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**CONSEIL CONSULTATIF DE PROCUREURS EUROPEENS  
CONSULTATIVE COUNCIL OF EUROPEAN PROSECUTORS  
(CCPE)**

**Questionnaire en vue de la préparation de l'Avis n° 10 du CCPE sur les relations  
entre les procureurs et la police et/ou les autres instances chargées d'enquête**

**Questionnaire for the preparation of the Opinion No. 10 of the CCPE on the relationship  
between prosecutors and police and/or other investigation bodies**

**Compilation des réponses au questionnaire**

**Compilation of replies to the questionnaire**

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## Armenia / Arménie

### A. Relationship between prosecutors and the police

- Please briefly describe the relationship between prosecutors and the police or other investigation body in your country. Is there any dialogue with the prosecutor concerning the work of the police or other investigation body? Is the prosecutor involved in training the police or other investigation body?

### B. Existing legal provisions and regulations

- Is any relationship between prosecutors and investigation bodies defined by law or other provisions? Please describe briefly.

According to Article 103 of the RA Constitution and the 4th Article of the RA Law “On Prosecutor’s Office of the RA”, the Prosecutor’s Office in cases and by the order envisaged by the Law

- 1) initiates criminal prosecution;
- 2) supervises over legality of inquiry and investigation;
- 3) presents the case for the prosecution in court;
- 4) brings actions in court to defend the interests of the state;
- 5) appeals the judgments, verdicts and decisions of the courts;
- 6) supervises over legality of discharge of penalties and other means of compulsion.

According to the 1st Article of the RA Law “On Prosecutor’s Office of the RA” the Prosecutor’s Office of the Republic of Armenia (hereinafter Prosecutor’s office) is a unified system, which is managed by the General Prosecutor of the Republic of Armenia (hereinafter General Prosecutor).

According to the RA Constitution (hereinafter Constitution) the Prosecutor’s office is authorized to accomplish its powers via prosecutors by the order defined by the RA Legislation.

According to part 1 of Article 52 of RA Criminal Procedural Code: “the Prosecutor by the order defined by law is entitled as state official, who initiates criminal prosecution, supervises over legality of inquiry and investigation, presents the case for the prosecution in court, participates in the discussions concerning the accomplishment of court decisions, appeals the judgments, verdicts and decisions of the court. The prosecutor who defends prosecution in the court is called Prosecutor”.

By Article 53 of the same Code the powers of the prosecutor during the pre-trial proceedings are defined which are as follows:

1. The prosecutor is authorized to conduct the following during the pre-trial proceedings:

1) to initiate and carry out criminal prosecution, to cancel the decision of the body of inquiry and the investigator on suspension of a case, to initiate 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 initiate a criminal case as well as to initiate a criminal case on his own initiative.

2) This point has lost its effect.

3) Instructs the body of inquiry and the investigator to prepare the materials for the initiation of a criminal case.

4) To instruct the body of inquiry and the investigator to conduct urgent investigatory measures.

5) This point has lost its effect.

6) To carry out prosecutorial management of the inquest and the preliminary investigation.

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:

1) to check the implementation by the body of inquiry the requirements of law on receiving, registration of and follow up on the reports on committed or prepared crimes, on other accidents;

2) to request from the investigator and the body of inquiry for examination of criminal cases, materials and documents and to get acquainted with the data on the course of investigation at the place of their location;

3) to withdraw from body of inquest and to transfer to the inquirer any criminal case, according to Article 190 of this Code to transfer the criminal case from one body of investigation to another in order to ensure the comprehensive, full and objective investigation;

4) in case of necessity, to instruct the head of the investigation department to undertake a criminal case, as well as to instruct heads of investigation departments of different bodies, who are conducting investigation, on the inclusion of investigators in the investigative team composed of the investigators from those bodies.

The investigators of Special Investigation Service may be involved in investigative teams which are established to investigate criminal cases subjected only to this service.

5) to resolve issues regarding challenges (rejections) declared to subordinate prosecutor, investigator, or the officer of the body of inquiry, and also their self-rejections;

6) to give written instructions to investigator, and the body of inquiry on the decisions passed and on implementation of investigatory and other procedure actions;

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 subordinate prosecutor, conducting the procedure management of the investigation;

8) to give written instructions to the prosecutor conducting supervision in order to ensure legality over the investigation of the case;

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

10) to dismiss the investigator, and the officer of the body of inquiry from further participation in the implementation of criminal proceedings on that case, if they have violated the law during the investigation of the case;

11) to apply to the appropriate bodies for deprivation from immunity for criminal prosecution of persons, possessing that immunity, if these persons are subject to involvement in the criminal case as accused;

12) to return criminal cases to the investigator with his/her obligatory instruction on implementation of additional investigation;

13) to cancel the decision of the body of inquest or the investigator to suspend the case, and other decisions, in cases envisaged in this Code;

14) to approve the indictment, and as for criminal cases with respect to persons, committed actions forbidden by criminal law in the state of insanity or who has fallen into such state after the accomplishment of the action, the final act.

15) To forward the case to the court to examine the case on the merits.

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

1) This point has lost its effect.

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 detain the criminal prosecution

7) to assign the body of inquiry the execution of the decisions on arresting, bringing to court, imprisonment, implementation of other procedure actions

8) to undertake measures for the protection of the injured, the witness, and other people participating in the criminal proceedings;

9) to address the court with motions envisaged by this Code;

10) to release the people arrested or imprisoned without legitimate bases or without necessity;

11) to eliminate restrictions on the right of secrecy of correspondence, telephone conversations, postal, telegraph and other messages when the necessity terminates.

4. The prosecutor, during the pre-trial proceeding of the criminal case, exercises also other powers, envisaged by this Code.

C. Responsibility of the prosecutor for setting priorities for investigating offenses

- What priorities have to be taken into account for initiation of criminal cases?
- Do prosecutors or the prosecution service in a direct way have an influence on this?

According to Article 175 of RA Criminal Procedure Code the prosecutor, the investigator, the inquest body are obliged to initiate a criminal case within their jurisdiction if there are appropriate reasons and grounds to initiate a criminal case. The reasons for initiation of a criminal case are defined by the Articles 176-179 of RA Criminal Procedure Code and the examination procedure of reports about crimes, decisions made as a result of examination are defined by the Articles 180-181 of the Code.

It is worth to mention that Article 183 of RA Criminal Procedure Code defines crimes envisaged by those articles of RA Criminal Code which can be initiated only on the grounds of the appeal of the injured party.

D. Responsibility of the prosecutor during the investigation

- Are prosecutors responsible for the conduct of investigations in your country? If no, who is responsible for that?
- When does the prosecutor receive a complaint (as soon as the complaint is filed, or after the investigation has been conducted by the police)?
- What is the degree of autonomy of the police or other investigation body, if there is any, during the investigation?
- Does the prosecutor have the power (Is liable) to prevent or stop an investigation?
- How is it decided which service of the police or other investigation body, is competent to investigate?
- If the prosecutor leads the police or other criminal investigation in your country, does he have the power to monitor compliance with his/her instructions? If so, please briefly describe.

E. Responsibility of the prosecutor for the respect of the law

- Is it a responsibility of the prosecutor to control respect for the law by the police or other investigation body, if any? If yes, at which stage and by which means of control?

F. Common principles concerning the police

- Are there written regulations concerning the conduct of criminal investigations by the police or other investigation body?
- What are these regulations about? (for instance, the way to carry out interrogations, deprivation of liberty etc.)

Concerning points D and E, as it is mentioned above, the Article 52 of RA Criminal Procedure Code clearly defines the concept of the prosecutor, and the powers of the prosecutor during the pre-trial proceeding, which are defined by Article 53.

Concerning point F, it should be noted, that the Article 55 of RA Criminal Procedure Code clearly defines the scope of investigator's powers.

1. Investigator is a state official, who conducts preliminary investigation of the criminal case within the limits of his/her competence.
2. The investigator is authorized 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 initiate 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 initiation of the proceedings of the criminal case. The investigator sends the copy of his/her decision on initiation of a criminal case or on rejecting to initiate a criminal case to the prosecutor within 24 hours in order to check legality of the decision.
3. After accepting the criminal case for his/her proceeding, the investigator, for the purpose of comprehensive, full and objective investigation is authorized to lead the course of investigation independently, make necessary decisions, conduct investigatory and other procedural actions in accordance with the provisions of this Code, except the cases, when by criminal procedure law is envisaged to receive permission from the court. The investigator is responsible for the lawful and timely implementation of investigatory and other procedural actions.
4. The investigator is particularly authorized:
  - 1) to appoint expert examination and to conduct the examination of the crime scene prior to the initiation of the criminal case, based on prepared materials
  - 2) To question the suspect, the accused, the injured, the witness, appoint expert examination, conduct inspections, searches, seizures, and other investigatory actions;
  - 3) To undertake measures for the compensation of the damage caused to the injured
  - 4) To request documents and materials which may contain data on accidents and people involved in it
  - 5) To request the conduct of inspections, inventory, other control actions;
  - 6) To receive from the body of inquiry, in connection with the prepared materials and the case under investigation, data on the implementation of operative-investigatory actions and the measures undertaken for disclosure of the crime, finding disappeared persons and lost property;
  - 7) To give to the body of inquiry mandatory written assignments on implementation of operative-investigatory measures based on the prepared materials and proceedings of the criminal case;
  - 8) To assign to the body of inquiry the fulfillment of decisions on arresting, bringing to court, imprisonment, conducting of other procedural actions, and also immediately receive from the body of inquiry facilitation at the execution of investigatory and other procedure actions;
  - 9) While receiving a report from the body of inquest about a committed crime, to go to the crime scene and to get involved in the investigation of the case by means of initiation of a criminal case or undertaking the initiated case in one's proceedings;

- 10) To assign to the body of inquiry the execution of separate investigatory actions;
- 11) To call people as witnesses;
- 12) To draw in for the participation the witnesses, translators, specialists and experts;
- 13) To arrest the person suspected in crime commitment; and to send the copy of decision to the prosecutor within 24 hours
- 14) To pass on impleading the person to the case as the accused, put forward charges and to inform the prosecutor within 24 hours;
- 15) To recognize as the injured, civil plaintiff, civil defendant;
- 16) To ensure the appointment of lawyers in the capacity of defense attorneys and to permit the people to participate in the proceedings of the criminal case as representatives;
- 17) To dismiss defense attorneys and representatives from the participation in proceedings of the criminal case, if circumstances are revealed which exclude their participation in the criminal proceedings, as mentioned in article 93 of this Code;
- 18) To exempt corresponding people from the payment for the legal aid;
- 19) To resolve challenges declared to the witness, the translator, the specialist, the expert;
- 20) To resolve motions of persons participating in criminal proceedings, and also applications and requests submitted by other persons;
- 21) To resolve the complaints of the people participating in criminal proceedings, within the limits of his/her competence;
- 22) To pass resolutions on the selection, alteration, cancellation of the precautionary measures and on implementation of other measures of procedural compulsion, with the exception of arrest; release upon his/her decision the suspect and the accused kept in detention after expiration of the prescribed period;
- 23) To pass resolution on the suspension of criminal proceedings and send the copy of the resolution to the prosecutor within 24 hours.
- 24) To appeal to the court with motions: on selection of arrest with respect to the accused as a precaution measure and on prolongation of the period of his/her detention; on imposing arrest on telephone conversations, postal, telegraph and other communications wire-tapping, with motion on the permission for search of the apartment;
- 25) To cancel the arrest on telephone conversations, postal, telegraph and other communications and wire-tapping, in case the necessity for such action ceases to exist;
- 26) To appeal any instruction of the prosecutor, without suspending its execution;
- 27) To appeal instructions of the prosecutor to a superior prosecutor without executing them in case of disagreement with the instructions on calling the person as accused, on qualifying the action and on the volume of indictment, on terminating the preliminary investigation or on suspending the proceeding or on terminating the criminal prosecution;



28) To pass decision on suspension of the criminal proceedings and on termination of criminal prosecution and send the copy of the decision to the prosecutor within 24 hours to verify the legitimacy of the decision;

29) To prepare and present for the approval of the prosecutor the indictment, and as for criminal cases with respect to persons, committed actions forbidden by criminal law in the state of insanity or who has fallen into such state after the accomplishment of the action, the final act.

5. The investigator is obligated to carry out legitimate instructions of the prosecutor.

5.1 During the pre-trial proceedings the decision made about the criminal case by the investigator within the limits of his/her competence is subject to execution by all the companies, public officials and citizens.

6. The investigator also carries out other authorities envisaged in this Code”.

As for the written instructions, due to Article 1 of the Criminal Procedure Code of the RA, the order of the proceedings of the criminal case is defined by the Constitution of the Republic of Armenia, international agreements of the Republic of Armenia, the Criminal Procedure Code of the Republic of Armenia, the Judicial Code of the Republic of Armenia and other laws adopted in accordance with them. The legal norms of criminal trials contained in other laws must comply with this Code.

The order of the proceedings defined by the Criminal Procedure Code is mandatory for Courts, investigation, preliminary investigation, prosecution bodies as well as for the participants of the trial.

#### G. General control over police

- What is the general control system of the police or other investigation body, if any (internal/external?) Does the prosecutor play a role in this system?
- Is the prosecutor competent to take sanctions?

The RA Investigation Committee has its own management and internal subdivision of control in regards to administration, as for the role of the prosecutor and his/her competency to take sanctions, it has already been mentioned above (the competencies of the prosecutor during the pre-trial proceedings are defined by the article 53 of the Criminal Procedure Code of the RA)

#### H. Conclusions

- What are the major challenges in relations between prosecutors and investigation bodies in your country?

To effectively resolve the problems arising during the practice, daily analytical work is carried out both by the RA Prosecutor's Office and the corresponding subdivisions of the RA Investigation Committee of, based on the results of which drafts are being made about amendments and supplements to laws, which are discussed and presented to the Government of the Republic of Armenia, then to the National Assembly of the Republic of Armenia.

## Azerbaijan / Azerbaïdjan

### A. Relations between prosecutors and police

**Q: 1.** Please briefly describe the relationship between prosecutors and the police or other investigation body in your country.

**A:** Relations between prosecutors, police or other investigation and inquiry bodies in Azerbaijan in the field of joint fight against crime, protection of human rights and freedoms of citizens are carried out by interrelated activities, procedural supervision over preliminary investigation conducted in these bodies, as well as in the form of supervision on the enforcement and application of laws by the police or other investigation and inquiry bodies.

Thus, under Article 84 of the Criminal Procedure Code of the Republic of Azerbaijan the prosecutor shall:

- examine applications and other documents on offences which have been committed or are planned, launch the criminal case if there are sufficient reasons and grounds for doing so and, if so, exercising powers of the investigator, conduct the preliminary investigation or delegate it to inquirer or investigator;
- manage the procedural aspects of the preliminary investigation of the case;
- ensure that the inquiry and preliminary investigation authorities observe the legal requirements in their reception, registration and processing of applications and other information on offences committed or planned;
- obtain material and documents on the criminal case and information about the progress of the investigation from the inquirer or investigator, and check the material and documents on the criminal case and acquaint himself with the course of the investigation;
- excluding cases of transferring the criminal cases from one authority to another, withdraw the criminal case from one inquirer or investigator and transfer it to another in order to guarantee the thorough, full and objective conduction of the investigation, and in cases of the law violation during the investigation;
- charge the investigating group with the criminal investigation and appoint the members of the group;
- examine objections to the inquirer or investigator as well as their requests to withdraw;
- give written instructions to the inquirer or investigator concerning the investigation of the offence, the choice, alteration or discontinuation of restrictive measures, the search for the guilty party, the contents of the indictment, the adoption of decisions and investigative or other procedures;
- cancel an illegal or groundless decision of the inquirer or investigator;

- (consider) examine complaints concerning decisions or acts of the inquirer or investigator;
- confirm the indictment and the decisions of the inquirer or investigator in the circumstances provided in CPC or if not, refer the criminal case to the investigator with mandatory instructions;
- refer the criminal case or other prosecution matter to the court for examination on the merits;
- take the appropriate decisions on the criminal case and conduct different investigative and other procedures;
- order search operations in order to detect offences and find missing persons or property, and receive information on the measures taken;
- obtain documents and other material on criminal acts and the persons connected with them;
- verify the legality of detention, forced appearance before the prosecuting authority and other coercive procedural measures taken by the inquirer or investigator, as well as charge the inquiry authorities to conduct the relevant procedures;
- release the suspect from custody or the accused from detention on remand if there are no longer legal grounds for holding them or if the detention periods provided in CPC have been exceeded;

Relations between prosecutors, police or other investigation-inquiry bodies in our country are governed by the orders and instructions of the Prosecutor General, orders and guidelines signed by the directing units of police or other investigation and inquiry bodies along with the applicable criminal procedure legislation.

**Q: 2.** Is there any dialogue with the prosecutor concerning the work of the police or other investigation body?

**A:** Dialogue with the prosecutor in connection with the work of the police or other investigation and inquiry bodies is performed in the form of a daily procedural supervision of the preliminary investigation, supervision over the enforcement and application of laws, preparation and execution of joint investigation-operational plans on criminal cases, if appropriate, in the form of obtaining and examination of criminal cases and materials by prosecutors, as well as reporting of criminal cases and materials to prosecutors by police officers or other investigation and inquiry bodies, prior notification of prosecutors on the implementation of important investigating acts.

## **B. Existing legal provisions and regulations**

**Q: 4.** Is any relationship between prosecutors and investigation bodies determined by law or other provisions? Please describe briefly.

**A:** Relations between prosecutors, police and investigation and inquiry bodies, procedural aspects of the investigative activities of these bodies, supervision over the enforcement and implementation of the laws are established in accordance with the criminal procedure legislation, the Laws of the Republic of Azerbaijan “On Prosecutor's Office”, “On Police”, “On the operational-search activity” and other laws, as well as orders and instructions of the Prosecutor General, Guidelines and other regulatory documents signed by the heads of investigation and preliminary investigation bodies.

### **C. Prosecutor’s responsibility for setting priorities for investigations offenses**

**Q: 5.** How are priorities in starting criminal investigations in your country determined?

**A:** The sequence of investigation of the established offence in our country starts with the reception and registration of information on offences which have been committed or planned. –

Information on the committed or planned offences may consist of information provided by individuals, legal persons and the media, and such information can be revealed directly by the prosecuting authority (Articles 204-208 of the CPC of the Republic of Azerbaijan);

After the registration of the information on the offences it is sent to competent authorities, or if it refers to their powers, a preliminary examination is conducted to establish the sufficient grounds for launching a criminal case by the prosecutor's office, the police and the investigation-inquiry bodies (Article 207 of the CPC of the Republic of Azerbaijan);

If the evidence obtained as a result of the conducted examination is sufficient, the investigation is conducted after launching proceedings on the case, or the case is sent for investigation, or the decision to refuse to start a criminal case on the collected materials is adopted (Articles 207 and 212 of the CPC of the Republic of Azerbaijan);

The sequence of investigative actions to be conducted on criminal cases is established depending on the nature of criminal incidents, conditions and other circumstances.

Furthermore, in all cases with reasons and grounds provided in the Criminal Procedure Code of the Republic of Azerbaijan, the inquirer, the investigator or the prosecutor in charge of the procedural aspects of the investigation shall

immediately institute criminal proceedings (Article 209 of the CPC of the Republic of Azerbaijan).

**Q: 6.** Do prosecutors or the prosecution service in a direct way have an influence on this?

**A:** Prosecutors or Prosecution Service affect it directly as follows:

- examine applications and other documents on offences which have been committed or are planned, launch the criminal case if there are sufficient reasons and grounds for doing so and, if so, exercising the powers of the investigator, conduct the preliminary investigation or delegate it to the inquirer or investigator;
- manage the procedural aspects of the investigation of the case;
- ensure that the investigating and inquiry authorities observe the legal requirements in their reception, registration and processing of applications and other information on offences committed or planned;
- obtain material and documents on the criminal case and information about the progress of the investigation from the detective or investigator, and check the material and documents on the criminal case and acquaint himself with the course of the investigation;
- excluding cases of transferring the criminal case from one authority to another, withdraw the criminal case from one inquirer or investigator and transfer it to another in order to guarantee the thorough, full and objective conduction of the investigation, and in cases of the law violation during the investigation;
- charge the investigating group with the criminal investigation and appoint the members of the group;
- examine objections to the inquirer or investigator as well as their requests to withdraw (Article 84 of the CPC of the Republic of Azerbaijan).

#### **D. Prosecutor's responsibility during the investigation and preliminary investigation process**

**Q: 7.** Are prosecutors responsible for the conduct of investigations in your country? If no, who is responsible for that?

**A:** Prosecutors in our country take charge of conducting investigations-inquiries.

Thus, under Articles 84.2.2 and 84.3 of the CPC of the Republic of Azerbaijan prosecutor along with other duties attributed to his powers in the cases and manner prescribed by the criminal procedure legislation, shall take charge of the procedural aspects of the investigation of the criminal case and the prosecutor being in charge of the procedural aspects of the preliminary investigation bears

responsibility for the enforcement and application of the CPC during the pre-trial proceeding of the criminal case.

**Q: 8.** When does the prosecutor receive a complaint (as soon as the complaint is filed, or after the investigation has been conducted by the police)?

**A:** Pursuant to the applicable Criminal Procedure Code of the Republic of Azerbaijan and other laws and regulations, a prosecutor shall receive complaints at all stages of the preliminary investigation, as well as during the implementation of the inquiry by police, consider them within the terms established by law, and take appropriate measures to execute these decisions.

**Q: 9.** What is the degree of autonomy of the police or other investigation body, if any, during the investigation?

**A:** The degree of autonomy of police or other investigation / inquiry bodies during the investigation / inquiry is established in accordance with the CPC of the Republic of Azerbaijan, the Laws of the Republic of Azerbaijan "On Police", "On the operational-search activity" and other regulatory documents.

Thus, under Articles 85.1 and 86.1 of the CPC of the Republic of Azerbaijan during the criminal prosecution, the inquirer shall take the necessary procedural decisions pursuant to the law, on the basis of the prosecutor's instructions and his own conscience, and shall carry out investigative or other procedures within his powers.

Article 84 of the Criminal Procedure Code states that, a prosecutor in charge of the procedural aspects of the preliminary investigation shall:

- excluding cases of transferring of the criminal cases investigation from one authority to another, remove withdraw the criminal case from one preliminary investigator inquirer or investigator and transfer it to another in order to guarantee the thorough, full and objective conduction of the investigation, and in cases of where the law is violationed during the investigation;

- charge the investigating authority group with the criminal investigation and appoint its members the members of the group;

- examine objections to the inquirer or investigator as well as their requests to withdraw;

- give written instructions to the inquirer or investigator concerning the investigation of the offence, the choice, alteration or discontinuation of restrictive measures, the search for the guilty party, the contents of the indictment, the adoption of decisions and investigative or other procedures;

- cancel an illegal or groundless decision of the inquirer or investigator;

- (consider) examine complaints concerning decisions or acts of the inquirer or investigator;

- confirm the indictment and the decisions of the inquirer or investigator in the circumstances provided for in the CPC or if not, refer the criminal case to the investigator with mandatory instructions;
- refer the criminal case or other prosecution matter to the court for examination on the merits;
- take the appropriate decisions on the criminal case and conduct different investigative and other procedures;
- direct the conduct of operational-search measures on crime disclosure, or search for the missing person or missing property and receive reports on the measures taken;
- obtain documents and other material on criminal acts and the persons connected with them;
- verify the legality of detention, forced appearance before the prosecuting authority and other coercive procedural measures taken by the inquirer or investigator, as well as charge the inquiry authorities to conduct to the relevant procedures;
- has the right to release the suspect from custody or the accused from detention on remand if there are no longer legal grounds for holding them or if the detention periods provided for in CPC have been exceeded.

