrongly in my opinion. The criticism is misguided firstly because the barristers' presence in no way impedes the steps taken by the investigators, besides which it strengthens supervision of the police hence the legitimacy of its acts.

The mere presence of a legal representative, who will not scruple to criticise the police operations conducted against his client and will be able to report breaches to the prosecution department, compels the police to ensure strict compliance with the law. This measure will be at least as effective as close supervision by the prosecution department.

Supervision of the police and law enforcement agencies by the prosecution department is not performed to the detriment of these authorities, but assures them that their acts are in accordance with the law and thus above criticism, which is what the legislator intends.

Thank you for attention.

Claude Nicati/ Lausanne/ Saint Pet