It should be noted that under Article 84.5 of the CPC of the Republic of Azerbaijan, if the prosecutor in charge of the procedural aspects of the investigation disagrees with the instructions on the prosecution of the accused, the choice of restrictive measures or changes to them, the classification of the offence, the scale of the charge, the termination of the case or committal for trial, he shall have the right to send his reasoned objection to the senior prosecutor. If the latter agrees with the arguments he shall rescind his written instructions; if he disagrees, he shall transfer responsibility for the investigation to another prosecutor. An objection to the prosecutor's written instructions shall not stay the execution of those instructions.

**Q: 10.** Does the prosecutor have the power to prevent or stop an investigation?

**A:** Article 84 the CPC of the Republic of Azerbaijan provides that, the prosecutor in charge of the procedural aspects of the preliminary investigation shall:

- cancel an illegal or groundless decision of the inquirer or investigator;
- take the appropriate decisions on the criminal case and conduct different investigative and other procedures;
- discontinue the criminal prosecution against the accused or refrain from prosecution in circumstances provided for in Articles 39 and 40 of the CPC.

According to this article, a prosecutor has the right to suspend the investigation and inquiry, as well as to prevent the groundless criminal prosecution setting aside decisions to launch the groundless criminal prosecution.

**Q: 12.** If the prosecutor leads the police or other criminal investigation in your country, does the prosecutor have the power to monitor compliance with his/her instructions? If so, please briefly describe.

**A:** Under article 84 of the CPC of the Republic of Azerbaijan, a prosecutor in charge of the procedural aspects of the preliminary investigation shall:

- give written instructions to the inquirer or investigator concerning the investigation of the offence, the choice, alteration or discontinuation of restrictive measures, the search for the guilty party, the contents of the indictment, the adoption of decisions and investigative or other procedures;

- confirm the indictment and the decisions of the inquirer or investigator in the circumstances provided for in this Code or if not, refer the criminal case to the investigator with mandatory instructions;

- direct the conduct of operational-search measures on crime disclosure, or search for the missing person or missing property and receive reports on the measures taken.

Prosecutor while being in charge of procedural aspects of the preliminary investigation supervise the execution of his instructions, constantly checks the execution of these instructions, and takes necessary steps prescribed by law in respect of persons responsible for the execution of the instructions.

## **E. Responsibility of the prosecutor for the respect of the law**

**Q:13.** Is it a responsibility of the prosecutor to control respect for the law by the police or other investigation body, if any? If yes, at which stage and by which means of control?

**A:** The prosecutor bears legal liability for violation of laws by the police or other preliminary investigation bodies.

Article 4 of the Law of the Republic of Azerbaijan “On Prosecutor’s Office” states that, the prosecutor's office in cases stipulated by law and order shall:

- manage of the preliminary criminal investigation and ensure the enforcement of laws;

- supervise the implementation and enforcement of laws in the activity of inquiry and operational search bodies.

Under Article 84 of the CPC of the Republic of Azerbaijan, s prosecutor shall:

- manage the procedural aspects of the investigation of the case;



- ensure that the investigation / inquiry authorities observe the legal requirements in their reception, registration and processing of applications and other information on offences committed or planned;
- obtain material and documents on the criminal case and information about the progress of the investigation from the inquirer or investigator, and check the material and documents on the criminal case and acquaint himself with the course of the investigation;
- cancel an illegal or groundless decision of the inquirer or investigator;
- examine complaints concerning decisions or acts of the inquirer or investigator;
- obtain documents and other material on criminal acts and the persons connected with them;
- verify the legality of detention, forced appearance before the prosecuting authority and other coercive procedural measures taken by the inquirer or investigator, as well as charge the inquiry authorities with the conduct of procedures;
- release the suspect from custody or the accused from detention on remand if there are no longer legal grounds for holding them or if the detention periods provided for in Articles 148.4, 158 and 159 of the CPC have been exceeded.

As is obvious, verification of compliance with the law by the police or other investigation / inquiry authorities under the law and relevant regulations was established as a duty of prosecutor. Prosecutor fulfill this obligation at any stage of the preliminary investigation constantly checking reception, registration and processing of applications and other information on offences committed or planned by the police or other investigation / inquiry authorities, obtaining and examining criminal cases and materials, and conducting generalizations on the implementation of laws within the stipulated terms.

## **F. Common principles concerning the police**

**Q: 14.** Are there written regulations concerning the conduct of criminal investigations by the police or other investigation body?

**A:** There exist written rules for the implementation of criminal investigations / inquiries by the police or other investigation / inquiry bodies, and they are regulated by relevant norms of the CPC of the Republic of Azerbaijan, as well as by orders and instructions given by police or other investigation / inquiry authorities in this regard.

**Q: 15.** What are these regulations about? (for instance, the way to carry out interrogations, deprivation of liberty etc.)

**A:** These rules apply to all investigative actions (e.g., questioning, confrontation, search, seizure, imprisonment, etc.).

At the same time, guidelines for the implementation of certain investigative actions and the investigation of specific crimes are prepared and used in practice.

### **G. General control over police**

**Q: 16.** What is the general control system of the police or other investigation body, if any (internal/external?) Does the prosecutor play a role in this system?

**A:** The main supervision/control system of the police or other investigation-inquiry bodies is prosecuting authorities.

Under Article 12 of the Law of the Republic of Azerbaijan “On Police”, during the execution of the provisions of this Law shall be the inter-institutional and external-institutional supervision.

The inter-institutional supervision of the police is carried out by the relevant executive authority within the powers established by the legislation of the Republic of Azerbaijan, and the external-institutional supervision is conducted by the relevant executive authority. Supervision over the implementation of laws in police authorities is performed by courts and prosecution authorities within the competences established by law

**Q: 17.** Is the prosecutor competent to take sanctions?

**A:** Under articles 154-157, 172 of the CPC of the Republic of Azerbaijan, arrest and removal from position on a submission by the prosecutor on the basis of a court decision, under articles 165-171 “a written undertaking not to go elsewhere”, “personal surety”, “surety offered by an organisation”, “police supervision”, “supervision” and “military observation” as restrictive measures are implemented on the basis of prosecutor’s decision.

In addition, under Article 243.1 of the CPC of the Republic of Azerbaijan, search and seizure, and under article 249.2.1, attachment of property is executed on the basis of a reasoned application by the investigator and the relevant submissions by the prosecutor in charge of the procedural aspects of the investigation.

In accordance with the applicable laws, in some other cases prosecutor shall have certain powers in connection with the adoption of legal sanctions.

## Bosnia and Herzegovina / Bosnie et Herzégovine

### A. Relationship between prosecutors and the police

1. Please briefly describe the relationship between prosecutors and the police or other investigation body in your country.

According to the accusational principles a criminal investigation cannot neither be initiated nor proceeded without a decision of a prosecutor. Following these principles there is a division of basic functions which are entrusted different legal subjects. The prosecutor's mission is to lead the investigation against criminals, the suspected criminal has to defend himself or make use of the help of an advocate, but the function of sentencing is handed over to the Court.

2. Is there any dialogue with the prosecutor concerning the work of the police or other investigation body?

The prosecutor leads the investigation but the police, in some cases in concert with other investigational institutions, is entrusted to inform the prosecutor on duty as soon as it is aware of the beginning of a criminal act. Through the whole criminal proceeding the police acts under the command and control of the acting prosecutor.

3. Is the prosecutor involved in training the police or other investigation body?

The prosecutors are educated and instructed in special centers for education of prosecutors. From time to time there are courses together with the police. It also could happen that there are organised special trainings of the police led by a prosecutor.

### B. Existing legal provisions and regulations

4. Is any relationship between prosecutors and investigation bodies determined by law or other provisions? Please describe briefly.

The relationship between prosecutors and the police is determined by the Law of Criminal Proceeding and the Law on Police.

- C. Responsibility of the prosecutor for setting priorities for investigating offenses
- 5. How are priorities in starting criminal investigations in your country determined?

The Law on Criminal Proceeding contains priorities of investigational measures.

- 6. Do prosecutors or the prosecution service in a direct way have an influence on this?

The prosecutor orders the priorities of every investigation.

- D. Responsibility of the prosecutor during the investigation
- 7. Are prosecutors responsible for the conduct of investigations in your country? If no, who is responsible for that?

Every investigation is lead by a prosecutor.

- 8. When does the prosecutor receive a complaint (as soon as the complaint is filed, or after the investigation has been conducted by the police)?

Complaints against the police has to be handed over to the prosecutor but the police has the right to complain against the orders of the prosecutor too. The latter has to be decided within the hierarchy of the prosecutorial service.

- 9. What is the degree of autonomy of the police or other investigation body, if any, during the investigation?

There is not any autonomy of the police during the conduct of criminal investigation. The procedures for the conduct binds the police quite strict to the leading prosecutor.

- 10. Does the prosecutor have the power to prevent or stop an investigation?

No.

- 11. How is it decided which service of the police or other investigation body, if any, is competent to investigate?

Who is responsible and competent to investigate within the body of the police or other institutions for investigation is laid down in its instructions to the Law on Police.

12. If the prosecutor leads the police or other criminal investigation in your country, does the prosecutor have the power to monitor compliance with his/her instructions? If so, please briefly describe.

The prosecutors are responsible to monitor the compliance of the police with the orders of the prosecutorial service. In case of any violation of the orders the prosecutor turns to the head of police.

E. Responsibility of the prosecutor for the respect of the law

13. Is it a responsibility of the prosecutor to control respect for the law by the police or other investigation body, if any? If yes, at which stage and by which means of control?

The prosecutors are not responsible for to control the respect for the law by the police but has to initiate an investigation in case there is any violation by the police.

F. Common principles concerning the police

14. Are there written regulations concerning the conduct of criminal investigations by the police or other investigation body?

The police as well as the prosecutors are bound to the obligations of the Law of Criminal Proceedings.

15. What are these regulations about? (for instance, the way to carry out interrogations, deprivation of liberty etc.)

In that Law is provided too, in what way have to be carried out interrogations by the order of prosecutor and the procedure of arresting suspected criminals.

G. General control over police

16. What is the general control system of the police or other investigation body, if any (internal/external?) Does the prosecutor play a role in this system?

During the criminal investigation the prosecutor supervises the proceeding of the police, proposes adequate measures to the police and controls what has been ordered by the Court. The prosecutor also controls the seizure of the pieces of evidence and its safekeeping. In addition the prosecutor is responsible to get the testimony of the suspected person as well as of the witnesses of the prosecution.

17. Is the prosecutor competent to take sanctions?

Whilst only a judge is entrusted to undertake sanctions against a policeman the prosecutor can issue an accusation against a policeman in case that he has violated the orders given by a prosecutor.

H. Conclusions

18. What are the major challenges in relations between prosecutors and investigation bodies in your country?

The profession of a prosecutor as well as of a policeman is a practical one. Therefore the close cooperation between these two different state's functions is usually determined by an appropriate organisation laid down in modern laws.

But it is always challenged by a lack of professionalism, dual sided misunderstandings, personal animosity and last but not least by political affairs the smaller a country is the more.

The only answer could be an enhancement of education and practical training with the aim of better effectiveness in the name of justice.

## Bulgaria / Bulgarie

### A. Relationship between prosecutors and the police

1. Please briefly describe the relationship between prosecutors and the police or other investigation body in your country.  
*The prosecutors are the masters of criminal investigations, according to Article 46 (2)(1)(i) of the Criminal Procedure Code [CPC]. In view of this, investigation bodies are in **procedural subordination to the competent prosecutor** – Article 52 (3) of the CPC. Specifically, Article 197 CPC postulates that “Written instructions of the prosecutor to the investigative body shall be binding and shall not be subject to any objections”.*
2. Is there any dialogue with the prosecutor concerning the work of the police or other investigation body?  
*Out of necessity, **such a dialogue exists**: as between a superior and subordinates.*
3. Is the prosecutor involved in training the police or other investigation body?  
*To **some extent YES**, in accordance with training plans of the given prosecution office and in accordance with the cooperation agreement between the Prosecutor’s Office of Bulgaria and the Ministry of Interior.*

### B. Existing legal provisions and regulations

4. Is any relationship between prosecutors and investigation bodies determined by law or other provisions? Please describe briefly.  
*Yes, as explained in point 1. The relations are governed briefly by Article 52 (3) of the CPC. This provision reads as follows: “The investigative bodies shall operate under the guidance and supervision of a prosecutor”. Besides, according to Article 196 of the CPC, „(1) When exercising guidance and supervision, the prosecutor may:*
  1. constantly control the progress of investigation, studying and inspecting all case materials;
  2. give instructions in relation to the investigation;
  3. take part or perform investigative actions;
  4. remove the investigative body, where he has committed a violation of the law or is not capable of ensuring the correct conduct of the investigation;
  5. withdraw a case from an investigative body and transfer it to another;
  6. assign to the respective bodies of the Ministry of Interior the implementation of individual actions related to the discovery of the crime;
  7. revoke on his own motion or on the basis of a complaint by the interested individuals decrees of investigative bodies.*(2) Apart from § 1 powers, the supervising prosecutor shall directly monitor the lawfulness of the investigation and its completion within the set period“.*

### C. Responsibility of the prosecutor for setting priorities for investigating offenses

5. How are priorities in starting criminal investigations in your country determined?  
*They are determined by the competent prosecutor.*

6. Do prosecutors or the prosecution service in a direct way have an influence on this?  
*- As explained, "YES". It is their duty, pursuant to Article 46 (2)(1)(i) of the CPC.*

**D. Responsibility of the prosecutor during the investigation**

7. Are prosecutors responsible for the conduct of investigations in your country? If no, who is responsible for that?  
*- As explained, the answer is "YES".*

8. When does the prosecutor receive a complaint (as soon as the complaint is filed, or after the investigation has been conducted by the police)?  
*- As soon as the complaint is filed.*

9. What is the degree of autonomy of the police or other investigation body, if any, during the investigation? –

*They have autonomy in investigative actions but within the directives of the competent prosecutor, esp. when it comes to judicial investigators – Article 52 (2) of the CPC.*

10. Does the prosecutor have the power to prevent or stop an investigation?

*YES, because s/he is the master of investigation. The prosecutor is authorized to prevent an investigation by the virtue of Article 212 of the CPC. S/he is authorized to suspend an investigation by the virtue of Article 244 of the CPC and authorized to terminate it by the virtue of Article 243 of the CPC.*

11. How is it decided which service of the police or other investigation body, if any, is competent to investigate?

*This is decided in accordance with Articles 194, 194a and 195 of the CPC; they govern the distribution of cases during pre-trial proceedings among investigative bodies. The territorial competence of the investigation bodies depends on the place, where the crime has been committed and in the seat of the competent court.*

12. If the prosecutor leads the police or other criminal investigation in your country, does the prosecutor have the power to monitor compliance with his/her instructions? If so, please briefly describe.

*YES, being the master and in accordance with the above-quoted Article 196 of the CPC, in particular.*

**E. Responsibility of the prosecutor for the respect of the law**

13. Is it a responsibility of the prosecutor to control respect for the law by the police or other investigation body, if any? If yes, at which stage and by which means of control?



Yes, all the time, according to Articles 46 (2)(1)(ii) and 196 (1)(4)(i) of the CPC.

**F. Common principles concerning the police**

14. Are there written regulations concerning the conduct of criminal investigations by the police or other investigation body?

Yes, apart from CPC, which regulates the pre-trial investigation, there is a comprehensive Instruction on pre-trial criminal proceedings.

15. What are these regulations about? (for instance, the way to carry out interrogations, deprivation of liberty etc.)

Their idea is to regulate all decision and activities relating to prejudicial checks /preliminary verifications/ and pre-trial criminal proceedings.

**G. General control over police**

16. What is the general control system of the police or other investigation body, if any (internal/external?)

- There is both internal and external control. Does the prosecutor play a role in this system? - His/her role is of a DOMINUS LITIS (Latin: Master of the Suit). This has been already explained.

17. Is the prosecutor competent to take sanctions?

YES, s/he is. Article 196 (1)(4)(i) of the CPC authorized him/her to remove the investigative body, where s/he has committed a violation of the law. The prosecutor is entitled to impose administrative fine when his/her order, given according the law is not fulfilled – Art. 405 of the Judicial Power Act.

**H. Conclusions**

18. What are the major challenges in relations between prosecutors and investigation bodies in your country?

I would say it is to overcome the lack of sufficient communication and control on behalf of prosecutors.

## Croatia / Croatie

### A. Relationship between prosecutors and the police

1. The State Attorney (prosecutor) has no authority over the police or other bodies, agencies of the Ministry of Finance of the Republic of Croatia. State Attorney's Office is an independent judicial authority, while the police is under the Ministry of Interior Affairs, and certain agencies (tax Administration, Customs Administration, etc.) are under the Ministry of Finance.

Pursuant to the Criminal Procedure Act (hereinafter: CPA), the State Attorney may give orders to the police or other bodies investigating criminal offences. Article 206h of the CPA prescribes that the State Attorney orders the police authorities to obtain necessary information by making inquiries and that police is bound to proceed in accordance with the order of the State Attorney. If a police officer does not act upon the order of the State Attorney, the State Attorney can only notify the Chief Police Directorate thereof.

The same is applicable to certain agencies of the Ministry of Finances. Namely, pursuant to Article 206g, paragraph 2 of the CPA, the State Attorney may request documents to be obtained, control to be conducted, etc. If officers of certain bodies (agencies) of the Ministry of Finance do not conduct requested control, the State attorney may request the Head of the body to examine why it was not acted upon his/her order.

Also, it is important to emphasize that the police is independent in its work and if police authorities believe that there are grounds of suspicion that criminal offence was committed, they can initiate inquiries into criminal offences in accordance with the Police Affairs and Powers Act, and they do not need an order or approval of the State Attorney. They only need to notify the State Attorney that they are conducting such actions.

2. State Attorney's Office signed a Protocol on Cooperation between the State Attorney's Office and the Police in preliminary (pre-investigative) and criminal proceedings. The Protocol regulates issues of mutual cooperation, manner of holding coordinative meetings, etc. In regard to the implementation of the Protocol, no less than once a year a meeting between the State Attorney's Office of the Republic of Croatia and Chief Police Directorate is held and joint work is discussed. Manners for the improvement of cooperation are agreed upon in the meeting. Protocol also prescribes that County and Municipal State Attorney's Offices are bound to hold such meetings with competent Police Administrations at least once a year.

3. State Attorney is involved in the education/training of the police or other bodies only or if the bodies request the State Attorney to be involved. There is no legal obligation of the referenced authorities to involve the State Attorney in the trainings.

It is common that after the adoption of significant amendments of the CPA and Criminal Code, the authorities organise education in which state attorneys also participate.

### B. Existing legal provisions and regulations

4. As previously mentioned, Article 206h of the CPA prescribes that the State Attorney may order the police authorities to obtain necessary information by making inquiries and undertaking other measures for collecting the data necessary for a decision on the crime report.

Once the State Attorney ordered the police to conduct inquiries in accordance with Article 206h, paragraph 2 of the CPA, the State Attorney has the right and duty to constantly supervise the conducting of the inquiries ordered to the police. This provision also prescribes that police is bound to execute the order or request of the State Attorney in performing supervision of the inquiries and will respond for their action to the State Attorney. However, the law does not regulate the manner of responsibility.

Police Affairs and Powers Act and Article 212 of the CPA prescribe that the police must notify the State Attorney in case a police officer committed a criminal offence and then the State Attorney decides whether he/she will conduct investigation on his/her own or involve certain police bodies.

With regard to the agencies of the Ministry of Finance of the Republic of Croatia, there is a provision in the CPA that the State Attorney has a right to request the referenced authorities to deliver certain information, that is, to conduct certain control. According to the CPA, the State Attorney has no right to supervise the conducting of requested actions.

C. Responsibility of the prosecutor for setting priorities for investigating offenses

5. There are no provisions or internal instructions within the State Attorney's Office in regard to determining priorities in the initiation of criminal investigations. Cases need to be resolved according to the time of receipt.

Bearing in mind legal deadlines, it is necessary to act urgently in cases where defendant was arrested, that is, when detention or investigative detention was ordered against the defendant. These cases have priority. In regard to all other cases, priorities are not determined, but state attorneys are bound to provide an order for conducting inquiries, commence with inquires themselves or make a decision in the case within 15 days from the day they received information on the perpetration of criminal offence.

6. State Attorney has no direct or indirect authority to influence a decision of police bodies, which have information on the perpetration of criminal offence, to conduct inquiries or in what term. However, if the State Attorney has information that a criminal offence was committed or once he/she receives a criminal report, the State Attorney has a right to order inquiries to be conducted and to supervise these inquiries.

D. Responsibility of the prosecutor during the investigation

7. Investigation is conducted by the State Attorney. He/she is responsible for timely, quality and complete collection of evidence, i.e. efficient conducting of investigation. He/she is especially responsible for conducting the investigation within prescribed deadlines. Investigation is conducted for criminal offences for which a punishment of more than five years imprisonment is prescribed, while investigation is conducted for criminal offences for which a fine or up to five years imprisonment is prescribed.

If the State Attorney, due to gross negligence, is not conducting actions in the investigation and therefore investigation cannot be concluded within the legal deadline, he/she is responsible and disciplinary proceedings can be conducted against him/her.

8. State Attorney receives crime reports from the police but also other state authorities. Police submits crime report if grounds of suspicion exists that a criminal offence was committed. According to the Police Affairs and Powers Act, the police conduct criminal investigation and afterwards is due to submit the crime report to the State Attorney. If police receives crime report from a citizen or a legal entity, it is bound to deliver the report to the State Attorney immediately, since Article 205, paragraph 1 of the

CPA prescribes the following: If the report was filed with the court, the police authority or a State Attorney lacking jurisdiction, they will receive it and immediately forward it to the State Attorney having jurisdiction.

9. CPA differentiates between inquiries, which according to the Police Act are titled criminal investigation, from investigation.

According to the Police Affairs and Powers Act, police is bound to conduct criminal investigation if grounds of suspicion exist that criminal offence prosecuted by virtue of office is being prepared or that it was committed. Term "grounds of suspicion" indicates that certainty that a criminal offence was committed is much smaller than in a case of existence of reasonable suspicion. One might say that it is sufficient that the police obtained information on possible perpetration of a criminal offence and then it is authorised to initiate criminal investigation.

Police is autonomous in deciding whether to initiate a criminal investigation or not and they do not need an approval of the State Attorney.

Investigation is conducted by the State Attorney, and police investigator can conduct certain evidentiary actions in investigation only upon the order of the State Attorney. Therefore, police is not authorised to conduct investigation independently.

10. The State Attorney is not authorised nor can he/she influence decisions of the police or other investigative authority in regard to conducting inquiries or criminal investigation. These bodies decide independently on the referenced actions. Once the State Attorney receives crime report, he/she can decide whether reasonable suspicion exist that the reported person committed criminal offence. If he/she believes there is no reasonable suspicion, the State Attorney is authorised to dismiss the crime report, and if the reasonable suspicion exists he is bound to conduct investigation for the purpose of collecting evidence. After investigation, the State Attorney decides whether to initiate criminal proceedings by preferring the indictment or desist from criminal prosecution.

11. As pointed out above, we differentiate between criminal investigation, which is under police competence and which the State Attorney cannot influence, from investigation that, according to the Criminal procedure Act, is conducted by the State Attorney.

Investigation is conducted by the State Attorney and he/she can order the investigator to conduct certain evidence collecting actions in the course of investigation.

The investigator is a police officer or an officer of other competent authority appointed investigator, pursuant to a special law. The investigator acts in accordance with order of the State Attorney and cannot conduct actions outside the scope of the order. As a rule, the State Attorney orders the investigator to conduct specific evidence collecting actions. The State Attorney entrusts the performance of particular evidence collecting actions to the investigator mostly in cases where a large number of persons needs to be questioned.

On the other hand, if there is danger in delay the police has a right to independently perform particular urgent evidence collecting actions (crime scene investigation, etc.). If criminal offences in questions are serious ones, prior to the execution of the action the investigator must inform the State Attorney who may take over the performance of the referenced actions.

12. If the State Attorney ordered the investigator to conduct particular evidence collecting actions in the course of investigation, the State Attorney has a right and duty to supervise lawful performance of the

action. The investigator is bound to act in accordance with the orders of the State Attorney and is responsible for not acting in accordance with the orders of the State Attorney.

As previously stated, the investigator cannot be sanctioned by the State Attorney. The State Attorney may request competent police officer to establish responsibility of the police officer and initiate appropriate procedure.

E. Responsibility of the prosecutor for the respect of the law

13. As previously mentioned, the police conduct criminal investigations which are conducted even before a crime report was submitted to the State Attorney. In conducting criminal investigations, the police act pursuant to the Police Affairs and Powers Act.

F. Common principles concerning the police

14. If the police conduct urgent evidentiary actions (Article 212 of the CPA) it is bound to conduct these actions pursuant to the Criminal Procedure Act. When the police conduct actions in the course of criminal investigation (without the order of the State Attorney), it is bound to act in accordance with the Police Affairs and Powers Act which prescribes the manner of conducting a particular actions, that is, subordinate legislation adopted on the basis of the Act.

15. If the police conduct urgent evidentiary actions (Article 212 of the CPA) it is bound to conduct these actions pursuant to the Criminal Procedure Act. When the police conduct actions in the course of criminal investigation (without the order of the State Attorney), it is bound to act in accordance with the Police Affairs and Powers Act which prescribes the manner of conducting a particular actions, that is, subordinate legislation adopted on the basis of the Act.

G. General control over police

16. Police Affairs and Powers Act lists police activities. Among others, these activities include suppression of criminal and misdemeanour offences, detection thereof, collection of data, search for perpetrators of criminal offences prosecuted by the virtue of office and proceeds of crime, etc.

If a person was arrested and there are grounds of suspicion that a criminal offence was committed, police is bound to act in accordance with the provisions of the Criminal Procedure Act which refer to the arrest and bringing the arrested person to a detention police station and surrendered to a detention supervisor and notifying the State Attorney. These are formal actions and police is bound respect the prescribed deadlines. Criminal Procedure Act regulates the right of arrested persons, procedure of introducing the rights and deadlines in which the State Attorney needs to be informed.

The State Attorney does not participate in the control system of the police. Police work is controlled by the Ministry of Interior Affairs of the Republic of Croatia, i.e. certain Committees of the Croatian Parliament. The State Attorney controls if actions conducted in a case were done in respect for the law, and if the actions were conducted in violation of the law, he/she cannot use the results of such actions in criminal proceedings.

17. As previously stated, the State Attorney/prosecutor can propose to the superior officer, i.e. superior police officer or officer of some other authority, to initiate appropriate procedure if the State Attorney considers that a police officer or officer of other authority did not perform particular actions in a timely manner or in respect for the law.

## H. Conclusions

18. According to the Criminal Procedure Act, the State Attorney is responsible for conducting inquiries, their legality, legality in conducting investigation, comprehensiveness of investigation and legality in collection of evidence. Finally, the State Attorney is responsible for the successfulness of a case. Degree of successfulness influences the assessment of the work that the State Attorney receives.

According to the Criminal Procedure Act, the police are bound to conduct actions ordered by the State Attorney; however, the act does not prescribe how the State Attorney can request liability of a police officer if such situation occurs.

## Czech Republic / République tchèque

### **A. Relationship between prosecutors and the police**

1. Please briefly describe the relationship between prosecutors and the police or other investigation body in your country.

Police authorities independently conduct the investigation, actively seek the facts proving perpetration of offences and at the same time accept criminal complaints from the public. As soon as the criminal procedure is started, the Police authority which formulates an official record of this has to inform the public prosecutor of this course of action within 48 hours. Public prosecutor conducts supervision over compliance with legality in the pre-trial procedure, which mainly consists of checking the police while investigating and collecting evidence. Public prosecutor acts as *dominus litis* of the pre-trial procedure, which determines his competencies towards the police authority – the public prosecutor is authorized to give binding instructions on investigating crimes; the public prosecutor is authorized to participate in the performance of actions of the Police authority; is authorized to require all the documentation concerning investigation from the Police authority in order to review its activities; cancels unlawful and unjustified decisions of the Police authority. The public prosecutor makes all the decisions concerning the merits of the case in the pre-trial procedure. The exhaustive enumeration of the competencies of the public prosecutor towards the police authority is listed in the Criminal Procedure Code.

2. Is there any dialogue with the prosecutor concerning the work of the police or other investigation body?

The Police authority is bound by the instructions given by the public prosecutor; nonetheless the Police authority acts relatively independently. Both subjects cooperate closely, the public prosecutor gives advice to the Police how to proceed, eventually gives the Police authority binding instructions. The Czech Police face a problem concerning an absenting legal education of the members of the Police, which requires a thorough control of the activities of the Police by the public prosecutor who guarantees the lawfulness of the whole pre-trial procedure.

3. Is the prosecutor involved in training the police or other investigation body?

Vocational education on the field of law is not required for entering the Police service except when a special education is necessary for the performance of the function. The newly hired members of the Police service are trained in the form of the so called basic training which lasts 3 months. The conception of the Ministry of Interior assumes a lifelong systematic education of the members of the Police. The education is provided within the structure of the Police (The Police Presidium) and by the Ministry of Interior (e.g. The Police Academy). Public prosecution also takes part in the educational process of the members of the Police but the main role plays the Police Presidium as well as the Ministry of Interior.

### **B. Existing legal provisions and regulations**

4. Is any relationship between prosecutors and investigation bodies determined by law or other provisions? Please describe briefly.

The relationship between these bodies is regulated in the Criminal Procedure Code (Act no. 141/1961 Coll.). This regulation provides the competencies of the Police authority and public prosecution in the pre-trial procedure. The main task of the public prosecution in this stage is to guarantee the lawfulness of the pre-trial procedure.

### **C. Responsibility of the prosecutor for setting priorities for investigating offenses**

5. How are priorities in starting criminal investigations in your country determined?

Initiation of the criminal procedure is governed by the principle of legality, which means that the public prosecutor is obliged to prosecute all the offences he gets to know about. The public prosecutor does not dispose of discretion to initiate the prosecution or not. The so called formal concept of a criminal offence is applied while assessing if an act is a crime or not. At the same time the criterion of the social harmfulness has to be assessed because an illegal act cannot be considered as a crime if its social harmfulness does not achieve a certain threshold. On principle, if an illegal act fulfills the conditions regulated in the Criminal Code it usually is to be qualified as a criminal act on condition that the social harmfulness of this act cannot be considered lower than in similar cases.

6. Do prosecutors or the prosecution service in a direct way have an influence on this?

Public prosecution service takes part in forming the criminal policy of the state. Public prosecution service determines problems the public prosecution deals with and suggests possible legislative solutions. In relation to the efficiency of the criminal justice possible regulation of elements of the principle of opportunity is being discussed. Some of these elements are regulated in the Criminal Procedure Code in the form of diversions, which enables the public prosecution to solve the criminal case of lower gravity within a pre-trial procedure without an unnecessary stigmatization of the defendants and without spending unnecessary costs on the criminal procedure.

**D. Responsibility of the prosecutor during the investigation**

7. Are prosecutors responsible for the conduct of investigations in your country? If no, who is responsible for that?

Public prosecutor acts as *dominus litis* of the pre-trial procedure who supervises the activities of the Police authority which factually collects evidence and conducts investigation. The public prosecutor conducts investigation on his own only in exhaustively listed cases (e.g. investigation of crimes committed by the members of the General Inspection of Security Forces, by members of the Office for Foreign Relations and Information etc.). The public prosecutor is authorized to give binding instructions to the Police authority and guarantees the lawfulness of the pre-trial procedure. As a result, the public prosecutor is responsible for the conduct of the pre-trial procedure.

8. When does the prosecutor receive a complaint (as soon as the complaint is filed, or after the investigation has been conducted by the police)?

The public prosecution as well as the Police authority is obliged to accept criminal complaints which refer to committing a crime. The investigation itself is conducted by the Police authority which is obliged to formulate an official record of initiating the criminal procedure and has to inform the public prosecutor of this course of action within 48 hours.

9. What is the degree of autonomy of the police or other investigation body, if any, during the investigation?

The Police authority is an independent body which however closely cooperates with the public prosecution service. The public prosecutor acts as *dominus litis* of the pre-trial procedure and the Police authority is bound by the instructions of the public prosecutor. The public prosecutor makes all the decisions concerning the merits of the case in the pre-trial procedure. The Police authority also makes some decisions but all of them can be contested by entitled persons and replaced or reviewed by the public prosecutor. The Police authority does for example initiate the criminal procedure by formulating an official record, resp. by performing urgent and unrepeatable acts, initiates the criminal prosecution against a particular person, and adjourns a case. Besides the cases when the public prosecutor's consent is



required, the Police authority makes all the decisions concerning the investigation independently and is fully responsible for the lawfulness and timeliness of performance of all the actions taken by the Police authority.

**10. Does the prosecutor have the power to prevent or stop an investigation?**

The public prosecutor is a *dominus litis* of the pre-trial procedure and due to this fact he is authorized to preclude the criminal prosecution for example by giving the Police authority a binding instruction to adjourn a case. At a later stage of the criminal procedure when a criminal prosecution against a particular person has been initiated, the prosecution may be discontinued only by the public prosecutor and for legal reasons exhaustively listed in the Criminal Procedure Code. On the base of the exhaustively listed reasons the criminal prosecution may be discontinued due to inadmissibility (e.g. limitation of a crime; final decision in the same case has already been issued; defendant passed away etc.) or due to the fact that after a conducted investigation is clear that there is an obligatory reason for discontinuing the criminal prosecution (the criminal act did not happen; the committed act is not a criminal offence; the defendant is not a perpetrator of the crime; the criminal prosecution is inadmissible; the defendant was mentally insane at the moment of committing the crime; criminal nature of the act vanished). In particular cases when the prosecution is not effective the criminal prosecution may be discontinued by using the so called procedural opportunity. In such cases the public prosecutor disposes of discretion to do so. This is considered an element of the principle opportunity in the Czech criminal procedure.

**11. How is it decided which service of the police or other investigation body, if any, is competent to investigate?**

Material and local jurisdiction of the Police to investigate crimes is determined by an internal binding regulation called Instruction of the Police President no. 103/2013. The local jurisdiction depends on the place where the offence was committed. If the scene of crime cannot be determined or if the offence was committed abroad, the local jurisdiction is determined on the base of the residence of the perpetrator, his workplace or the place where he stays. If these places cannot be determined or are abroad, the local jurisdiction is determined according to the place where the offence emerged. The material jurisdiction is determined by the gravity of the offence. Offences which are supervised in the pre-trial procedure by the district prosecutor's office and judged in the first instance by the district courts are investigated by the district Police authority. Offences which are supervised in the pre-trial procedure by the regional prosecutor's office and judged in the first instance by the regional court are investigated by the regional Police authority.

**12. If the prosecutor leads the police or other criminal investigation in your country, does the prosecutor have the power to monitor compliance with his/her instructions? If so, please briefly describe.**

Public prosecutor is a *dominus litis* of the pre-trial procedure and is responsible for the lawfulness of the pre-trial procedure. The public prosecutor is authorized to give binding instructions to the Police authority concerning the investigation. The public prosecutor is authorized to request files and documents from the Police authority including cases where the prosecution has not been initiated yet. Due to this fact the public prosecutor disposes of all the procedural possibilities to check if the Police authority complies with his instructions. In case that the Police authority does not comply with his instructions, the public prosecutor is authorized to replace all the decisions made by Police by his own decision.

**E. Responsibility of the prosecutor for the respect of the law**

**13. Is it a responsibility of the prosecutor to control respect for the law by the police or other investigation body, if any? If yes, at which stage and by which means of control?**

The essential role of the public prosecutor in the pre-trial procedure is to guarantee the lawfulness of all the actions taken. In the trial stage of the criminal procedure the position of the public prosecutor changes because he becomes a party and the procedural guarantor is a court in this stage. In the pre-trial stage the public prosecutor performs supervision over the police, gives it binding instructions and may replace all the decision taken by the Police if he supposes that the Police decided unlawfully. In the pre-trial stage only the public prosecutor is authorized to make all the decisions concerning the merits of the case.

#### **F. Common principles concerning the police**

##### **14. Are there written regulations concerning the conduct of criminal investigations by the police or other investigation body?**

The Charter of Fundamental Rights and Freedoms determines a basic frame for the activities of the investigating, prosecuting and adjudicating bodies within the criminal procedure. This regulation is a part of the constitutional order and disposes of higher legal force than the procedural norm regulating the activities of the investigating, prosecuting and adjudicating bodies (Criminal Procedure Code). The Charter mainly regulates legal limits of the possible interference with fundamental rights and basic freedoms which must not be exceeded by the state bodies while performing their duties. The Criminal Procedure Code is the essential procedural norm which regulates the course of action of the investigating, prosecuting and adjudicating bodies. The competencies of the Police are further regulated in the Act on Police. Activities and position of the public prosecution service are regulated in the Act on Public Prosecution Service and in the Act on Rules of Procedure of the Public Prosecution Service.

##### **15. What are these regulations about? (for instance, the way to carry out interrogations, deprivation of liberty etc.)**

The Charter of Fundamental Rights and Freedoms determines the constitutional frame of the possible interference with the fundamental rights and freedoms conducted by the investigating, prosecuting and adjudicating bodies (e.g. imposition of custody, performing the house search etc.). The Charter determines the basic rights of the defendant in the criminal procedure and further principles of the procedural and substantive criminal law (e.g. presumption of innocence, principle of a due process of law etc.). The Criminal Procedure Code determines specific rules for the conduct of the mentioned bodies.

#### **G. General control over police**

##### **16. What is the general control system of the police or other investigation body, if any (internal/external?) Does the prosecutor play a role in this system?**

Body of an internal control of the Police is called the General Inspection of Security Forces which was established on 1 January 2012 as a body unifying the system of internal control of the Police. Creating such a body seemed to be a must because the whole system of the control was previously quite fragmented and control competencies were conferred to various bodies within the Police. The General Inspection of Security Forces is an independent body which actively investigates the facts suggesting committing a crime by a member of the Police (and by members of other enumerated bodies). Everybody is entitled to notify the General Inspection of Security Forces about the shortcomings in the activities of the Police and at the same time everybody can notify that a member of the Police committed a crime, disciplinary offence or an administrative offence. Chamber of Deputies of the Czech Parliament is a body which controls the activities of the General Inspection of Security Forces. However, the General Inspection of Security Forces closely cooperates with the public prosecution service because the public prosecution service supervises the activities of the General Inspection of Security Forces while investigating the offences of the members of the Police. According to the Act on Police the institute of the so called public control was established. According to this regulation everybody can notify the

shortcomings in the activities of the Police authority, member of a Police and an employee of the Police and at the same time everybody can notify that such a person committed a crime, disciplinary offence or an administrative offence. In the year 2011 the so called Police Ombudsman was established (Office of the Ombudsman of the Ministry of Interior) by a regulation of the Ministry of Interior. The ombudsman accepts and deals with complaints filed by the members of the Police which concern violation of rights of the members of the Police; inaction of the superordinate Police members while enforcing these rights; activities which contradict the principles of a democratic rule of law state; avoiding and solving cases of discrimination by the superordinate, subordinate Police members, eventually by the colleagues. After investigating the complaint the ombudsman suggests a measure to be taken or if the complaint does not fall within his competence, he refers the matter to a competent body.

**17. Is the prosecutor competent to take sanctions?**

The public prosecutor supervises the investigation which is conducted by the General Inspection of Security Forces. Due to this fact the public prosecutor disposes of the same competencies like during the pre-trial procedure which is conducted against perpetrators outside the Police (the public prosecutor makes all the decisions concerning the merits of the case – e.g. diversions (the defendant may be imposed some obligations or the public prosecutor files indictment in court). The public prosecutor does however not impose sanctions for committing a disciplinary offence or an administrative offence because these sanctions must not be imposed within a criminal procedure.

**H. Conclusions**

**18. What are the major challenges in relations between prosecutors and investigation bodies in your country?**

The Police has been undergoing a process of reform while various aspects of its activities are emphasized. For example lack of legal education of the members of the Police is considered a big problem although the legal education is not required for entering the Police. The pre-trial procedure has to meet requirements of lawfulness, which can be problematic when there is a lack of legal education. The Police is overloaded with quantity of various activities which prevent the Police from conducting its main task – the investigation of crimes. These activities are called non-police activities and they should partly be conferred to other bodies. Another problem is bureaucracy and slow computerization of justice which has the potential to accelerate the criminal procedure. Creation of the above mentioned General Inspection of Security Forces can be considered a partial success of the ongoing reform.

Attachment:

**Section 12 Interpretation of Some Terms**

(1) Authorities involved in criminal proceedings are understood as the court, the public prosecutor and the Police authority.

(2) Police authorities are understood as

a) units of the Police of the Czech Republic,

b) General Inspection of Security Forces in proceedings on criminal offences committed by members of the Police of the Czech Republic, members of the Prison Service of the Czech Republic, customs officers or employees of the Czech Republic placed to work in the Police of the Czech Republic, or on criminal offences committed by employees of the Czech Republic placed to work in the Prison Service of the

Czech Republic or in the Customs Administration of the Czech Republic, which were committed in connection with fulfilment of their work tasks,

c) authorized bodies of the Prison Service of the Czech Republic in proceedings on criminal offences of persons in custody, prison sentence or security detention, which were committed in a custodial prison, prison or a facility for the execution of security detention,

d) authorized customs authorities in proceedings on criminal offences committed by breaching customs regulations or regulations on the import, export or transit of goods, even in cases of criminal offences committed by members of the armed forces or security forces, and committed by breaching laws in the placement and purchase of goods in Member States of the European Communities, if such goods are transported across the state borders of the Czech Republic, and in cases of tax infringements, where the customs authorities administer the tax according to special legal regulations,

e) authorized bodies of the Military Police in proceedings on criminal offences of members of the armed forces and persons who commit a criminal activity against members of the armed forces in military facilities, against military facilities, military material or other property of the State, administration of which appertains to the Ministry of Defence,

f) authorized bodies of the Security Information Service in proceedings on criminal offences committed by members of the Security Information Service,

g) authorized bodies of the Office for Foreign Relations and Information in proceedings on criminal offences committed by members of the Office for Foreign Relations and Information,

h) authorized bodies of Military Intelligence in proceedings on criminal offences committed by members of Military Intelligence,

i) authorized bodies of the General Inspection of Security Forces in proceedings on criminal offences committed by members of the General Inspection of Security Forces or on the criminal offences of employees of the Czech Republic placed to work in the General Inspection of Security Forces.

This does not affect the right of the public prosecutor according to Section 157 (2) b). Unless stipulated otherwise, the listed authorities are entitled to all acts of criminal proceedings belonging to the competence of police authorities.

### **Section 157 General Provisions**

(1) The public prosecutor and the Police authority are obliged to manage their activities so as to effectively contribute to the timeliness and reasonability of the criminal prosecution.

(2) The public prosecutor may order the Police authority to perform such actions that this authority is authorised to perform and that are necessary to clarify the matter or to identify the offender. In order to examine the facts indicating that a criminal offence has been committed, the public prosecutor is also entitled to:

a) request files from the Police authority, including files, in the matter of which no criminal proceedings were initiated, documents, materials and reports on the procedure on examination of criminal complaints,

b) remove any case from the Police authority and take measures to ensure that the case is assigned to another Police authority,

c) temporarily adjourn initiation of criminal prosecution.

### **Supervision of the Public Prosecutor**

#### **Section 174**

(1) Supervision over compliance with the legality in pre-trial proceedings shall be conducted by the public prosecutor.

(2) Besides the entitlements referred to in Section 157 (2), the public prosecutor is also entitled in the course of performing the supervision

a) to give binding instructions for the investigation of the criminal offences,

b) to request files, documents, materials and reports on committed criminal offences from the Police authority in order to review, whether the Police authority timely initiates criminal prosecution and proceeds accordingly,

c) to participate in the performance of the actions taken by the Police authority, to personally make individual actions or even an entire investigation and issue a decision in any matter; therein he proceeds in accordance with the provisions of this Code applicable for the Police authority, and a complaint against his decision is admissible to the same extent as against a decision of the Police authority,

d) to return the matter to the Police authority with his instructions for supplementation,

e) to repeal unlawful or unjustified decisions and actions of the Police authority, which he may replace with his own; in the case of a resolution to adjourn the matter, he may do so within 30 days of receipt; if the public prosecutor replaced a decision of the Police authority by his own decision otherwise than upon a complaint of an entitled person against the resolution of the Police authority, then a complaint is admissible against his decision in the same extent as against the decision of the Police authority,

f) to order that the actions in the matter are carried out by another person in active service of the Police authority.

## Denmark / Danemark

### A. Relationship between prosecutors and the police

1. Please briefly describe the relationship between prosecutors and the police or other investigation body in your country.

***In Denmark, criminal investigations are carried out by the Police. However, criminal cases against police officers are carried out by the Independent Police Complaint Authority. There are no other investigative bodies.***

***Both the Police and the Prosecution Service belong to the executive power and are under the responsibility of the Minister of Justice. At the local level, the Police and the Prosecution Service are integrated in a joint structure. Thus, the local Commissioner is at the same time the head of the Police and of the Prosecution Service.***

2. Is there any dialogue with the prosecutor concerning the work of the police or other investigation body?

***Yes, due to the structure described under point 1, there is a very close daily contact and cooperation between Police and Prosecution, both when it comes to specific cases and to questions of a more general nature.***

***Also, the Prosecution has a supervisory role Vis a Vis the Police and must ensure the legality of the investigations.***

3. Is the prosecutor involved in training the police or other investigation body?

***Yes. Many teachers at the Danish Police College are prosecutors. Also, joint training of both investigators and prosecutors are often organised. Especially at the local level, prosecutors organise ad hoc training sessions for investigators.***

### B. Existing legal provisions and regulations

4. Is any relationship between prosecutors and investigation bodies determined by law or other provisions? Please describe briefly.

***According to the Danish criminal procedural code, the task of prosecutors is – together with the Police – to pursue crime in accordance with the law.***

### C. Responsibility of the prosecutor for setting priorities for investigating offenses

5. How are priorities in starting criminal investigations in your country determined?

***According to the law, the Police will – either upon complaint or by its own initiative - initiate investigations when there is reason to believe that a criminal offence has been committed.***

**Denmark applies the principle of opportunity. There are no guidelines or instructions issued to guide the discretionary decisions.**

6. Do prosecutors or the prosecution service in a direct way have an influence on this?

**Most often, decisions whether or not to initiate investigations are taken by the Police. However, the prosecution can always order the Police to initiate investigations. Also, due to the supervisory functions towards the police, the Prosecution can give instructions on whether or not to initiate investigations.**

**D. Responsibility of the prosecutor during the investigation**

7. Are prosecutors responsible for the conduct of investigations in your country? If no, who is responsible for that?

**In Denmark, the Police are responsible for carrying out investigations. The Police can initiate an investigation and carry out various investigative steps on their own initiative. However, all intrusive measures must be warranted by the Courts. It is the Prosecution who decides whether or not conditions for an investigative step are likely to be met – and thus decides whether or not to request the Court to approve the measure.**

8. When does the prosecutor receive a complaint (as soon as the complaint is filed, or after the investigation has been conducted by the police)?

**In cases where intrusive investigative measures and/or pre-trial detention are not required, see point 7, the Prosecution will normally receive the case only after the completion of the investigation.**

**In cases where intrusive investigative measures and/or pre-trial detention are to be used, the Prosecution will most likely be involved at an early stage.**

9. What is the degree of autonomy of the police or other investigation body, if any, during the investigation?

**The Danish Police have a wide autonomy. In larger or more complex cases however, investigations will always be carried out in cooperation between Police and Prosecution. See also point 7.**

10. Does the prosecutor have the power to prevent or stop an investigation?

**Yes. However, this is very unlikely to take place and will probably only take place if it is considered that initiation of investigations must be considered a violation of the law.**

11. How is it decided which service of the police or other investigation body, if any, is competent to investigate?

**Denmark only has one Police force. Usually, investigations are carried out in the Police district where the crime has been committed – or where a suspect has his residence.**

***The State Prosecutor for Serious Economic and International Crime can decide to investigate and prosecute all cases of economic crime and will investigate and prosecute all cases of international crime.***

12. If the prosecutor leads the police or other criminal investigation in your country, does the prosecutor have the power to monitor compliance with his/her instructions? If so, please briefly describe.

***The Prosecution can give instructions to the Police in a specific case.***

***E. Responsibility of the prosecutor for the respect of the law***

13. Is it a responsibility of the prosecutor to control respect for the law by the police or other investigation body, if any? If yes, at which stage and by which means of control?

***Yes. The control is carried out during the investigative phase - normally as part of the daily cooperation. Also, control can be exercised after the termination of the investigation when the prosecution formally receives the case and sees the case file.***

***The prosecution can also decide to make a general supervision or surveillance of a specific area of Police action. They can then ask to see all cases relevant to this supervision/surveillance. This may lead to targeted training or information meetings with the local investigators.***

***F. Common principles concerning the police***

14. Are there written regulations concerning the conduct of criminal investigations by the police or other investigation body?

***The conditions and procedures for investigations are set out in the criminal procedural code. The Police have also made internal guidelines on certain investigative steps.***

15. What are these regulations about? (for instance, the way to carry out interrogations, deprivation of liberty etc.)

***G. General control over police***

16. What is the general control system of the police or other investigation body, if any (internal/external?) Does the prosecutor play a role in this system?

***Denmark has established an Independent Police Complaint Authority that handles complaint over the Police – both Police conduct and also criminal offences committed by police officers.***

***The independent authority investigates allegations of un-proper police behaviour and decides whether the express criticism.***

***The independent authority also investigates allegations of criminal offences committed by police officers. After finalizing investigations, the case is sent to the State Prosecutor (the***



***prosecution at the regional level) who then decides whether or not the case should be prosecuted. The decision not to prosecute a police officer can be appealed to the office of the Director of Public Prosecutions.***

17. Is the prosecutor competent to take sanctions?

***No.***

***H. Conclusions***

18. What are the major challenges in relations between prosecutors and investigation bodies in your country?

## Estonia / Estonie

### A. Relationship between prosecutors and the police

1. Please briefly describe the relationship between prosecutors and the police or other investigation body in your country.

Sect. 30 subs. 1 of Code of Criminal Procedure (thereafter CCP) states that the prosecution service ensures the legality and efficiency of preliminary proceedings. Under legality is meant that the prosecutor is the official who is responsible for securing the fundamental rights and freedoms of individuals in pre-trial proceedings. In order to ensure legality and efficiency Sect. 213 subs. 1 CCP grants the prosecution service the authority to issue orders to investigative bodies.

Sect. 32 subs. 1 of CCP declares that investigation performs procedural acts (eg examination of witnesses) independently unless they need the approval of the court or the prosecution.

Therefore, a twofold situation arises: the investigation is independent and yet not. In reality it means that the prosecution, in case having capacity which depends mainly on the field of crime and, limits externally the autonomy of the investigation.

The concept of the prosecutor as the master of the pre-trial procedure requires that the prosecutor is involved in criminal proceedings from the earliest stage possible. This means that planning of procedural activities is carried out, as much as possible, in cooperation with the prosecution and investigation. This is everyday practice regarding priorities (severe and complex crime. This practice also stems from the legal regulation, as certain procedural acts may be performed only by the approval of the prosecutor or at the request of the prosecutor and by the approval of the pre-trial judge: search, freezing assets. The prerequisite of all special investigation measures is the involvement of the prosecution: eg approval to perform covert surveillance.

Those procedural possibilities are mostly being used in severe and complex crime and therefore the leading role of the prosecutor is vital in these type of cases.

In mass crime investigations the prosecution does not have enough human resources to lead investigation and therefore usually receives the criminal case from the police when pre-trial activity has been finished.

2. Is there any dialogue with the prosecutor concerning the work of the police or other investigation body?

Cooperation between investigation and prosecution is the issue of constant dialogue on 3 main levels: 1) single prosecutor-investigators

2) head of the local prosecution unit – head of the local investigation unit

3) head of the national unit, ie prosecutor general and the subordinates – head of the investigation unit, ie police, customs and tax, Security Police etc and the subordinates

3. Is the prosecutor involved in training the police or other investigation body?

The investigative apparatus is under the control of the Minister of Internal Affairs, to be even more precise under the head of the Police Board who is responsible for the development, strategy and management of the police, hence also training.

However, prosecutors provide so-called ad hoc trainings on legal issues to the investigation. This may concern certain substantive criminal law fields (eg crimes related to illegal immigration) or procedural issues (eg conducting covert surveillance). Specialised prosecutors (eg crimes related to minors, economic crime) have regular so-called round table meetings twice a year where leaders of investigation participate to discuss over cases and court practice.

B. Existing legal provisions and regulations

4. Is any relationship between prosecutors and investigation bodies determined by law or other provisions? Please describe briefly.

See answer to question nr 1

C. Responsibility of the prosecutor for setting priorities for investigating offenses

5. How are priorities in starting criminal investigations in your country determined?

Estonia follows the principle of legality regarding the starting of criminal investigations (Sect 6 of CCP). The Supreme Court has stated that the principle of *in dubio pro duriore* applies meaning that in case of probable doubt that a crime has been committed an investigation has to be started. Therefore, the principle of opportunity and the possibility of setting priorities of which cases to investigate may not be applied.

Priorities have been agreed on Government level concerning ongoing investigations:

Crimes related to minors and against minors, especially sexual crimes; organised and severe crimes, including corruption, economic crimes, crimes related to narcotics and human trafficking; violent crimes inside family, especially repeated violence.

6. Do prosecutors or the prosecution service in a direct way have an influence on this?

These have been the national priorities for over 10 years but the prosecution and investigation set also so-called regional priorities stemming from regional peculiarities.

D. Responsibility of the prosecutor during the investigation

7. Are prosecutors responsible for the conduct of investigations in your country? If no, who is responsible for that?

Prosecutor being the leader of investigation is responsible for the conduct of investigations.

8. When does the prosecutor receive a complaint (as soon as the complaint is filed, or after the investigation has been conducted by the police)?

Complaints on the activities of the investigation may be filed, first, to the local prosecution unit and thereafter to Prosecutor General's Office. The latter's decisions may also be challenged in criminal court (pre-trial judge). Complaints have to be settled during investigation within 30 days from arrival (Sect 228-231 of CCP).

9. What is the degree of autonomy of the police or other investigation body, if any, during the investigation?

Investigation has autonomy only if allowed to have. It means that it up to the prosecutor and investigator(s) to communicate and find best solutions to questions arising during investigation. If the prosecutor does not wish to, does not have the ability to lead investigation, then they act on their own. This kind of practice is not recommended.

10. Does the prosecutor have the power to prevent or stop an investigation?

The prosecutor may prevent investigation when there are legal grounds not to initiate (start) an investigation, eg due to statute of limitations. The same may apply to a case that has been started.

An investigation may also be stopped due to the excess of reasonable time: the Prosecutor General's office has been granted this authority (Sect 205<sup>2</sup> of CCP).

11. How is it decided which service of the police or other investigation body, if any, is competent to investigate?

Sect 212 of CCP regulates the field of competence of each investigation body. Besides that the legislator has given authority to the Government to decide upon the division of competence between the police and Security Police.

12. If the prosecutor leads the police or other criminal investigation in your country, does the prosecutor have the power to monitor compliance with his/her instructions? If so, please briefly describe.

As stated earlier the prosecutor may give oral or written orders/instructions to the investigation and may therefore supervise the fulfilment of the orders/instructions.

Orders may extend the time-limit by when the pre-trial investigation has to be finished or a concrete procedural act has to be performed. Orders, in principle, may address anything concerning investigation.

Even though the right to give orders exists, it is not deemed to be the best practical tool. Orders may be given to subordinates but the relationship between the prosecution and investigation should be like partnership where the prosecution has more legal skills and the investigation more tactical and technical skills and human resources to perform procedural acts.

#### E. Responsibility of the prosecutor for the respect of the law

13. Is it a responsibility of the prosecutor to control respect for the law by the police or other investigation body, if any? If yes, at which stage and by which means of control?

As the prosecution is responsible for the legality of investigation it has to analyse the activities of the investigations bodies. Complaints are the most common way of doing it but the Prosecutor General's Office performs annually controls on the activities of the local prosecution services. Already for several years the topic of surveillance activities has been on agenda (surveillance files are monitored from the point of legality).

#### F. Common principles concerning the police

14. Are there written regulations concerning the conduct of criminal investigations by the police or other investigation body?

All procedural activities the investigation body performs have to be in accordance with the regulations of the CCP.

15. What are these regulations about? (for instance, the way to carry out interrogations, deprivation of liberty etc.)

These regulations concerns everything related to activities of gathering evidence, eg via electronic devices (mobile, computer) also those activities where rights of the individuals are at stake: search, detaining the suspect, restricting freedom to move (Prohibition on departure from residence).

#### G. General control over police

16. What is the general control system of the police or other investigation body, if any (internal/external?) Does the prosecutor play a role in this system?

The police and other investigation bodies has an internal control system which is responsible for the general control of investigation.

17. Is the prosecutor competent to take sanctions?

Sanctions may be imposed by the head of that institution where the investigator belongs. Sect 213 of CCP enacts that in case prosecution deems that a violation of the law has occurred it informs the internal control body of the disciplinary act.

H. Conclusions

18. What are the major challenges in relations between prosecutors and investigation bodies in your country?

The main obstacle regarding investigation is the lack of human resources, especially in investigation and specific fields (economic crime). Therefore, reorganisation and allocation of resources is taking place and priorities are set (those case which fall out of priorities are on hold).

## Finland / Finlande

### **A. Relationship between prosecutors and the police**

1. Please briefly describe the relationship between prosecutors and the police or other investigation body in your country.

In Finland, pre-trial investigation bodies and prosecutors work within the administrative branches of the various ministries. They have independent organisations and separate appropriations (budget). However, the investigation of an operational criminal matter requires collaboration between the pre-trial investigation authorities and prosecutors.

In Finland, pre-trial investigations are performed by the police. The pre-trial investigation authorities include not only the police but also the Border Guard, Customs and military authorities. The public prosecutor directs a pre-trial investigation if a police officer is suspected of committing an offence in the performance of his or her official duties. Consequently, the pre-trial investigation authorities are, as a rule, responsible for conducting pre-trial investigations. However, the prosecutor actively participates in pre-trial investigations.

The pre-trial investigation authority is obliged to notify the public prosecutor that an investigation has been opened in the case of an offence, with the exception of cases that are petty or clear. The pre-trial investigation authority may discuss the circumstances connected with the suspected offence informally with the public prosecutor before submitting a notification.

However, the pre-trial investigation authority is responsible for assessing whether an offence has been committed, and whether a pre-trial investigation should be initiated. If the pre-trial investigation authority deems it appropriate to waive a pre-trial investigation or to discontinue an investigation completely or partially, a proposal on this must be submitted to the public prosecutor, who decides on the matter.

Upon the request of the prosecutor, the pre-trial investigation authority must conduct a pre-trial investigation or conduct a pre-trial investigation procedure. In other respects too, the pre-trial investigation authority must comply with the orders issued by the public prosecutor regarding the consideration of prosecution and court proceedings.

After the completion of the pre-trial investigation, the prosecutor decides on all pre-trial investigation measures.

Although, as a rule in Finland, the pre-trial investigation authority is the head of any pre-trial investigation, the pre-trial investigation authority and the prosecutor collaborate in the investigation of a case in accordance with the Criminal Investigation Act. The prosecutor must ensure that the matter is sufficiently clarified during the pre-trial investigation, to avoid any need to conduct a further investigation, that would delay the process following the completion of the pre-trial investigation. Before closing the investigation, the pre-trial investigation authority must consult the prosecutor.

The prosecutor plays a key role in considering whether it is necessary to require the use of coercive measures in connection with the investigation. Although the pre-trial investigation authority is competent in terms of requiring the use of coercive measures, in many cases the public prosecutor must be notified if such a demand is presented. However, upon the closure of

an investigation, competence in terms of requiring the use of coercive measures is transferred solely to the public prosecutor.

2. Is there any dialogue with the prosecutor concerning the work of the police or other investigation body?

Please see the response in paragraph 1. Pursuant to the Criminal Investigation Act, the pre-trial investigation authority and the public prosecutor must cooperate in operational matters.

Since these actors are mutual, key stakeholders, regular cooperation meetings are also held on issues other than those involving operational criminal matters. These are organised at both local and central government level. Joint training is also provided.

3. Is the prosecutor involved in training the police or other investigation body?

Yes. The Finnish Prosecution Service cooperates on a regular basis in training with the police, Customs and Border Guard and the military authorities. Prosecutors provide training for cooperating authorities. The pre-trial investigation authorities are welcome to attend training sessions provided by public prosecutors. Joint training sessions are also arranged. For example, in 2013, broad-based joint training was organised on the reforms of the Criminal Investigation Act and Coercive Measures Act that entered into force on 1 January 2014.

**B. Existing legal provisions and regulations**

4. Is any relationship between prosecutors and investigation bodies determined by law or other provisions? Please describe briefly.

Chapter 5 of the Criminal Investigation Act lays down provisions on the public prosecutor's and pre-trial investigation authority's obligation to cooperate.

**Chapter 5 – Cooperation between the criminal investigation authority and the public prosecutor**

**Section 1 – Notification to the prosecutor**

*The criminal investigation authority shall inform the public prosecutor without delay of a matter in which a police officer is a suspect in an offence, unless the matter is to be dealt with as a summary penal fine or summary penal judgment matter. In addition, the public prosecutor shall be notified of an offence that has come under investigation, and the criminal investigation and the prosecutorial authorities have jointly decided on the basis of their competence that notice shall be given of such offences, or the public prosecutor has requested that notice be given of such offences.*

**Section 2 – The competence of the public prosecutor in the criminal investigation**

*(1) On the request of the public prosecutor, the criminal investigation authority shall conduct a criminal investigation or perform a criminal investigation measure. Also otherwise the criminal investigation authority shall comply with orders given by the public prosecutor intended to ensure clarification of the matter in the manner referred to in Chapter 1, section 2.*

*(2) After a matter has been transferred to the public prosecutor following the conclusion of the investigation, the public prosecutor decides on criminal investigation measures.*

*(3) Chapter 2, section 4 contains provisions on the function of the public prosecutor as head investigator.*

**Section 3 – Obligation to cooperate**

*(1) The criminal investigation authority shall, in the manner required by the nature or scope of the matter, notify the public prosecutor of the conducting of a*



*criminal investigation and of circumstances connected with criminal investigation measures and otherwise of progress in the investigation. If the criminal investigation authority has notified the public prosecutor of the opening of an investigation in an offence, the head investigator shall, before concluding the criminal investigation, hear the public prosecutor on whether the matter has been clarified sufficiently in the manner referred to in Chapter 1, section 2, if the nature or scope of the matter require that the public prosecutor be heard, or if the intention is to conclude the criminal investigation without submitting the matter to the prosecutor. The Coercive Measures Act contains provisions on the notification obligation concerning the use of coercive measures.*

*(2) The public prosecutor shall participate to the extent necessary in the criminal investigation in order to ensure that the matter is clarified in the manner referred to in Chapter 1, section 2.*

*(3) The criminal investigation authority and the public prosecutor shall discuss questions relating to the arrangement of cooperation in the criminal investigation.*

Provisions on the authorities' conduct in pre-trial investigations are laid down in Chapter 2, section 1 of the Criminal Investigation Act. Accordingly, pre-trial investigations are conducted by the police. As provided in special acts, the pre-trial investigation authorities include the police, the Border Guard, Customs and military authorities. The public prosecutor participates in pre-trial investigations alongside the pre-trial investigation authorities, but does not constitute a pre-trial investigation authority. Further individual provisions regarding the distribution of authority between the pre-trial investigation authority and the public prosecutor are included in legislation such as the Coercive Measures Act and the Criminal Investigation Act.

Further to the above, the Finnish Prosecution Service and pre-trial investigation authorities' central administration authorities have issued orders and instructions on cooperation during pre-trial investigations.

**C. *Responsibility of the prosecutor for setting priorities for investigating offenses***

5. How are priorities in starting criminal investigations in your country determined?

Pre-trial investigations are more or less compulsory in Finland: The Criminal Investigation Act requires that the pre-trial investigation authority conduct an investigation when there is reason to suspect that an offence has been committed. By law, pre-trial investigations must be conducted without undue delay. Pre-trial investigation measures may, however, be placed in order of priority and even postponed based on a decision by the head investigator.

The pre-trial investigation authority, not the prosecutor, decides on the priorities referred to in the question. With respect to operational issues, the pre-trial investigation authorities plan their work carefully and may target investigation resources at solving certain types of crime in particular.

An estimate of the measures and resources appropriate to solving each particular offence is made on each occasion. Should the pre-trial investigation authorities not wish to conduct an investigation or wish to discontinue one, they must submit a proposal on the matter to the public prosecutor, who will make a decision on the matter. Please see response 6 on the other possibilities available to the prosecutor in influencing the performance of a pre-trial investigation.

6. Do prosecutors or the prosecution service in a direct way have an influence on this?

In most cases, it is the pre-trial investigation authority, not the prosecutor, that takes the decision to initiate a pre-trial investigation (incl. the prioritisation of cases).

However, the prosecutor has sole authority to investigate if a police officer is suspected of committing an offence in the performance of his or her official duties. In the case of such offences, the Finnish Prosecution Service has sole authority over deciding which cases will be investigated and at what stage.

However, pursuant to the Criminal Investigation Act, in all cases the prosecutor may order the initiation of a pre-trial investigation even in a case where a pre-trial investigation authority has refused to do so in the first instance. In principle, the prosecutor therefore has the opportunity to influence the prioritisation of matters.

**D. *Responsibility of the prosecutor during the investigation***

7. Are prosecutors responsible for the conduct of investigations in your country? If no, who is responsible for that?

Pre-trial investigations are conducted by the pre-trial investigation authorities: as a rule, the police. Most criminal cases fall within the sphere of pre-trial investigations conducted by the police. In certain cases, however, investigations are conducted by the Border Guard, Customs or military authorities.

Offences committed by police officers in the performance of their official duties are an exception to this rule. In such cases, the public prosecutor conducts the investigation.

8. When does the prosecutor receive a complaint (as soon as the complaint is filed, or after the investigation has been conducted by the police)?

The pre-trial investigation authorities are obliged to notify the prosecutor of any offences reported for investigation. Such a notification must be submitted as soon as the pre-trial investigation authority has investigated the suspected offence to the extent necessary to demonstrating probable cause to suspect that an offence has been committed and that a pre-trial investigation must be conducted. Such a notification must be submitted well in advance, so that the investigation and related measures can be considered, planned, targeted and scheduled in cooperation with the public prosecutor. Should urgent measures be necessary with respect to the case, the prosecutor must be informed of this without delay.

The pre-trial investigation authority need not submit a notification to the prosecutor on initiating the investigation of a petty offence in which the circumstances require no clarification, and where no particular need to discuss such an offence with the prosecutor has arisen.

9. What is the degree of autonomy of the police or other investigation body, if any, during the investigation?

When acting as the heads of the investigation, both the pre-trial investigation authority and the prosecutor are autonomous and independent.

The pre-trial investigation authority's independence resides in the fact that no party, such as the public prosecutor, may order that a pre-trial investigation initiated be discontinued or interrupted. A pre-trial investigation may only be waived, discontinued or restricted upon a proposal by the head investigator. After a pre-trial investigation has been initiated, it may be interrupted based on

a decision by the head investigator if no-one is suspected of the offence and if clarification of the case is not possible.

10. Does the prosecutor have the power to prevent or stop an investigation?

As a rule, no.

The only exception is an offence committed abroad. In cases where the investigation of an offence committed abroad requires a prosecution order by the Prosecutor-General, the prosecutor is the authority which decides on whether an investigation should be initiated. In the case of an offence committed abroad, the pre-trial investigation authority may therefore be willing to initiate an investigation but the prosecutor may decide otherwise, either because Finnish law cannot be applied to the case, or because an investigation of the case by the Finnish authorities would not be appropriate.

11. How is it decided which service of the police or other investigation body, if any, is competent to investigate?

Finland's 11 police departments are responsible for e.g. the investigation of offences committed in their geographical area. The investigating unit in each case is basically determined on the basis of the so-called principle of regional responsibility, i.e. each police department investigates offences committed in its geographical area.

If an offence occurs in the areas of several police departments, the departments may agree among themselves on how best to conduct the investigation. Particularly in extensive series of property offences involving the areas of several police departments, the National Bureau of Investigation's criminal intelligence and analysis unit may prepare a so-called proposal on investigation arrangements. Such a proposal describes the series of offences in question and includes a proposal, with grounds, on which police unit could most expediently conduct the pre-trial investigation. The National Police Board ultimately decides on which investigation unit will be involved.

In addition to police departments, the National Bureau of Investigation conducts pre-trial investigations in Finland.

The NBI's primary task is to prevent and uncover organised and other crime of the most serious nature and, as a rule, to investigate such crime. In addition, the NBI investigates any other, separately defined crimes of the most serious nature of which it has become aware. The National Police Board has issued an order on this issue.

The Border Guard, Customs and military authorities have internal orders of their own on the determination of the investigating unit. These, too, mainly follow the principle of regional responsibility.

12. If the prosecutor leads the police or other criminal investigation in your country, does the prosecutor have the power to monitor compliance with his/her instructions? If so, please briefly describe.

In administrative terms, the prosecutor is not the supervisor of the pre-trial investigation authority, nor has the public prosecutor any disciplinary authority over investigation authorities.

The public prosecutor will head up a pre-trial investigation if it is suspected that a police officer has committed an offence in the performance of his or her official duties. In such cases, the prosecutor issues orders on all pre-trial investigation measures.

The prosecutor may also issue orders to the investigation authorities in other operational matters. Under the Criminal Investigation Act, the public prosecutor may order that a pre-trial investigation be initiated and an investigation measure be performed. The prosecutor may also issue other orders pertaining to the pre-trial investigation, in order to ensure the appropriate consideration of charges and presentation of the case in court.

As a rule, the public prosecutor decides on initiating the pre-trial investigation of any offence committed abroad.

The pre-trial investigation authority is obliged to comply with any orders issued by the public prosecutor.

However, it should be noted that the Finnish Prosecution Service does not have its own investigation resources. All concrete investigation measures are therefore performed by pre-trial investigation authorities acting under the auspices of other administrative branches. The public prosecutor has no authority to define the resources available to the pre-trial investigation authority or the schedule for a measure which the public prosecutor has ordered. Should disputes arise, they should be resolved under the obligation to collaborate set forth in the Criminal Investigation Act.

**E. *Responsibility of the prosecutor for the respect of the law***

13. Is it a responsibility of the prosecutor to control respect for the law by the police or other investigation body, if any? If yes, at which stage and by which means of control?

In the first instance, the pre-trial investigation authority ensures the legality and appropriateness in other regards of the pre-trial investigation. The prosecutor is not responsible for ensuring that the pre-trial investigation authority abides by the law. This does not, however, relieve the prosecutor of responsibility for ensuring that the pre-trial investigation is conducted in compliance with the law while respecting basic and human rights. The prosecutor must be able to provide grounds demonstrating the objectivity and accuracy of the pre-trial investigation material. The public prosecutor may not refer to any other type of material in support of any charges brought.

**F. *Common principles concerning the police***

14. Are there written regulations concerning the conduct of criminal investigations by the police or other investigation body?

Yes. Provisions on conducting a pre-trial investigation are laid down in the Criminal Investigation Act, and provisions on employing coercive measures are set forth in the Coercive Measures Act. In addition, under section 4 of the Act on police administration (Laki poliisin hallinnosta 110/1992), the National Police Board has issued several orders and instructions related to conducting a pre-trial investigation

The Border Guard, Customs and military authorities have also been issued with orders and instructions on conducting a pre-trial investigation.

15. What are these regulations about? (for instance, the way to carry out interrogations, deprivation of liberty etc.)

Please see the previous response.

**G. General control over police**

16. What is the general control system of the police or other investigation body, if any (internal/external?) Does the prosecutor play a role in this system?

The Internal Audit Unit operates as part of the National Police Board and is directly subordinate to the National Police Commissioner. In addition, the National Police Board's legality control department ensures the legality of conduct throughout the police administration. All police units have a legal unit, one of whose tasks is to ensure the legality of all conduct in the police unit in question.

The Border Guard, Customs and military authorities have their own internal control systems. In addition to the aforementioned, the supreme guardians of the law, the Parliamentary Ombudsman and the Chancellor of Justice, exercise control over the law enforcement authorities. The public prosecutor is not involved in supervising the operations of the pre-trial investigation authorities. The prosecutor adopts a more concrete role when the police are suspected of violating the law during their activities. In such an event, the case is referred to the public prosecutor for the consideration of performance of a pre-trial investigation.

17. Is the prosecutor competent to take sanctions?  
No.

**H. Conclusions**

18. What are the major challenges in relations between prosecutors and investigation bodies in your country?

Pursuant to the Criminal Investigation Act, the public prosecutor has extensive powers to participate in pre-trial investigations, to issue its own statements as guidance for decision-making and to issue instructions on the performance of an investigation. The challenge for prosecutors lies in allocating sufficient time for managing issues at the investigation stage. Most of a prosecutor's time is usually taken up with the consideration of charges and overseeing cases in court. Improvements could also be made with respect to the timely and sufficiently comprehensive reporting of cases to prosecutors by the pre-trial investigation authorities. Improvement is also required in the planning of pre-trial investigations (incl. the preparation of a written investigation plan), the final discussion between the prosecutor and pre-trial investigation authorities before an investigation is closed, and the transfer of a case to the prosecutor.

Although the prosecutor may order that a pre-trial investigation be initiated and investigation measures be performed, it is the pre-trial investigation authority that decides on the resources to be allocated to the task and on the timing of measures. While most cases are handled without problems, implementing a prosecutor's order may prove challenging in practice.

## Germany / Allemagne

1. According to the general legal approach the prosecutor has to instruct and supervise the police in the course of the investigation. Thus, police officers can be subject to special instructions of the prosecutor. Nevertheless, police decide on many (tactical) issues, e.g. to hear witnesses. Moreover, the police have the power to execute certain coercive measures of a minor character when due to the urgency prior judicial authorisation cannot be obtained, e.g. body searches of a suspect and seizures. Since the police have intensified their demands for an expansion of their powers in criminal proceedings in recent years, in fact police have - compared with the public prosecution office - far more expertise in criminalistics, dispose of the technical equipment, and have achieved a higher degree of specialisation. Reflecting their superior manpower, training and experience, the police in practice conduct the majority of criminal investigations in the areas up to a medium level of crimes mainly on their own, whereas the public prosecutor is "tied to" his desk. In these cases the file is turned over to the prosecutor's office only after the police see no further possibility or no further reason to investigate. In more severe or complex cases, e.g. in cases of capital or other serious offences as well as organized or white-collar crimes, there is a closer supervision and the prosecutor will usually guide the police as it is provided for in the law. Apart from that, the prosecutor will exercise his supervisory power if coercive measures which require for judicial authorisation have to be considered; then the prosecutor can determine how the investigation shall be continued and whether the case should be submitted to the investigative court in order to apply for permission for certain measures. Moreover, it is only the prosecutor who can decide to prosecute or terminate the investigation.

2. In general, particularly in more serious cases there should be a close contact between the prosecutor and the police officer handling the case.

3. Prosecutors are not regularly involved in training measures of the police, but can form part of the training programme on a voluntary basis.

4. The general rule is laid down in Section 161 subsection 1 of the Criminal Procedure Code:

"(1) For the purpose indicated in Section 160 subsections (1) to (3), the public prosecution office shall be entitled to request information from all authorities and to make investigations of any kind, either itself or through the authorities and officials in the police force provided there are no other statutory provisions specifically regulating their powers. The authorities and officials in the police force shall be obliged to comply with the request or order of the public prosecution office and shall be entitled, in such cases, to request information from all authorities."

Section 160 subsections 1 to 3 read as follows:

"(1) As soon as the public prosecution office obtains knowledge of a suspected criminal offence either through a criminal information or by other means it shall investigate the facts to decide whether public charges are to be preferred.

(2) The public prosecution office shall ascertain not only incriminating but also exonerating circumstances, and shall ensure that evidence, the loss of which is to be feared, is taken.

(3) The investigations of the public prosecution office shall extend also to the circumstances which are important for the determination of the legal consequences of the act. For this purpose it may avail itself of the service of the court assistance agency."

Section 163 reads as follows:

"(1) The authorities and officials in the police force shall investigate criminal offences and shall take all measures that may not be deferred, in order to prevent concealment of facts. To this end they shall be entitled to request, and in exigent circumstances to demand, information from all authorities, as well as to conduct investigations of any kind insofar as there are no other statutory provisions specifically regulating their powers.

(2) The authorities and officials in the police force shall transmit their records to the public prosecution office without delay. Where it appears necessary that a judicial investigation be performed promptly, transmission directly to the Local Court shall be possible.

(3) Section 52 subsection (3), Section 55 subsection (2), Section 57 subsection (1) and Sections 58, 58a, 58b and 68 to 69 shall apply *mutatis mutandis* to the examination of a witness by officials in the police

force. The decision on permission pursuant to Section 68 subsection (3), first sentence, and on the assignment of counsel to a witness shall be taken by the public prosecution office; in all other cases the necessary decisions shall be taken by the person in charge of the examination. Section 161a subsection (3), second to fourth sentences, shall apply *mutatis mutandis* to decisions by officials in the police force pursuant to Section 68b subsection (1), third sentence. Section 52 subsection (3) and Section 55 subsection (2) shall apply *mutatis mutandis* to the instruction of an expert by officials in the police force. In the cases referred to in Section 81c subsection (3), first and second sentences, Section 52 subsection (3) shall also apply *mutatis mutandis* to examinations by officials in the police force.”

5. The legal concept excludes priorities in investigating certain areas of crimes (thus at least indirectly postponing investigations of other cases). According to the rule of mandatory prosecution (Legalitätsprinzip) all law enforcement authorities are obliged to initiate investigations whenever there is sufficient suspicion of a crime.

This principle is laid down in Section 152 subsection 2 of the Criminal Procedure Code:

“Section 152

[Indicting Authority; Principle of Mandatory Prosecution]

(1) The public prosecution office shall have the authority to prefer public charges.

(2) Except as otherwise provided by law, the public prosecution office shall be obliged to take action in relation to all prosecutable criminal offences, provided there are sufficient factual indications.”

An exception of this obligation exists if either the court or the prosecutor denies a public interest in prosecuting the case, see Section 153 and Section 153a of the Criminal Procedure Code, which read as follows:

“Section 153

[Non-Prosecution of Petty Offences]

(1) If a misdemeanour is the subject of the proceedings, the public prosecution office may dispense with prosecution with the approval of the court competent to open the main proceedings if the perpetrator’s guilt is considered to be of a minor nature and there is no public interest in the prosecution. The approval of the court shall not be required in the case of a misdemeanour which is not subject to an increased minimum penalty and where the consequences ensuing from the offence are minimal.

(2) If charges have already been preferred, the court, with the consent of the public prosecution office and the indicted accused, may terminate the proceedings at any stage thereof under the conditions in subsection (1). The consent of the indicted accused shall not be required if the main hearing cannot be conducted for the reasons stated in Section 205, or is conducted in his absence in the cases referred to in Section 231 subsection (2) and Sections 232 and 233. The decision shall be given in a ruling. The ruling shall not be contestable.”

“Section 153a

[Provisional Dispensing with Court Action; Provisional Termination of Proceedings]

(1) In a case involving a misdemeanour, the public prosecution office may, with the consent of the accused and of the court competent to order the opening of the main proceedings, dispense with preferment of public charges and concurrently impose conditions and instructions upon the accused if these are of such a nature as to eliminate the public interest in criminal prosecution and if the degree of guilt does not present an obstacle. In particular, the following conditions and instructions may be applied:

1. to perform a specified service in order to make reparations for damage caused by the offence;
2. to pay a sum of money to a non-profit-making institution or to the Treasury;
3. to perform some other service of a non-profit-making nature;
4. to comply with duties to pay a specified amount in maintenance;
5. to make a serious attempt to reach a mediated agreement with the aggrieved person (perpetrator-victim mediation) thereby trying to make reparation for his offence, in full or to a predominant extent, or to strive therefor;
6. to participate in a social skills training course; or
7. to participate in a course pursuant to section 2b subsection (2), second sentence, or a driver’s competence course pursuant to section 4a of the Road Traffic Act.

The public prosecution office shall set a time limit within which the accused is to comply with the conditions and instructions, and which, in the cases referred to in numbers 1 to 3, 5 and 7 of the second sentence, shall be a maximum of six months and, in the cases referred to in numbers 4 and 6 of the second sentence, a maximum of one year. The public prosecution office may subsequently revoke the

conditions and instructions and may extend the time limit once for a period of three months; with the consent of the accused it may subsequently impose or change conditions and instructions. If the accused complies with the conditions and instructions, the offence can no longer be prosecuted as a misdemeanour. If the accused fails to comply with the conditions and instructions, no compensation shall be given for any contribution made towards compliance. Section 153 subsection (1), second sentence, shall apply *mutatis mutandis* in the cases referred to in numbers 1 to 6 of the second sentence. Section 246a subsection (2) shall apply *mutatis mutandis*.

(2) If public charges have already been preferred, the court may, with the approval of the public prosecution office and of the indicted accused, provisionally terminate the proceedings up until the end of the main hearing in which the findings of fact can last be examined, and concurrently impose the conditions and instructions referred to in subsection (1), first and second sentences, on the indicted accused. Subsection (1), third to sixth and eighth sentences, shall apply *mutatis mutandis*. The decision pursuant to the first sentence shall be given in a ruling. The ruling shall not be contestable. The fourth sentence shall also apply to a finding that conditions and instructions imposed pursuant to the first sentence have been met.

(3) The running of the period of limitation shall be suspended for the duration of the time limit set for compliance with the conditions and instructions.

(4) In the case referred to in subsection (1), second sentence, number 6, also in conjunction with subsection (2), Section 155b shall apply *mutatis mutandis*, subject to the proviso that personal data from the criminal proceedings that do not concern the accused may only be transmitted to the agency in charge of conducting the social skills training course insofar as the affected persons have consented to such transmission. The first sentence shall apply *mutatis mutandis* if an instruction to participate in a social skills training course is given pursuant to other criminal law provisions.”

6. The principle of mandatory prosecution is obligatory for all public prosecution offices. See answer to question 5.

7. The prosecutor is responsible for the lawfulness including the conduct of investigations and the execution of coercive measures.

8. The public prosecutor is only responsible for complaints which fall within the technical supervision of the public prosecution office and not within the disciplinary supervision of the police. Within this competence the public prosecutor receives a complaint as soon as it is filed.

9. According to the legal framework the public prosecutor has a dominating position throughout the investigation while the factual situations can be different (see answer to question 1).

10. Due to the legal concept it is the prosecutor who is in charge with initiating, leading and terminating the investigation. See also the answer to question 1.

11. Generally the police decide which internal service is competent to deal with the case, but in more severe and complex cases the public prosecutor who is leading the investigations will determine which service of the police or investigation service shall be entrusted with the investigation work.

12. The prosecutor has the power and duty to monitor the work of the police in order to secure the lawfulness and effectiveness of the investigation.

13. Since the prosecutor is responsible for the lawfulness of the investigation, he has the right to direct the police by oral or written orders. If the police, however, act unlawfully without relying on such an instruction, it is not the public prosecutor who can be held responsible.

14. Basically, the Code of Criminal Procedure regulates how to conduct the criminal investigations both for public prosecution offices and the police. Complementary, there are internal guidelines in place.

15. The Code of Criminal Procedure contains provisions for all phases of criminal proceedings, ranging from the first interrogation of the defendant and witnesses, the conditions for pre-trial custody, the



requirements for search, seizure and all other coercive measures to rules for the termination of the investigation, the indictment and the proceedings before the court.

16. The suspect or other persons affected by coercive measures can file a complaint and seek for judicial review (external control). As means of an internal control, disciplinary procedures can be initiated. Free media play an important role in disclosing deficits in the application of the law in particular cases.

17. The prosecutor is obliged to open an investigation, if there is sufficient suspicion for a criminal act committed by the police or other investigation bodies, also including the prosecutions offices (see answer to question 5). The power to inflict sanctions on the accused lies with the court.

18. Major challenges:

- One major difficulty for the prosecution offices remains to maintain the effective control of the police work in the course of the investigation (see answer to question 1.)
- Another challenge is to secure a fast and steady flow of information between police and the prosecution authority, which is a precondition for the lawfulness and the success of the investigation.
- Prosecutors are often confronted with heavy workload, which may endanger the continuation and the completion of the investigation in due course.

## Greece / Grèce

### **A. Relationship between prosecutors and the police**

1. Please briefly describe the relationship between prosecutors and the police or other investigation body in your country.

The prosecution service is a judicial authority independent from the courts and the executive power; it acts in a uniform and indivisible manner. Prosecutors are associated by a relationship of hierarchical dependence and their supervisor is the prosecutor at the Supreme Court. Police authorities must immediately execute the orders of prosecution authorities. Preliminary inquiries and investigations are conducted by order of the prosecutor at the magistrate court and under his direction, while the prosecutor at the court of appeal is the highest authority in interrogations.

2. Is there any dialogue with the prosecutor concerning the work of the police or other investigation body?

There is dialogue, in the sense of cooperation for the most effective performance of the task of maintaining legality, protecting citizens and safeguarding the rules of public order.

3. Is the prosecutor involved in training the police or other investigation body?

The prosecutor is not involved in training the police or other investigation body, except when prosecutors teach in police academies.

### **B. Existing legal provisions and regulations**

4. Is any relationship between prosecutors and investigation bodies determined by law or other provisions? Please describe briefly.

The key legislative instrument that determines the relationship between prosecutors and investigation bodies is the Code of Penal Procedure.

### **C. Responsibility of the prosecutor for setting priorities for investigating offences**

5. How are priorities in starting criminal investigations in your country determined?

As a rule, priorities are determined on the basis of the seriousness of the offences, taking into account their gravity, the prejudice caused by their commission, the prejudiced legal interest and the time of commission.

6. Do prosecutors or the prosecution service in a direct way have an influence on this?

It is primarily the prosecutors, by a relevant order, who determine whether to investigate the said offences.

**D. *Responsibility of the prosecutor during the investigation***

7. Are prosecutors responsible for the conduct of investigations in your country? If no, who is responsible for that?

The mandate of the prosecutors comprises the tasks referred to in points A.1 and 2 above, and their duties also include the supervision of searches conducted in the context of investigations.

8. When does the prosecutor receive a complaint (as soon as the complaint is filed, or after the investigation has been conducted by the police)?

The prosecutor undertakes cases *ex officio* following a lawsuit, complaint or other information, provided however that no action (lawsuit only from the victim) or petition is required for the specific offence.

9. What is the degree of autonomy of the police or other investigation body, if any, during the investigation?

The police and other investigation officers always act autonomously, under the direction and the instructions, as the case may be, of the prosecutor.

10. Does the prosecutor have the power to prevent or stop an investigation?

Only on specific legal grounds (e.g. non-filing or withdrawal of a complaint).

11. How is it decided which service of the police or other investigation body, if any, is competent to investigate?

By special laws that govern the internal operation of the police and the relevant provisions of the Code of Penal Procedure.

12. If the prosecutor leads the police or other criminal investigation in your country, does the prosecutor have the power to monitor compliance with his/her instructions? If so, please briefly describe.

The prosecutor directs preliminary inquiries and preliminary investigations and gives appropriate instructions if so required; he/she also inspects the compliance of police and other investigation authorities therewith.

**E. *Responsibility of the prosecutor for the respect of the law***

13. Is it a responsibility of the prosecutor to control respect for the law by the police or other investigation body, if any? If yes, at which stage and by which means of control?

The prosecutor controls respect for the law both in the context of conducted searches and, in general, by giving orders, instructions and opinions on legal matters addressed by police and other investigation authorities in the discharge of their duties.

**F. *Common principles concerning the police***

14. Are there written regulations concerning the conduct of criminal investigations by the police or other investigation body?

There are regulations and instructions in the context of the internal structure and operation of police and other investigation authorities, which, however, do not deviate from the provisions of the Constitution, the Code of Penal Procedure and the provisions of the applicable special penal laws.

15. What are these regulations about? (for instance, the way to carry out interrogations, deprivation of liberty etc.)

These regulations do not abrogate the provisions of the Code of Penal Procedure, which is the key legislative instrument that governs in detail the preliminary and main investigation procedure, determines the conditions of arresting suspects, the detention of defendants in remand etc.

**G. *General control over police***

16. What is the general control system of the police or other investigation body, if any (internal/external?) Does the prosecutor play a role in this system?

An Internal Affairs Agency operates within the police, headed by a higher officer. A prosecutor at the court of appeal is appointed supervisor of these agencies in Athens and Thessaloniki; however, he/she is not the official chief of these police authorities, but supervises the investigation tasks of the latter.

17. Is the prosecutor competent to take sanctions?

The prosecutor is not competent to impose disciplinary sanctions.

#### **H. Conclusions**

18. What are the major challenges in relations between prosecutors and investigation bodies in your country?

The major challenge is improving cooperation between them. Finally, it should be noted that the establishment of judicial police would make an important contribution to effectively and rapidly dealing with serious crime.

## Hungary / Hongrie

### *I. Relationship between prosecutors and the police*

#### **19. Please briefly describe the relationship between prosecutors and the police or other investigation body in your country.**

Structurally and with regard to the question of separation of powers investigation bodies in Hungary are independent and entirely separated bodies from the Prosecution Service. Hungarian investigation bodies comprise the police, which have general competence for criminal investigations and specific bodies of the National Tax and Customs Administration (see: The Directorate General of Criminal Affairs and the regional directorates of the NTCA) which have special competence for criminal investigation and are primarily responsible for investigating financial crimes.

While being a contributor to the administration of justice by enforcing the punitive authority of the State under the terms provided for in the Criminal Procedure Code<sup>1</sup>, the Prosecution Service of Hungary also has significant powers and functions in connection with criminal investigations conducted by the police or by the NTCA. Prosecutorial rights and functions in connection with criminal investigations can be exercised either if investigation bodies conduct investigations upon the order of prosecutors or if they investigate independently. Even if investigation bodies investigate on their own (independent investigations) prosecutors may instruct them any time regarding their investigations.

The essence of the relationship between the Prosecution Service and the Hungarian investigation bodies lies in that the Prosecution Service is responsible for ensuring that criminal investigations are conducted with expertise, in compliance with the rules of substantive and procedural criminal law and by respecting human rights. In this regard, prosecutors are in ultimate charge of investigations and guarantee the legality of investigations. In addition, prosecutors generally have strong supervisory powers over investigations.

As far as relevant law is concerned, Section 165 of the Hungarian Criminal Procedure Code provides for the relationship between prosecutors and investigation bodies and sets forth the major and general rules of this relationship. Section 2 (1) b) and c) of Act CLXIII of 2011 on the Prosecution Service also provides for this relationship by stating that the Prosecution Service shall

- b) exercise supervision to ensure that investigative authorities conduct independent investigations in compliance with the provisions of law (supervision of investigation);
- c) exercise other rights in connection with investigations as specified under law.

#### **20. Is there any dialogue with the prosecutor concerning the work of the police or other investigation body?**

Supervision of investigations exercised by prosecutors serves as a framework for the dialogue concerning the work and investigations of the police and the National Tax and Customs Administration. While exercising supervision over criminal investigations conducted by the police

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<sup>1</sup> see: Act XIX of 1998 on Criminal Proceedings

or competent investigative bodies of the NTCA, prosecutors ensure that the entire investigation and each investigative act of the investigation bodies comply with substantive and procedural rules of criminal law, and they are carried out appropriately as well as with expertise.

Prosecutors ensure the legality and compliance of investigations with law by giving instructions, providing guidelines or recommendations. Prosecutors safeguard, for example, that in the course of investigations deadlines are kept, all evidence necessary for proving the facts of the case are collected and are lawfully obtained, lawful, appropriate and duly proportionate actions and measures are taken by investigation bodies. Relevant provisions of the Criminal Procedure Code state "Investigation bodies shall perform the instructions of prosecutors regarding the investigations by the deadline and inform prosecutors verbally or in writing – as instructed – about the investigations launched and the status of cases. If an investigation body finds that a procedural action is necessary but the decision thereon falls in the competence of the court or the prosecutor, it shall inform the prosecutor thereof immediately." This obligation for investigation bodies to inform the competent prosecutor is irrespective of whether investigation bodies investigate upon the instruction of prosecutors or independently, on their own.

Relevant provisions concerning the dialogue between prosecutors and investigation bodies also include that prosecutors give their orders, while investigation bodies give their information in writing (Section 165 (5) of the Criminal Procedure Code). An exception to this rule is provided for by Section 165 (6) of the Criminal Procedure Code stating "if a case allows for no delay, the prosecutor may give his order, while the investigation body may give its information verbally as well, but the prosecutor must give the order and the investigating authority must give its information subsequently in writing, too". The Criminal Procedure Code allows for the head of the investigation body to file a motion against the order of the prosecutor. The motion shall be filed with the superior prosecutor through the superior body of the investigation body concerned. Afterwards, the superior body shall forward the motion alongside with its standpoint regarding the facts of the case and its professional opinion to the superior prosecutor. The motion has no delaying effect. The superior prosecutor examines the documents of the case upon receipt of the motion and shall inform the submitter in writing about the result as well as his legal point of view within 15 days following the receipt of the motion.

Prosecutors also act as appellate bodies in relation to investigation bodies in that complaints submitted against decisions of investigation bodies shall be decided by the competent prosecutors.

**21. Is the prosecutor involved in training the police or other investigation body?**

Upon initiation of leading and head investigators prosecutors regularly participate in trainings organized by the police and by the National Tax and Customs Administration. In 2013, for example, prior to the entry into force of the new Criminal Code (see: Act C of 2012), twenty, primarily high-positioned prosecutors or prosecutors having been actively involved in the codification of the new Code held lectures in trainings organized for police officers.

Prosecutors are frequently invited to hold presentations on issues such as the role of prosecutors in criminal procedures or on how investigative acts – e.g. secret intelligence gathering or covert data gathering subject to judicial warrant – are assessed by prosecutors. Prosecutors were also involved in trainings focusing on specific crimes and crime categories such as bribery of public officials, traffic offences or money laundering.

**J. Existing legal provisions and regulations**

**22. Is any relationship between prosecutors and investigation bodies determined by law or other provisions? Please describe briefly.**

In Hungary the relationship between the prosecutors and the investigation bodies is strictly determined by law and other provisions. In the most general sense the relationship is determined by the Fundamental Law of Hungary, which in its Article 29 (2) a) states that the Prosecutor General and the prosecution service shall exercise rights in connection with investigations as provided for by an Act. The most essential, generally applicable provisions concerning the relationship between the prosecution service and the investigation bodies are included in Act XIX of 1998 on the Criminal Procedure Code and Act CLXIII of 2011 on the Prosecution Service, but sectoral provisions<sup>2</sup> also contain detailed rules in this regard.

**K. Responsibility of the prosecutor for setting priorities for investigating offenses**

**23. How are priorities in starting criminal investigations in your country determined?**

As regards the starting of criminal procedure Section 170 (3) of the Criminal Procedure Code is of special relevance. Section 170 (3) provides that the acting body (prosecutor or investigation body) shall decide about the criminal complaint within 3 days following its receipt. Consequently, the law sets a strict deadline for all cases without making any distinction.

Section 64/A (1) of the Criminal Procedure Code specifies cases when criminal acts shall be detected and investigation shall be conducted immediately, with priority. Such cases include the following:

- a. the defendant is in pre-trial detention, or there is a restraint order against him;
- b. the victim of crimes against life, physical integrity and health, of crimes against sexual freedom and of sexual offences, of crimes against children and against family, or the victim of other violent crimes against a person was a minor, and the interest of the minor gives reason to conduct the criminal procedure as soon as it is possible, in particular, if the crime significantly endangered the bodily, mental or moral development of the victim or if the defendant nurses, supervises or looks after the victim or otherwise lives close to him;
- c. immunity of the defendant has been waived;
- d. criminal proceedings have been initiated for bribery of public officials;
- e. in event of corruption crimes if the following persons are suspected of having committed such crimes:
  - a) a member of the council of the municipality, a mayor or a deputy mayor of a municipal government, a high-ranking official employed by the office of council of a municipal

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<sup>2</sup> Sectoral regulations, the list of which is not an exhaustive one, include the following:

- Act XXXIV of 1994 on the Police
- Act CXXII of 2010 on the National Tax and Customs Administration
- Joint Decree No. 23/2003 (VI.24.) of the Minister of Interior and the Minister of Justice
- Joint Decree No.17/2003 (VII.1.) of the Minister of Finance and the Minister of Justice
- Order No.11/2003 (ÜK.7.) of the Prosecutor General on prosecutorial tasks relating to the preparation of indictments, supervision of investigations and indictments
- Decree No 25/2013 (VI.24.) of the Minister of the Interior on the competence and territorial jurisdiction of police investigation bodies



- government, a Member of Parliament, a nationality spokesperson, or high-ranking state official,
- b) employee holding a high position at a central budgetary institution, central administrative body or the regional bodies thereof (hereinafter, by the enforcement of this Act: administrative authority) can be reasonably suspected, or as a perpetrator only one of the above enumerated persons can come into question, or the crime was committed in relation to these persons,
    - f. active bribery of a person working for or on behalf of a foreign business entity, passive bribery of a person working for or on behalf of a foreign business entity, active bribery of a foreign public official, passive bribery of a foreign public official, active trading in influence of a person working for or on behalf of a foreign business entity, active trading in influence of a foreign public official, passive trading in influence of a foreign public official,
    - g. participation in a criminal organization,
    - h. any crime committed by a criminal organization,
    - i. crimes for which, according to Section 26 (3) of the Criminal Code, no statute of limitation applies,
    - j. criminal offences which do not have a statute of limitations according to international law as determined by the Act on the punishability and exclusion of prevalence of statute of limitations concerning crimes against mankind, as well as the prosecution of certain crimes committed during communist dictatorship;
    - k. with the exception of cases falling under previous subsection, communist crimes determined by the Act on the punishability and exclusion of prevalence of statute of limitations concerning crimes against mankind, as well as the prosecution of certain crimes committed during communist dictatorship.

**24. Do prosecutors or the prosecution service in a direct way have an influence on this?**

Our reply given to Point 5 indicates that in Hungary legislators are entitled to determine cases which are to be treated with priority. By using tools which are legally available to them prosecutors shall secure that those cases are dealt with priority.

If investigations are conducted by investigation bodies, such tools may include the ones that are listed by Section 28 (4) of the Criminal Procedure Code. Thus, prosecutors are entitled to instruct investigation bodies to perform and carry out investigative acts, to conclude investigations within the deadline set by prosecutors, and as a last resort, prosecutors may even take over proceedings from investigation bodies.

According to Section 37 of Order No.11/2003 (ÜK.7.) of the Prosecutor General prosecutors may exercise a more intensive form of supervision called enhanced supervision over the independent investigations of investigation bodies. While exercising enhanced supervision, prosecutors are obliged to scrutinize all the documents, records and files of the investigation every month and shall take all measures that are required for purposes of enhanced supervision. Within the framework of enhanced supervision prosecutors:

- a) instruct investigation bodies to carry out the investigative acts they have failed to take by setting deadlines for them,

- b) determine the scope of investigations if so required by the foregoing investigation, and they may specify crimes into which investigations needs to be abandoned,
- c) designate evidence and evidentiary procedures that need to be obtained and conducted during additional investigations,
- d) designate the investigative act or set the deadline after which documents need to be sent to prosecutors,
- e) instruct investigation bodies to conclude investigations if facts of the case have been detected to such an extent that the case can be decided.

**L. *Responsibility of the prosecutor during the investigation***

**25. Are prosecutors responsible for the conduct of investigations in your country? If no, who is responsible for that?**

As mentioned above, prosecutors possess extensive rights and functions in connection with criminal investigations, and after all they have ultimate responsibility for the legality and expertise of criminal investigations. Section 165 of the Criminal Procedure Code provides that “investigations shall be conducted according to the orders of the prosecutors. Prosecutors may instruct investigation bodies.” Such provisions are to be interpreted in the sense that in Hungary prosecutors are in total control of criminal investigations, supervise and monitor them and intervene if they find that laws are not adhered to or the success of investigations is at risk in any way. Therefore, prosecutors are often referred as ‘dominus litis’. In order to ensure lawful and professional conduct of investigations, prosecutors may determine which facts need to be proven and which evidence need to be obtained in a given case.

Prosecutors’ responsibility for the conduct of investigations is obvious if investigation bodies investigate upon prosecutors’ orders or instructions, but prosecutorial responsibility also extends to investigations conducted by investigations bodies independently. Investigating upon prosecutors’ instruction generally occurs when a) the criminal complaint is filed with a prosecution office, and based on the complaint the prosecutor orders the investigation of the case and instructs the investigation body to carry out the investigation or b) upon the examination of the files and records of the criminal investigation, sent alongside with the investigation body’s initiation of indictment, the prosecutor orders additional investigative acts to be carried out. Investigation bodies shall conduct investigations or perform certain investigative actions independently if the criminal offence was detected by or the criminal complaint was filed with the investigation body itself, the offence came to the notice of the investigation body in another way, or the prosecutor ordered that supplementation of the criminal complaint or the investigation should be carried out by the investigation body<sup>3</sup>. If an investigation body conducts an investigation or certain investigative acts independently, the prosecutor shall supervise compliance with rules of the Criminal Procedure Code throughout the procedure and shall secure that persons participating in the procedure can assert their rights (Section 28 (4) of the Criminal Procedure Code).

It can be concluded that in Hungary prosecutors are responsible for the conduct of investigations. Naturally, this is also the case when investigations are conducted by prosecutors themselves.

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<sup>3</sup> Section 35 (2) of the Criminal Procedure Code (see: Act XIX of 1998 on Criminal Proceedings)

Prosecutorial investigation is restricted only to specific cases defined by Section 29 of the Criminal Procedure Code.

**26. When does the prosecutor receive a complaint (as soon as the complaint is filed, or after the investigation has been conducted by the police)?**

According to the Sections 172 (1)-(3) of the Criminal Procedure Code criminal complaints shall be filed either with a prosecution office or with an investigation body in writing or verbally. Verbal criminal complaints must be recorded in writing immediately. Criminal complaints may be received by other authorities and the court as well, but they shall be forwarded to the investigation body. If a criminal complaint has not been filed with a prosecutor or investigation body having competence and jurisdiction for the case, it shall still be taken over and recorded in minutes, and be forwarded to the party entitled to act.

Based on the above, if criminal complaints are filed with them, prosecutors receive criminal complaints directly and as soon as the criminal complaints are filed. If criminal complaints are filed with the investigation bodies, according to law, prosecutors have to be informed about the ordering of investigations (and not particularly about the criminal complaint) in a written memorandum. Enclosed to such a memorandum, however, the criminal complaint may also be sent by the investigation body to the prosecutor.

If a criminal complaint has been filed in the case (i.e. the case starts upon a criminal complaint and not ex officio by the investigation body), the investigation body needs to decide about the criminal complaint within 3 days following the receipt of the complaint. Based on the available information the investigation body may decide: a) to transfer the complaint to the competent body b) to dismiss the criminal complaint c) or to order an investigation into the case. The investigation body must inform the prosecutor about the ordering of investigation in a memorandum mentioned above, while about the dismissal of the criminal complaint by sending him a copy of the decision ordering the dismissal. Prosecutors are also informed about the transfer of cases.

To sum it up, if a criminal complaint is filed with an investigation body, it is basically the written memorandum sent by the investigation body which informs the prosecutor about the fact that a criminal complaint has been filed in the case and about the decision of the investigation body regarding the criminal complaint.

**27. What is the degree of autonomy of the police or other investigation body, if any, during the investigation?**

Hungarian investigation bodies have the greatest degree of autonomy if they investigate, independently, on their own (see: reply to Point 7). In the course of their independent investigations investigation bodies may take any measures, actions and apply any coercive measures, make any decisions they are allowed by law; in other words, they may take any procedural acts which do not fall into the exclusive competence of prosecutors. This autonomy also implies that during their independent investigations investigation bodies do not need to wait for prosecutorial instructions or guidelines but can progress with the case on their own. In spite of this autonomy, it may occur, however, that investigation bodies get instructed by prosecutors if the legality or expertise of investigations is at risk. The decisions made, the actions taken by investigation bodies or by prosecutors always depend on the particular case investigated.

Investigations conducted upon prosecutorial orders and supervision of investigations as a right and responsibility of prosecutors obviously narrows the autonomy of investigation bodies during their investigations: the more prosecutors need to intervene in the investigations the less autonomy investigation bodies have. In other words, the degree of prosecutorial intervention

generally depends on to what extent investigation bodies risk the lawfulness or expertise of investigations with their actions.

Finally, it must be noted that in Hungary enhanced supervision of investigations, which is a more intensive form of supervision, allows the least autonomy for investigation bodies during their independent investigations. The legal requirements and preconditions of enhanced supervision are set forth by Order No.11/2003 (ÜK.7.) of the Prosecutor General on prosecutorial tasks relating to the preparation of indictments, supervision of investigations and indictments. Section 37 of the Order provides that prosecutors may exercise enhanced supervision over the independent investigation of the investigation bodies if a) complicated factual or legal questions have arisen in the case or proving the crime is a complex matter b) a substantial violation of legal provisions, omission, or risks to the successful outcome of the investigation have been detected in the course of the investigation c) six months have passed since a coercive measure depriving the suspect of his personal liberty was ordered d) one year has passed since investigation was initiated against a specific person e) investigation is ongoing into a crime that is subject to imprisonment exceeding ten years f) the case was declared to be a priority case g) enhanced supervision is deemed to be necessary for other reasons.

Tools of enhanced supervision include, for example, the intensive and more frequent scrutiny of investigation files, documents and records, or more detailed specification of investigative acts which are to be executed.

Prosecutors shall inform heads of the investigation bodies in writing if they are to exercise enhanced supervision. Prosecutors make memos about their actions, keep records of the measures taken by them in writing and send these alongside with their submissions to superior prosecutors.

**28. Does the prosecutor have the power to prevent or stop an investigation?**

Yes, prosecutors have the power to prevent or stop an investigation. As a general rule, preventing or terminating investigations are primarily prosecutorial powers or competences, and they may only be exercised by investigation bodies in cases and on legal grounds allowed by law.

Investigations are prevented if criminal complaints are dismissed. Section 174 of the Criminal Procedure Code provides for dismissal of criminal complaints: "The prosecutor shall dismiss the criminal complaint coming to his notice within a period of 3 days with a decision, if the following can be established from the criminal complaint itself:

- a) the act does not constitute a criminal offence,
- b) the suspicion of a criminal offence is absent,
- c) a ground for the preclusion of punishability exists (Section 15 of the Criminal Code<sup>4</sup>),
- d) no proceeding may be instituted due to death of the defendant, statutory limitation or pardon,
- e) there is no private motion or criminal complaint,
- f) the act has already been adjudicated by a final decision.

(2) In cases specified in Subsection (1) a)–b) and d)–f) and when punishability is precluded because the offender is a child [Section 15 a) of the Criminal Code], the criminal complaint may also be dismissed by the investigation body."

In addition, Section 175 (1) and (2) provide for special cases of the dismissal of criminal complaints.

Section 175 (1) If there are reasonable grounds to suspect that a criminal offence has been committed, the prosecutor or – with the permission of the prosecutor – the investigation body may dismiss the criminal complaint, if the person who may be reasonably suspected of having committed the criminal offence co-operates in the investigation or proving of the case or of another criminal offence to such an extent that the interests of national security or law enforcement take priority over the interest to enforce the claim of the state under criminal law.

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<sup>4</sup> see: Act C of 2012

(2) If there are reasonable grounds to suspect that a criminal offence has been committed, the prosecutor shall dismiss the criminal complaint in a formal decision if the person who may be reasonably suspected of having committed the criminal offence is an covert investigator [Section 178 (2)], who committed the act in line of duty in the interest of law enforcement, and the latter interest takes precedence over the interest to enforce the claim of the state under criminal law.

Section 190 (1) of the Criminal Procedure Code provides for cases when investigations shall be terminated:

“A prosecutor shall terminate an investigation in a formal decision

a) if the action does not constitute a criminal offence,

b) if, based on the data of the investigation, the perpetration of a criminal offence cannot be established and continued procedure is not expected to yield any result,

c) if the criminal offence was not committed by the suspect, or based on the data of the investigation it cannot be established whether the criminal offence was committed by the suspect,

d) if a ground for the preclusion of punishability occurs, unless it appears necessary to order involuntary treatment in a mental institution,

e) due to the death of the suspect, statutory limitation or pardon,

f) due to other grounds for the termination of punishability stipulated by law,

g) there is no private motion, request or criminal complaint and they cannot be subsequently submitted,

h) the action has already been adjudicated by a final decision,

i) if based on the outcome of a consultation procedure, in accordance with the Act on the cooperation with the Member States of the European Union in criminal matters<sup>5</sup>, the criminal procedure is to be conducted by another EU Member State,

j) and applies a warning if the action of the suspect no longer endangers society or endangers to such a small degree only that the lightest punishment to be imposed or any other measures to be taken according to the law is not necessary,

k) if Hungary has no jurisdiction for the case.

(2) In the cases specified in subsection (1) a), b), e), g) and h) and if punishability is precluded because the offender is a child [Section 15 a) of the Criminal Code], the investigation may also be terminated by the investigation body. The investigation body shall forward its formal decision ordering the termination of the investigation to the prosecutor without delay.”

Unless an exception is made by the Criminal Procedure Code, the termination of the investigation shall not prevent the subsequent resumption of the proceeding in the same case.

**29. How is it decided which service of the police or other investigation body, if any, is competent to investigate?**

As mentioned before, in Hungary the police have general competence to investigate criminal cases, whereas specific units of the National Tax and Customs Administration have a special investigative competence, primarily reserved for the investigation of financial crimes (Section 36 (2) of the Criminal Procedure Code lists crimes which fall into the investigative competence of the NTCA<sup>6</sup>).

According to Section 37 of the Criminal Procedure Code the competence and territorial jurisdiction of investigation bodies in Hungary are determined by separate laws. Having regard to the authorization given by the Criminal Procedure Code, Decree No 25/2013 (VI.24.) of the Minister of the Interior provides for the competence and territorial jurisdiction of the police

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<sup>5</sup> see: CLXXX of 2012

<sup>6</sup> To mention a few, such crimes include: budget fraud, failure of monitoring and supervisory obligations committed in connection with budget fraud, usurpation, violation of copyright or associated rights, violation of the orders of public accountancy, fraudulent bankruptcy, dealing in stolen goods if committed with regard to any non-Community goods obtained through budget fraud and withheld from customs inspection, violation of international economic restrictions etc.

investigation bodies, whereas relevant rules concerning the competence and territorial jurisdiction of investigation units of the National Tax and Customs Administration are contained by the Organizational and Operational Rules of the NTCA (see: Order No. 2/2014 (III.13) of the NTCA).

“In event of a conflict of competence between the police and the National Tax and Customs Administration, if an offence falling within the competence of the National Tax and Customs Office is combined with an offence falling in the competence of the police, and the National Tax and Customs Administration can not have competence for this offence, moreover, the procedure cannot be practically separated, the acting investigation body shall be designated by the competent prosecutor. The prosecutor may also designate as the acting investigation body an investigation body which, pursuant to relevant provisions of the Criminal Procedure Code would not otherwise be competent for the investigation of the offence” (Section 37 of the Criminal Procedure Code).

As regards the question of territorial jurisdiction, the general rule is that the place of commission of the criminal offence shall determine which investigation body has territorial jurisdiction for the case. In other words that investigation body shall have territorial jurisdiction over the case in the territory of which the crime occurred. Special rules, however, allow for some deviations.

**30. If the prosecutor leads the police or other criminal investigation in your country, does the prosecutor have the power to monitor compliance with his/her instructions? If so, please briefly describe.**

As mentioned above, investigation bodies may investigate upon the orders of prosecutors or independently. It is in the former case when prosecutors are ‘real’ leaders of criminal investigations; in the latter case investigation bodies have more autonomy to make decisions in connection with their investigations, but in such cases prosecutors have a strong supervisory role and monitor actions of the investigation bodies. It can thus be concluded that prosecutors have the power to monitor investigations both if investigation bodies investigate on their own and if they investigate upon the orders and in accordance with prosecutors’ instructions.

Compliance with prosecutorial instructions is required by Section 165 (2) of the Criminal Procedure Code, which states “investigation bodies shall perform the instructions of the prosecutor regarding the investigation of the case by deadline and inform the prosecutor verbally or in writing – as instructed – about the ordering of the investigation and the status of the case.”

Supervision of investigation and enhanced supervision also serve as tools of monitoring, but they are used during the independent investigations of investigation bodies.

***M. Responsibility of the prosecutor for the respect of the law***

**31. Is it a responsibility of the prosecutor to control respect for the law by the police or other investigation body, if any? If yes, at which stage and by which means of control?**

Yes, prosecutors are ultimately responsible for the legality of investigations and for controlling respect for the law by investigation bodies at all stages of the investigations. Thus, prosecutors shall safeguard that both substantive and procedural rules of criminal law are adhered to and human rights are respected during the entire course of investigation. All evidence shall be collected, obtained and presented, every coercive measure and evidentiary procedure shall be carried out lawfully, in compliance with law.

When providing for the functions of prosecutors Section 28 (4) of the Criminal Procedure Code states:

When an investigation body conducts an investigation or certain investigative acts independently [Section 35 (2)], the prosecutor shall supervise compliance with this Act throughout the procedure and ensure that the persons participating in the procedure can assert their rights. With this in view, the prosecutor

a) may order an investigation or the supplementation of criminal complaints, assign the investigation body to conduct the investigation and may instruct the investigation body to perform – within its own territorial jurisdiction – further investigative acts, further investigation, or to conclude the investigation within the deadline set by the prosecutor,

b) may be present at investigative acts and may examine or send for the documents produced during the investigation,

c) may amend or set aside decisions of the investigation body, and shall decide the complaints received against the decisions of the investigation body,

d) may reject criminal complaints, terminate investigations and order the investigation body to terminate the investigations,

e) may take over proceedings.

Section 28 (6) adds that prosecutors shall oversee the lawful enforcement of coercive measures ordered in the course of the criminal proceedings and entailing the restriction or deprivation of liberty.

Means of prosecutorial control thus include supervision and enhanced supervision of investigations.

**N. *Common principles concerning the police***

**32. Are there written regulations concerning the conduct of criminal investigations by the police or other investigation body?**

The most important general rules of criminal investigations, which are evenly applicable for criminal investigations conducted by the police and the National Tax and Customs Administration, are set forth by the Criminal Procedure Code. Apart from these general rules, Joint Decree No. 23/2003 (VI.24.) of the Minister of Interior and the Minister of Justice contains more detailed rules regarding the criminal investigations of the police, while Joint Decree No.17/2003 (VII.1.) of the Minister of Finance and the Minister of Justice regulates the criminal investigations of competent bodies of the National Tax and Customs Administration. Moreover, other laws and provisions such as Act XXXIV of 1994 on the Police, Act CXXII of 2010 on the National Tax and Customs Administration or Order No.11/2003 (ÜK.7.) of the Prosecutor General on prosecutorial tasks relating to the preparation of indictments, supervision of investigations and indictments also contain significant rules for investigations and prosecutors' tasks relating to investigations.

**33. What are these regulations about? (for instance, the way to carry out interrogations, deprivation of liberty etc.)**

In its Chapter I the Criminal Procedure Code specifies basic provisions of criminal proceedings, in particular, basic rights and principles such as the right to judiciary proceeding, right to remedy, right to defence, burden of proof, presumption of innocence, prohibition of self-incrimination etc., which are to be followed. Chapter III of the Code deals with functions and responsibilities of prosecutors in the course of criminal proceedings, competence and territorial jurisdiction of prosecution offices, exclusion of prosecutors from proceedings, whereas Chapter IV contains similar rules concerning the investigation bodies. Chapter V focuses on persons involved and

concerned in criminal proceedings (e.g. defendants, victims, defence counsels, private prosecutors, substitute private prosecutors etc.), while Chapter VI includes general rules for procedural actions taken by the court, prosecutors or investigation bodies. Chapter VII determines the rules of evidence (requirements of lawful evidence, witness testimonies, expert opinions, rules of collecting evidence, types of evidence, evidentiary procedures etc.). Chapter VIII deals with coercive measures and determines which coercive measures may be ordered or taken by the court, prosecutors or by investigation bodies. Chapter IX focuses on criminal investigations, and among others it provides for the initiation of investigations, criminal complaints, deadline of investigations, data collection activities of investigation bodies, interrogation of suspects, interviewing witnesses, suspension and termination of investigations.

Joint Decree No. 23/2003 (VI.24.) of the Minister of Interior and the Minister of Justice determines detailed rules regarding the criminal investigations of the police and how investigative acts may be recorded in alternative ways and not only in minutes. The Joint Decree basically specifies additional or supplementary rules to relevant rules of the Criminal Procedure Code. Joint Decree No.17/2003 (VII.1.) of the Minister of Finance and the Minister of Justice is quite identically structured to Joint Decree No. 23/2003 (VI.24.) but deals with criminal investigations of investigation bodies functioning under the direction of the Minister of Finances. This Joint Decree also contains additional and supplementary rules to relevant provisions of the Criminal Procedure Code.

Order No.11/2003 (ÜK.7.) of the Prosecutor General on prosecutorial tasks relating to the preparation of indictments, supervision of investigations and indictments is of paramount importance as it determines detailed rules with regard to prosecutors' functions, tasks and responsibilities in connection with criminal investigations. The Order sets forth, for example, requirements and tools of enhanced supervision.

## **O. *General control over police***

### **34. What is the general control system of the police or other investigation body, if any (internal/external?) Does the prosecutor play a role in this system?**

According to Section 5 of the Police Act, the Minister responsible for law enforcement and public order (currently the Minister of Interior) exercises legality, financial and professional control over the system and functions of the police and monitors the efficiency of police activities. As regards the investigations conducted by the National Tax and Customs Administration Section 5 (1) d) of the National Tax and Customs Administration Act stipulates that the designated minister may request reports, data or information from the head of the National Tax and Customs Administration.

Based on Section 18 (1) of the Act CXI of 2011 on the Commissioner of Fundamental Rights if investigation bodies infringe or directly risk fundamental rights, and there are no legal remedies against such infringements or direct risks, the Commissioner of Fundamental Rights may take measures and initiate a proceeding. According to Section 21 (1) of the said Act the Commissioner of Fundamental Rights may send for copies of documents, request data and information from the body under examination, conduct on-spot inspections, attend hearings and may initiate examinations.



**35. Is the prosecutor competent to take sanctions?**

The tools prosecutors may use to exercise legality, professional or efficiency control over the criminal investigation of investigation bodies are defined by law (see replies to Points 12 and 13).

Based on Section 28 (4) b) prosecutors may be present at the investigative actions, and may examine or send for the documents produced during the investigation. In addition, if prosecutors become aware of acts or omissions which violate the law, provided statutory conditions exist, they shall initiate criminal, disciplinary, administrative proceedings or other administrative authority proceedings.

***P. Conclusions***

**36. What are the major challenges in relations between prosecutors and investigation bodies in your country?**

The Prosecution Service of Hungary is not aware of any challenges or any hindrances in the relation between prosecutors and investigation bodies.

## Iceland / Islande

### **A. Relationship between prosecutors and the police**

1. Please briefly describe the relationship between prosecutors and the police or other investigation body in your country.
  - a. **The prosecution is in about 90% of all cases in the hand of the chief of police. The minor cases. All investigation in Iceland should be conducted in cooperation with the prosecution.**
  
2. Is there any dialogue with the prosecutor concerning the work of the police or other investigation body?
  - a. **Yes see no. 1.**
  
3. Is the prosecutor involved in training the police or other investigation body?
  - a. **Yes the training is always conducted in cooperation with the chief of police who are the head of police and also the head of prosecution in their district.**

### **B. Existing legal provisions and regulations**

4. Is any relationship between prosecutors and investigation bodies determined by law or other provisions? Please describe briefly.
  - a. **The Police Act no. 90 13<sup>th</sup> June 1996**
  
5. **Article 8**  
*Police investigations.*
  1. *The police shall investigate offences in consultation with the prosecuting authority.*
    - b. **The Director of Public Prosecution (DPP) can give the police orders regarding the investigation of a single case or in general, and the police is obliged to follow those instructions according to the law on criminal procedure art. 21 of the Law on Criminal Procedure. (LCP)**

- c. **The decision of the police to suspend cases can be appealed to the DPP who can overturn their decision and order them to investigate or to prosecute if the investigation is over when the case is suspended art. 52. and 145. LCP**

***C. Responsibility of the prosecutor for setting priorities for investigating offenses***

- 6. How are priorities in starting criminal investigations in your country determined?
  - a. **Every criminal act shall be investigated according to the LCP. There has not been any formal prioritization done in Iceland.**
- 7. Do prosecutors or the prosecution service in a direct way have an influence on this?
  - a. **Yes**

***D. Responsibility of the prosecutor during the investigation***

- 8. Are prosecutors responsible for the conduct of investigations in your country? If no, who is responsible for that?
  - a. **Yes**
- 9. When does the prosecutor receive a complaint (as soon as the complaint is filed, or after the investigation has been conducted by the police)?
  - a. **As soon as the complaint is filed. It is up to the police chiefs in what degree the prosecutors with in the police look in to the complaint in the beginning but they shall do so in all the complicated and important cases.**
- 10. What is the degree of autonomy of the police or other investigation body, if any, during the investigation?
  - a. **Should be total autonomy. Only the DPP can give instruction about investigations.**
- 11. Does the prosecutor have the power to prevent or stop an investigation?

a. **Yes, but their decision can be appealed to the DPP.**

12. How is it decided which service of the police or other investigation body, if any, is competent to investigate?

a. **The 8 districts of the police are geographically decided. Only the district prosecutor office have the whole of Iceland as its district, and its competence is decided in the LCP to be the investigation and prosecution of economic crimes.**

13. If the prosecutor leads the police or other criminal investigation in your country, does the prosecutor have the power to monitor compliance with his/her instructions? If so, please briefly describe.

a. **Yes as the chiefs of police are the prosecutors they can monitor how their subordinate police personal does its job. The same goes for the district prosecutor that is parallel to the police but responsible for investigation of economic crimes.**

***E. Responsibility of the prosecutor for the respect of the law***

14. Is it a responsibility of the prosecutor to control respect for the law by the police or other investigation body, if any? If yes, at which stage and by which means of control?

a. **Yes. See above.**

***F. Common principles concerning the police***

15. Are there written regulations concerning the conduct of criminal investigations by the police or other investigation body?

a. **Yes**

16. What are these regulations about? (for instance, the way to carry out interrogations, deprivation of liberty etc.)

a. **Interrogations, deprivation of liberty, right of the suspect to defence, knowing what he is accused of, right to getting information on his arrest to relatives (if**

allowed), the right of minors to having a parent and social worker present jurying interrogation.

#### **G. General control over police**

17. What is the general control system of the police or other investigation body, if any (internal/external?) Does the prosecutor play a role in this system?
- a. **The Ministry of Interior have the disciplinary power over the police and the DPP can complain to the Ministry if the police is not in line with its duties or does not react to the orders of the DPP.**
  - b. **The police officers and/or the chiefs of police can be held criminally liable if needed. The DPP investigate and prosecute member of the police for criminal act committed in their duties.**
18. Is the prosecutor competent to take sanctions?
- a. ?????????

#### **H. Conclusions**

19. What are the major challenges in relations between prosecutors and investigation bodies in your country?
- a. **Competence and recourses, that is related because it costs money to train people and keep up standards and know how.**

## Ireland / Irlande

### A. *Relationship between prosecutors and the police*

1. Please briefly describe the relationship between prosecutors and the police or other investigation body in your country.

The investigation and prosecution of offences are separate and distinct functions within the Irish criminal justice system. The investigation of criminal offences is the function of the Garda Síochána (Irish police). The Director of Public Prosecutions decides whether to charge people with criminal offences and what the charges should be.

The Director decides and directs public prosecutions on indictment (serious cases) in the courts and gives general direction and advises the Garda Síochána (Irish police) in relation to summary (minor) cases and specific direction in such cases when requested. Many investigative agencies have the power to prosecute summarily without reference to the Director. The sole power to prosecute on indictment rests with the Director (apart from a very limited number of cases still dealt with by the Attorney General). When an offence is or may be sufficiently serious to be tried on indictment the investigator sends a file to the Director. The decision whether to initiate or continue a criminal prosecution is made by the Director or one of her professional officers who decide independently of those who were responsible for the investigation what, if any, charges to bring. In some cases a summary prosecution may be directed.

Most summary prosecutions (minor offences) are brought in the name of the Director. In practice, the great majority of these are presented by officers of An Garda Síochána (Irish police) without specific reference to the Director's office, except in cases where An Garda Síochána are required to seek a direction from the Director or where for some other reason they seek instructions. General directions covering the conduct of prosecutions in the Director's name are now issued by the Director. The first such direction came into effect on 1 February 2007 outlining the category of cases in which the decision to institute a prosecution lies solely with the Director. Under section 8 of the Garda Síochána Act 2005, which came into force on 1 February 2007, members of the Garda Síochána who prosecute summarily in the course of their official duties must do so in the name of the Director of Public Prosecutions and must comply with the any instructions given by the Director whether of a general or specific nature. The Director may assume the conduct of a prosecution instituted by a Garda at any time.

2. Is there any dialogue with the prosecutor concerning the work of the police or other investigation body?

While the Director has no investigative function and no power to direct the Garda Síochána or other agencies in their investigations, she and her Office co-operate regularly with the Garda Síochána and the other investigating agencies during the course of criminal investigations, particularly in furnishing relevant legal and prosecutorial advice. The Director may advise investigators in relation to the sufficiency of evidence to support nominated charges and the appropriateness of charges or in relation to legal issues arising in the course of investigation. While the Director is not responsible for the conduct of investigations she is free to indicate what evidence would be required to sustain a prosecution.

3. Is the prosecutor involved in training the police or other investigation body?

The Office of the Director of Prosecutions is not responsible for training the police or other investigation bodies. While the Office assists, when requested, with training on specific topics such as file preparation, conduct of criminal proceedings in the lower courts and other relevant issues as they

arise, primary responsibility for such training rests with the police or other investigation body concerned.

**B. Existing legal provisions and regulations**

4. Is any relationship between prosecutors and investigation bodies determined by law or other provisions? Please describe briefly.

The prosecution system in Ireland is not described or set out fully in any one document. It is grounded in the Constitution of Ireland, 1937 and in statute law, notably the Prosecution of Offences Act, 1974, which established the Office of Director of Public Prosecutions. The prosecution system in Ireland has developed from common law tradition and many important practices and rules in Ireland have their basis in common law, that is, judge-made law.

Article 30.3 of the Constitution of Ireland provides that all crimes and offences prosecuted in any court (other than a court of summary jurisdiction shall be prosecuted in the name of the People and at the suit of the Attorney General or some other person authorised in accordance with law to act for that purpose.

The Prosecution of Offences Act 1974 established the Office of the Director of Public Prosecutions and provides that the Director shall be independent in the performance of her functions. The 1974 Act conferred on the Director of Public Prosecutions the function of prosecuting both on indictment and summarily. All criminal prosecutions taken on indictment (serious offences) are taken in the name of the people and prosecuted at the suit of the Director of Public Prosecutions, except for a limited category of offences still prosecuted at the suit of the Attorney General.

**C. Responsibility of the prosecutor for setting priorities for investigating offenses**

5. How are priorities in starting criminal investigations in your country determined?

The investigation of criminal complaints is the function of the Garda Síochána (Irish police) or other appropriate investigation body and it is a matter for such body to consider priorities in investigating.

6. Do prosecutors or the prosecution service in a direct way have an influence on this?

The Office of the Director of Prosecutions has no function in investigating crime or determining priorities in relation to such investigations.

**D. Responsibility of the prosecutor during the investigation**

7. Are prosecutors responsible for the conduct of investigations in your country? If no, who is responsible for that?

The Director of Public Prosecutions has no investigative function. The investigation of criminal offences is the function of the Garda Síochána (Irish police). In addition there are specialised investigating authorities in relation to certain particular categories of crime, including the Competition Authority in relation to offences against the Competition Acts; the investigation branch of the Revenue Commissioners in relation to revenue offences; the Health and Safety Authority in relation to offences relating to safety and welfare at work; and the Office of Director of Corporate Enforcement which deals with offences against company law. This list is not exhaustive. Complaints of criminal conduct made to the Director cannot be investigated by her but are transmitted to the Garda Commissioner or to one of the other investigation authorities to take the appropriate decisions and action.

8. When does the prosecutor receive a complaint (as soon as the complaint is filed, or after the investigation has been conducted by the police)?

Generally, following the completion of a criminal investigation by the Garda Síochána (Irish police) or other specialised investigating authority in relation to an indictable (serious) offence, a file will be sent to the Office of the Director of Public Prosecutions to decide whether there should be a prosecution or if a prosecution should continue. However, in urgent cases, the Garda Síochána (Irish police) may contact the Office of the Director of Public Prosecutions by telephone seeking a verbal direction to prosecute based on the evidence gathered to date. In such case a provisional direction to prosecute may issue but the Garda Síochána (Irish police) will be required to submit a written file before that decision is confirmed (or changed). In other cases the Garda Síochána (Irish police) may make initial contact with the Office of the Director of Public Prosecutions for advice as outlined in the reply at (2) above.

9. What is the degree of autonomy of the police or other investigation body, if any, during the investigation?

The Director has no investigative function and no power to direct the Garda Síochána or other agencies in their investigations, which are a matter for that body.

10. Does the prosecutor have the power to prevent or stop an investigation?

The Director has no power to interfere with or stop an investigation.

11. How is it decided which service of the police or other investigation body, if any, is competent to investigate?

Please see reply at (7) above. It is a matter for the investigating agency to decide how best to investigate.

12. If the prosecutor leads the police or other criminal investigation in your country, does the prosecutor have the power to monitor compliance with his/her instructions? If so, please briefly describe.

Not applicable. The Director has no investigative function and no power to direct the Garda Síochána or other agencies in their investigations.

**E. *Responsibility of the prosecutor for the respect of the law***

13. Is it a responsibility of the prosecutor to control respect for the law by the police or other investigation body, if any? If yes, at which stage and by which means of control?

The Director does not have direct responsibility to control respect for the law by the police or other investigating body. However, the actions of the investigators will be relevant to the decision by the Director on whether or not to prosecute and, ultimately, to the courts in the context of ensuring a fair trial or otherwise reviewing that decision, following the initiation of any prosecution. There are, separately, procedures by which persons aggrieved by the actions of the police or other investigating



body may seek redress from the courts. Finally there is an ombudsman who receives complaints against members of the police. (Garda Síochána Ombudsman Commission). See below.

**F. Common principles concerning the police**

14. Are there written regulations (legislation?) concerning the conduct of criminal investigations by the police or other investigation body?

There are written regulations/legislation concerning the arrest, detention and questioning of person suspected of involvement in crime. There are also written regulations/legislation in relation to the gathering and retention of fingerprint and other forensic evidence as well as in relation to application for and issuing of search warrants. While there are also some general procedural regulations, the overall scope and conduct of a criminal investigation is largely a matter for the investigator to determine.

15. What are these regulations about? (for instance, the way to carry out interrogations, deprivation of liberty etc.)

See reply to (14) above.

**G. General control over police**

16. What is the general control system of the police or other investigation body, if any (internal/external?) Does the prosecutor play a role in this system?

The Garda Síochána Act 2005 provides for a Garda Síochána Inspectorate consisting of three members who are appointed by the Irish Government. The functions of the Inspectorate, *inter alia*, are as follows:

- carry out, at the request or with the consent of the Minister for Justice, inspections or inquiries in relation to any particular aspects of the operation and administration of the Garda Síochána,
- submit to the Minister for Justice a report on those inspections or inquiries, and if required by the Minister, a report on the operation and administration of the Garda Síochána during a specified period and on any significant developments in that regard during that period, and any such reports must contain recommendations for any action the Inspectorate considers necessary,
- provide advice to the Minister with regard to best policing practice.

Since 2007, the Garda Síochána Ombudsman Commission (GSOC) replaced the earlier system of complaints (the Garda Síochána Complaints Board) and is empowered to:

- Directly and independently investigate complaints against members of the Garda Síochána (Irish police)
- Investigate any matter, even where no complaint has been made, where it appears that a Garda may have committed an offence or behaved in a way that justified disciplinary proceedings
- Investigate any practice, policy or procedure of the Garda Síochána with a view to reducing the incidence of related complaints

The Office of the Director of Public Prosecutions may decide whether or not to prosecute, following the submission of a file by the Garda Síochána Ombudsman Commission. However, otherwise the Director has no role in relation to the above.

In 2014 the Minister for Justice also announced proposals to establish an independent Policing Authority.

17. Is the prosecutor competent to take sanctions?

See reply to (16) above. The Office of the Director of Public Prosecutions may decide whether or not to prosecute individual police officers following the completion of a criminal investigation and submission of a file by the Garda Síochána Ombudsman Commission and/or by the Garda Síochána (Irish police). However, otherwise the Director has no role in relation to the general control of the police.

#### **H. Conclusions**

18. What are the major challenges in relations between prosecutors and investigation bodies in your country?

Generally, the working relationship between the Office of the Director of Public Prosecutions and the Garda Síochána (Irish police) and other investigating bodies is good. However, the Office is conscious of the ongoing need to build on those relationships and ensure this continues into the future.

## Italia / Italie

### ***Relationship between prosecutors and the police***

1. *Please briefly describe the relationship between prosecutors and the police or other investigation body in your country*

In Italy the relationship between prosecutors and the police is ruled by law in its highest expression. The Italian Constitution so establishes that “judicial authorities directly avail themselves of the investigative police”. When this provision mentions the words “judicial authorities”, it refers both to the Courts and to the Prosecution Service.

The expression (they) “directly avail themselves” leads to exclude that prosecutors might actually use the police by the means of or subject to other public authorities.

The indication within the Constitution is restated in the Italian Code of Criminal Procedure, as far as investigation activities are concerned. The Code rules that the functions of the investigative police are dependent upon and directed by judicial authorities.

It is to be noted that in Italy there are several bodies acting as the police. Here are the major ones: the State Police (*Polizia di Stato*), the Carabineers (*Carabinieri*), the Fiscal Police (*Guardia di Finanza*).

All of them act as “investigative police” when they investigate crimes; on the other hand, they perform functions of “security police” when they act as public security forces. The former role is played after a crime has been committed; the latter is aimed at preventing offences. Whenever, in these answers to the questionnaire, reference is made to the “police” *tout court*, it must be understood as referred to the investigative police (in Italian: “*polizia giudiziaria*”, literally “judicial police”).

In every Prosecution Office there is a unit of the investigative police composed of members of different police forces. The prosecutor can resort to other bodies of the police, beside police units.

Units members cannot be turned away from investigative police activities on orders of different authorities other than the prosecutor whom they depend on.

2. *Is there any dialogue with the prosecutor concerning the work of the police or other investigation body?*

The dialogue between prosecutors and the police is necessary and it is imposed by Italian law.

See hereunder at § 4.

*3. Is the prosecutor involved in training the police or other investigation body?*

Italian law does not set forth any provision about that, although many prosecutors are actually involved in police training activities.

***B. Existing legal provisions and regulations***

*4. Is any relationship between prosecutors and investigation bodies determined by law or other provisions? Please describe briefly.*

Italian law determines the relationships between prosecutors and investigation bodies.

The police must perform the duties that public prosecutors entrust them with. They must take notice of criminal offences, even on their own initiative, prevent them from bringing further consequences about, look for offenders, accomplish the necessary acts to ensure evidence and gather any needed information to enforce criminal law. Furthermore, the police carry out any investigation and activity ordered or delegated by prosecutors.

The Italian Code of Criminal Procedure provides that both prosecutors and the police take notice of offences. They can do so on their own initiative or upon claim of public officials or private citizens.

After taking notice of an offence, a police officer has to refer it to the prosecutor “without delay” by reporting the essential elements of the criminal act, the sources of evidence and the performed activities. Furthermore, the police officer sends all the documents over and underlines the day and time when the criminal offence was reported.

From then on, the prosecutor takes the helm of the investigation. He can directly lead it so far or he can act through the police by delegating special activities or the whole direction to them, although the prosecutor still gives them his guidelines.

Carrying on their functions, police officers gather any useful element to reconstruct the event and to detect the guilty person and they “speedily” inform the prosecutor about it.

***C. Responsibility of the prosecutor for setting priorities for investigating offenses***

*5. How are priorities in starting criminal investigations in your country determined?*

The main feature of the Italian criminal system is that criminal action is mandatory. This characteristic is sanctioned by the Italian Constitution.

As a consequence, whereas elements of crime come about, each case must be mandatorily investigated. If enough evidence for trial is obtained, the case must be brought before a Court.

Therefore, a prosecutor cannot dismiss a case at his own discretion, if the above mentioned assumptions exist. Within this framework, every Chief Prosecutor can outline his priority criteria to rationalise the employment of available resources: he cannot decide whether he may or may not investigate a single case, but he can evaluate which categories of cases deserve a priority. A useful criterion for guidance comes from law provisions establishing which kind of cases must be treated as a priority matter by judging Courts (for example, cases related to organized crime or terrorist crime offences, sexual abuse, etc.).

No priority assessment is made by the police. They have to stick to the prosecutors' indications.

*6. Do prosecutors or the prosecution service in a direct way have an influence on this?*

Yes, they do. See § 5.

#### ***D. Responsibility of the prosecutor during the investigation***

*7. Are prosecutors responsible for the conduct of investigations in your country? If no, who is responsible for that?*

Yes, they are. See § 4.

*8. When does the prosecutor receive a complaint (as soon as the complaint is filed, or after the investigation has been conducted by the police)?*

See § 4.

*9. What is the degree of autonomy of the police or other investigation body, if any, during the investigation?*

Following what we have already explained at §§ 1 and 4, in Italy there is an actual subordination of the investigative police to the prosecution service.

When a prosecutor gives his guidelines to conduct an investigation, the police must interpret them on the basis of their expertise.

*10. Does the prosecutor have the power to prevent or stop an investigation?*

A prosecutor has full control over an investigation. Moreover, the principle of mandatory prosecution (mentioned here above at § 5) binds him in relation to whether he might not investigate or prosecute a specific case, or whether he might stop an ongoing investigation.

If he wishes to do so, a prosecutor must make a request to the judge for filing the case. It is up to the Judge of the Preliminary Investigation to decide on this request: he may file the case or he may order the prosecutor to conduct further investigations or to bring charges.

*11. How is it decided which service of the police or other investigation body, if any, is competent to investigate?*

A prosecutor has an autonomous power to decide which police service he wishes to delegate for each investigation. When he makes a choice, a prosecutor tries to enhance specific competences (for instance, he chooses the Fiscal Police (*Guardia di Finanza*) for economic and financial crimes). In the most delicate and complex cases, he sometimes delegates several police forces altogether, while he keeps the power of coordination.

*12. If the prosecutor leads the police or other criminal investigation in your country, does the prosecutor have the power to monitor compliance with his/her instructions? If so, please briefly describe.*

The prosecutor can always monitor that his instructions have been complied with.

This monitoring is actually carried out in all cases, when the police report to the prosecutor the results of investigation activity they are required to conduct.

### ***E. Responsibility of the prosecutor for the respect of the law***

*13. Is it a responsibility of the prosecutor to control respect for the law by the police or other investigation body, if any? If yes, at which stage and by which means of control?*

The Prosecutor is certainly responsible for this matter.

The general rule establishes that prosecutors (as well as judges) and the police must all comply with the rules of the Code of Criminal Procedure. This applies in any case, both in case of infringements where the voidness of accomplished acts or another procedural sanction is required and in case of a provision implying no sanctions.

Chief Prosecutors control that rules shall be complied with and they can adopt disciplinary measures against police officers in case of infringement.

The ordinary way through which the prosecutor controls whether police officers have been law abiding officials consists in the examination of documents –he receives from the police service– pertaining the investigation activities they have conducted so far. In fact, police officers must forward all the results of their investigations. They cannot choose instead what they wish and what they do not wish to send.

During the processing of a criminal case, one of the involved persons can submit a complaint about the actions of the police. In this case, the prosecutor can adopt any initiative he believes to be convenient to monitor the lawfulness of their actions.

#### **F. Common principles concerning the police**

14. *Are there written regulations concerning the conduct of criminal investigations by the police or other investigation body?*

The Italian Code of Criminal Procedure contains detailed regulations about all aspects related to how both the prosecutor or the police shall conduct investigations.

15. *What are these regulations about? (for instance, the way to carry out interrogations, deprivation of liberty etc.)*

As already mentioned at § 4, the Italian Code of Criminal Procedure sets forth the main regulations for conducting investigations, with respect to jurisdiction, duties, ways wherein individual acts are carried out (for instance in case of witnesses' questioning, searches, seizures, arrest of a suspect).

#### **G. General control over police**

16. *What is the general control system of the police or other investigation body, if any (internal/external?) Does the prosecutor play a role in this system?*

Yes, he does. The prosecutor plays a major role in this regard.

Disciplinary action against police officers is initiated by the Prosecutor General at the Court of Appeal.

If police officers have omitted to report the offence to a prosecutor within the prescribed time limit or they have omitted or delayed the enforcement of the prosecutor's order or, however enforced, the order was partly or carelessly enforced, they can be prosecuted for a disciplinary offence (unless this is considered as a criminal offence).

Within each police service there are also internal controls concerning the fairness of its members' actions.

17. *Is the prosecutor competent to take sanctions?*

As mentioned at § 16, the Prosecutor General at the Court of Appeal shall be responsible for starting a disciplinary action against police officers. The law sets forth the rules to conduct disciplinary proceedings. At the end of the proceedings, some sanctions might be decided by a Commission composed of the President of a Chamber of the Court of Appeal, a Judge of the First Instance Court and a police officer belonging to the same police corp of the accused person.

As provided for by law, the accused person is fully entitled to the rights of defense. The possibility also exists (for the defense counsel and for the prosecutor) to eventually appeal to an Appeal Commission and then to the Supreme Court.

## **H. Conclusions**

*18. What are the major challenges in relations between prosecutors and investigation bodies in your country?*

In Italy, there are sometimes debates at a political level on whether it is convenient to extend the autonomy of the police, mostly with reference to the initial stages of the investigations.

However, as underlined here above, today the Italian legal system clearly states that the prosecutor is responsible for directly conducting the investigations himself and the police are subject to it.

If we wish the system to work properly, we need a high standard for the prosecutors' professional qualifications, even in relation to investigation techniques. Police officers are themselves specialized in some sectors. Therefore, the prosecutor has the duty (and should have the ability) to exploit this specialization at its best and to avoid that police subordination might lead to lack of motivation in conducting investigations.

From another point of view, the prosecutor must carefully avoid in individual cases that rivalries or competitions between different police services might hinder investigations. Instead, he has to promote coordination as much as possible.

On his side, the prosecutor must be able to play a really autonomous role in his investigation assessments, when he carefully examines police' indications and proposals on possible investigative developments or concerning investigative results tending to committal the suspect for trial.



## Liechtenstein

### **A. Relationship between prosecutors and the police**

1. Please briefly describe the relationship between prosecutors and the police or other investigation body in your country.  
The National Police shall investigate ex officio or on the basis of a criminal complaint, but it shall comply with instructions from the Office of the Public Prosecutor. The National Police shall keep records on its investigations, so that the cause, the implementation, and the result of such investigations may be verified; it shall report to the Office of the Public Prosecutor in writing. The Office of the Public Prosecutor is entitled to have the National Police carry out provisional enquiries.
2. Is there any dialogue with the prosecutor concerning the work of the police or other investigation body?  
There can be a dialogue between the prosecutor and the police – if necessary – in any case. At least once a year there are meetings between prosecutors of the Office of the Public Prosecutor and the heads of several services of the National Police.
3. Is the prosecutor involved in training the police or other investigation body?  
There is no regular involvement of prosecutors in training of the police, but about once a year a prosecutor of the Office of the Public Prosecutor takes part as an instructor in a training of the National Police.

### **B. Existing legal provisions and regulations**

4. Is any relationship between prosecutors and investigation bodies determined by law or other provisions? Please describe briefly.  
The relationship between the Office of the Public Prosecutor and the National Police is determined in the CPC (code of criminal procedure):

#### § 9

- 1) The National Police shall take part in the investigation and prosecution of offences in terms of the provisions of this Act. It shall investigate ex officio or on the basis of a criminal complaint; it shall comply with instructions from the Office of the Public Prosecutor and the Court.
- 2) Subject to Art. 21 et sqq. of the Police Act (Polizeigesetz), the National Police shall have authority to apply proportionate and adequate coercion to implement the instructions of the Office of the Public Prosecutor or the Court (Art. 20 of the Police Act) or the powers granted to it by this Act. In this, the National Police shall - subject to the conditions and formal requirements

respectively provided in each case - have the power to also use physical force against persons and items as far as this is indispensable for the investigation and less grave means are not suitable. An arrest warrant (§ 128 (1)) shall also provide authority to search the apartment or other places protected by the immunity of the home for the person to be arrested as far as the arrest is to be carried out in these places according to the warrant.

3) As far and as long as this is necessary for carrying out a coercive measure or for the recording of evidence, the National Police shall have the power *ex officio* or on the basis of a direction to close containers or facilities by affixing a seal or to close off crime scenes in order to prevent unauthorised access.

4) If a person refuses an act which such person is legally obliged to carry out, such act may be directly replaced by coercion pursuant to paragraph 2 or by a judicial decision. If this is not possible, the person - unless such person is him-/herself suspect of the offence or privileged from testifying - may be coerced by recurring penalties to comply with such obligation. Recurring penalties may only be applied as far as they are proportionate to the gravity of the offence, to the degree of the suspicion, and to the result that is being striven for.

5) The eligible recurring penalties shall be a fine of up to 10,000 Swiss francs and in important cases up to six weeks of imprisonment. The application and the amount of recurring penalties shall be decided by the Court.

6) The application of direct coercion shall be threatened and announced if the person concerned by it is present. This may only be refrained from if the success of the investigation would be thwarted otherwise.

## § 10

1) The National Police shall be obliged to investigate every criminal offense which is subject to indictment and suspicion of which has been brought to their attention. For this purpose the National Police shall without delay carry out inquiries to ascertain the facts and issue such orders as are necessary to prevent the removal of the traces of the criminal act or the escape of the suspect. The National Police shall only be permitted unsolicitedly to take persons into custody, and to take other coercive measures, in the cases envisaged in this law. They shall inform the Office of the Public Prosecutor or the investigating judge of their orders and inquiries in accordance with § 11.

2) To perform their duty in accordance with paragraph 1 the National Police shall be entitled,

1. to receive communications and demand information from persons;

2. to ascertain the identity of suspects and persons who can contribute towards clarification of the suspicion (§ 91a);
3. to take fingerprints and photographs of persons who are strongly suspected of a crime or an offense (Art. 24a of the Police Act);
4. to question unsworn witnesses and suspects, whereby the National Police shall apply mutatis mutandis the provisions of Titles X. to XII;
5. to search real estate and premises which are not accessible to the general public and do not form part of a household (§ 92 paragraph 1), vehicles or containers, as well as a person, in accordance with § 92 paragraph 2;
6. to carry out a house search in the cases listed under § 94;
7. to arrange the investigation of biological traces at the scene of a crime or the non-invasive sampling of persons (§ 95a paragraph 3, last sentence);
8. to seize items pursuant to § 96a;
9. to monitor the behavior of a person pursuant to § 104a;
10. to carry out an undercover inquiry (§ 104b).

3) Insofar as the National Police are not carrying out an undercover inquiry, they shall point out their official status, unless this is obvious from the circumstances. They are permitted to receive communications or demand information provided this is given voluntarily and is not obtained by compulsion. The provisions concerning the questioning of persons charged and witnesses shall not be permitted to be circumvented thereby. The subject-matter of information provided and other circumstances which has been obtained through such inquiries and which may be of significance for the proceedings shall be recorded in an official memorandum (§ 47 paragraph 2).

4) A deferment of the inquiries incumbent upon the National Police in accordance with this provision is permissible if

1. this promotes the clarification of a substantially more serious criminal act or the gathering of information on a leading accessory to the commission of the punishable act and this deferment does not involve any serious risk to life, health, physical injury or the freedom of third parties, or
2. otherwise a serious risk to life, health, physical injury or the freedom of a person would arise, which cannot be averted in another manner.

5) The National Police shall without delay inform the Office of the Public Prosecutor about a deferment in accordance with paragraph 4.

§ 11

1) The National Police shall keep records on its investigations, so that the cause, the implementation, and the result of such investigations may be verified. It shall state grounds for the exercise of coercion and of powers that are connected with an infringement of rights, as far as such grounds are not already evident from the order of the Office of the Public Prosecutor or of the Court.

2) The National Police shall report to the Office of the Public Prosecutor in writing (paragraph 1) if and as soon as

1. it learns of the suspicion of a grave crime or another offence of particular public interest (report of occurrence);
2. an order from the Office of the Public Prosecutor or from the Court is required or these demand a report (required report);
3. it has completed its investigation pursuant to §§ 9 and 10, but in any event as soon as three months have passed in proceedings against a certain person since the first investigation against such person without a report having been submitted, or if three months have passed since the last report (interim report);
4. it has completed all investigations ordered or if the facts and suspicions appear sufficiently clarified for a decision of the Office of the Public Prosecutor on indictment, the discontinuation of prosecution, or the closing of proceedings (final report).

3) A report in terms of paragraph 2 shall in particular contain the following, unless these circumstances have not already been reported:

1. the names of the accused persons - or, if these are unknown, the characteristics necessary to seek them out or identify them - , their financial situation, the deeds of which they are suspect, and the legal designation of those deeds;
2. the names of the persons who filed complaints, the victims, and any other persons who may contribute to clarification;
3. a coherent statement of the facts and suggestions for further procedure;
4. any applications from the accused persons or from other participants of the proceedings as well as statements of injured parties to join the criminal proceedings for civil-law claims.

4) With each report, the Office of the Public Prosecutor or the Court shall - as far as this has not yet been done - be provided with all records of the National Police necessary for assessing the factual and legal situation.

5) The National Police shall permit the inspection of the files only if so ordered by the Court; applications to such effect shall otherwise be handled pursuant to paragraph 2, subparagraph 2.

#### § 21a

1) For this purpose, the Office of the Public Prosecutor shall also be entitled to have the National Police or the investigating judge carry out provisional enquiries in order to obtain the necessary reference points for initiating criminal proceedings against a specific person (§ 22 paragraph 1).

2) The investigating judge shall have the same rights and duties in these provisional enquiries that he has in the investigation; the National Police shall proceed in accordance with the provisions of Title Ia.

3) The Office of the Public Prosecutor shall be entitled to have the National Police question persons who are likely to be able to provide clarification concerning punishable acts that have been committed. The Office of the Public Prosecutor may also itself question such persons, but not under oath, and have the National Police gather evidence by inspection and search premises, and it may accompany such official acts, if they cannot be carried out or ordered by the competent investigating judge because of an imminent danger.

4) The records of such acts, for which all formalities required for judicial official acts of this kind must be complied with, may however be used as evidence only if they are immediately communicated to the investigating judge, who shall verify their form and completeness and if necessary shall ensure that the acts are repeated or completed; otherwise, the records shall be deemed null and void.

#### **C. *Responsibility of the prosecutor for setting priorities for investigating offenses***

5. How are priorities in starting criminal investigations in your country determined?  
There are no priorities in starting criminal investigations in Liechtenstein. The National Police shall pursuant to § 9, paragraph 1 CPC investigate *ex officio* or on the basis of a criminal complaint. Pursuant to § 21, paragraph 1 CPC the Office of the Public Prosecutor shall, *ex officio* and with the assistance of the National Police, be responsible for solving all punishable acts of which it gains knowledge and which are not subject to investigation and punishment merely at the request of an involved party, and it shall prosecute those suspected of committing the punishable acts, in order to enable the court to do what is necessary for purposes of investigation and punishment.

6. Do prosecutors or the prosecution service in a direct way have an influence on this?

No, see answer to 5.

**D. Responsibility of the prosecutor during the investigation**

7. Are prosecutors responsible for the conduct of investigations in your country? If no, who is responsible for that?  
The National Police shall investigate *ex officio*, but it shall comply with instructions from the Office of the Public Prosecutor. The National Police shall report to the Office of the Public Prosecutor in writing.  
Pursuant to § 21, paragraph 1 CPC the Office of the Public Prosecutor shall, *ex officio* and with the assistance of the National Police, be responsible for solving all punishable acts of which it gains knowledge.
8. When does the prosecutor receive a complaint (as soon as the complaint is filed, or after the investigation has been conducted by the police)?  
The National Police shall keep records on its investigations, so that the cause, the implementation, and the result of such investigations may be verified. It shall state grounds for the exercise of coercion and of powers that are connected with an infringement of rights, as far as such grounds are not already evident from the order of the Office of the Public Prosecutor or of the Court. The National Police shall report to the Office of the Public Prosecutor in writing (see § 11 CPC).
9. What is the degree of autonomy of the police or other investigation body, if any, during the investigation?  
The National Police shall investigate *ex officio*, but it shall comply with instructions from the Office of the Public Prosecutor (see § 9 CPC). The National Police shall report to the Office of the Public Prosecutor in writing (see § 11 CPC).
10. Does the prosecutor have the power to prevent or stop an investigation?  
Yes, the National Police shall comply with instructions from the Office of the Public Prosecutor (see § 9 CPC).
11. How is it decided which service of the police or other investigation body, if any, is competent to investigate?  
This is stipulated in the Police Act (Polizeigesetz) and in ordinances and instructions of the National Police.
12. If the prosecutor leads the police or other criminal investigation in your country, does the prosecutor have the power to monitor compliance with his/her instructions? If so, please briefly describe.  
One way of control or monitoring of the National Police concerning instructions of the prosecutor are the written reports of the National Police to the Office of the Public Prosecutor; the Office of

the Public Prosecutor can also demand a report from the National Police, especially concerning instructions of the prosecutor (required report).

**E. Responsibility of the prosecutor for the respect of the law**

13. Is it a responsibility of the prosecutor to control respect for the law by the police or other investigation body, if any? If yes, at which stage and by which means of control?  
There is no responsibility of the prosecutor to control respect for the law by the police. Pursuant to § 9, paragraph 1 CPC the National Police shall take part in the investigation and prosecution of offences in terms of the provisions of the CPC.

**F. Common principles concerning the police**

14. Are there written regulations concerning the conduct of criminal investigations by the police or other investigation body?  
Yes, see § 9 to § 11 CPC.
15. What are these regulations about? (for instance, the way to carry out interrogations, deprivation of liberty etc.)  
Yes, see § 9 to § 11 CPC.

**G. General control over police**

16. What is the general control system of the police or other investigation body, if any (internal/external?) Does the prosecutor play a role in this system?  
The National Police is subordinated to the government; the minister of the interior can give instructions and exercises the supervision, e.g. for the respect of the law by the police (Art. 8 and 9 Police Act).
17. Is the prosecutor competent to take sanctions?  
No, only the government and/or the minister of the interior (see answer to 16).

**H. Conclusions**

18. What are the major challenges in relations between prosecutors and investigation bodies in your country?  
The National Police should file the written reports to the Office of the Public Prosecutor as soon as possible after the date on which the offence was committed; the reports of the National Police should contain all the relevant facts of the reported offence.

## Lithuania / Lituanie

### *A. Relationship between prosecutors and the police*

1. Please briefly describe the relationship between prosecutors and the police or other investigation body in your country.

**When directing the course of pre-trial investigation, prosecutors give instructions, within the limits of their competence, to pre-trial investigation authorities with regard to carrying out of certain procedural actions, and also verify the lawfulness and validity of procedural actions and decisions by pre-trial investigation authority officers.**

2. Is there any dialogue with the prosecutor concerning the work of the police or other investigation body? **Prosecutor directing the pre-trial investigation and the pre-trial investigation officer conducting the pre-trial investigation maintain contacts with each other: coordinate procedural actions, deadlines for their execution, course of investigation, results thereof, deal with issues issues that might arise.**
3. Is the prosecutor involved in training the police or other investigation body? **Legal acts do not provide for such obligation, however, in practice the prosecutors often lecture officers of pre-trial investigation authorities, joint trainings are being organised.**

### *B. Existing legal provisions and regulations*

4. Is any relationship between prosecutors and investigation bodies determined by law or other provisions? Please describe briefly.

**Article 164 Paragraph 1 of the Code of Criminal Procedure of the Republic of Lithuania (hereinafter referred to as CCP of RL) stipulates that pre-trial investigation shall be carried out by pre-trial investigation officers. The prosecutor shall organise and direct the course of pre-trial investigation. The prosecutor may decide to conduct the entire pre-trial investigation or part thereof by himself.**



Article 170 Paragraph 2 of CCP of RL (Powers of prosecutor while carrying out pre-trial investigation) provides that in cases where the pre-trial investigation or separate actions thereof are being carried out by pre-trial investigation officers, the prosecutor shall be obliged to control how the pre-trial investigation is going on. Paragraph 3 stipulates that the prosecutor shall give mandatory orders to pre-trial investigation officers, revoke their decisions which are unlawful or invalid, and entrust the criminal intelligence subjects with the task of using methods or means of collecting criminal intelligence information whereby the rights of a person as specified under Article 44 Paragraph 9 of this Code are not restricted.

Article 172 Paragraph 1 of CCP of RL (Rights and duties of pre-trial investigation officers) When carrying out a pre-trial investigation, the pre-trial investigation officer shall have the right to carry out all actions specified under this Code with the exception of those which may only be implemented by a prosecutor or a pre-trial judge. Paragraph 2 of this Article lists the following duties of a pre-trial investigation officer: to carry out all the necessary procedural actions so as to promptly and thoroughly disclose the criminal offences; to comply with all instructions given by the prosecutor; to inform the prosecutor about the course of pre-trial investigation at the time specified by the latter.

*C. Responsibility of the prosecutor for setting priorities for investigating offenses*

5. How are priorities in starting criminal investigations in your country determined?

The Criminal Procedure Code of the Republic of Lithuania provides that an investigation has to be carried out in all cases when attributes of a criminal offence are identified. Besides, investigations covered by the Description of the Pre-Trial Investigations Carried out by the Police (as approved by the order of the Prosecutor General of the Republic of Lithuania and the Police Commissioner General of Lithuania) are prioritized on the basis of the gravity and threat degree of a criminal offence.

6. Do prosecutors or the prosecution service in a direct way have an influence on this?

Yes. Prosecutor may influence the priority of the investigation and can decide on the transfer of pre-trial investigation following the territorial principle and the subject matter. The criminal law of the Republic of Lithuania provides that all criminal offences have to be investigated.

*D. Responsibility of the prosecutor during the investigation*

7. Are prosecutors responsible for the conduct of investigations in your country? If no, who is responsible for that?

Prosecutor is entitled to carry out the entire pre-trial investigation or separate pre-trial investigation actions by himself. Paragraph 2: in cases where the pre-trial investigation or separate actions thereof are being carried out by pre-trial investigation officers, the prosecutor shall be obliged to control how the pre-trial investigation is going on (Article 170, Paragraphs 1-2 of CCP of RL).

8. When does the prosecutor receive a complaint (as soon as the complaint is filed, or after the investigation has been conducted by the police)?

As soon as the complaint is filed. In accordance with the provisions of Article 62 Paragraph 2 of CCP of RL (Appealing against procedural actions and decisions by pre-trial investigation officer),

the complaint is filed to the prosecutor either directly or through the pre-trial investigation officer whose procedural actions or decisions are being appealed against. Paragraph 3 of this Article states that the pre-trial investigation officer must refer the thus received complaint as well as his explanations related thereto to the prosecutor within one day from the day of the receipt of the aforementioned complaint.

9. What is the degree of autonomy of the police or other investigation body, if any, during the investigation?

**In accordance with the provisions of Article 172 Paragraph 1 of CCP of RL, pre-trial investigation officer shall have the right to carry out all actions specified under CCP with the exception of those which may only be implemented by a prosecutor or a pre-trial judge.**

10. Does the prosecutor have the power to prevent or stop an investigation?

**Prevent:** a prosecutor or a pre-trial investigation officer, upon receiving a complaint, an application or a report and in relevant cases clarification thereof, shall refuse to initiate a pre-trial investigation only in cases where the specified data about a criminal offence are evidently untrue or where the presence of circumstances defined under Article 3 Paragraph 1 of this Code (i.e. circumstances under which the criminal proceedings are not possible) is clearly evident. For the purposes of clarification of data presented in the received complaint, application or report a number of actions which are not related to procedural constraint measures may be carried out, such as:

- **Inspection of the scene of the event;**
- **Interviews of witnesses of the event;**
- **Demand for data or documents to be supplied by state or municipal enterprises, establishments, organisations, or by the applicant or by the person in whose interests such a complaint, application or report has been filed;**
- **Interviews of the applicant or the person in whose interests such a complaint, application or report has been filed.**

**Such procedural actions must be completed within the shortest time span possible but the term of their completion must not exceed the period of 10 days (Article 168 Paragraph 1 of CCP of RL).**

**Stop:** in accordance with the provisions of Article 3<sup>1</sup> Paragraph 1 of CCP of RL (Suspension of pre-trial investigation in cases where the person having committed the crime has not been identified), in cases where all the relevant procedural actions have been conducted and all possibilities to identify the person having committed the crime have been exhausted during the pre-trial investigation but such person has not been identified yet, the pre-trial investigation may be suspended on the grounds of a reasoned decision by the prosecutor. The prosecutor's decision to suspend the pre-trial investigation may be appealed against in accordance with the procedure defined under Article 63 of this Code within the term of seven days from the day when the copy of such a decision has been served upon the aggrieved person or representative thereof.

11. How is it decided which service of the police or other investigation body, if any, is competent to investigate?

**The prosecutor may assign the task of conducting pre-trial investigation into any type of criminal offence or individual pre-trial investigation actions to the police, however, with regard to the**

functions prescribed in the laws governing the operations of different institutions, **Recommendations On Distribution of Crime Investigation to Pre-Trial Investigation Authorities** (approved by the Order of the Prosecutor General of the Republic of Lithuania) contains a list of authorities which, as recommended, are to be entrusted with the task of carrying out investigations into specific criminal offences.

12. If the prosecutor leads the police or other criminal investigation in your country, does the prosecutor have the power to monitor compliance with his/her instructions? If so, please briefly describe.

**The prosecutor shall verify the lawfulness and validity of procedural decisions and actions of any officer from a pre-trial investigation authority. Article 170 Paragraph 2 of CCP of RL obliges the prosecutor to control the course of pre-trial investigation in cases where the pre-trial investigation or individual actions thereof are being conducted by pre-trial investigation officers.**

*E. Responsibility of the prosecutor for the respect of the law*

13. Is it a responsibility of the prosecutor to control respect for the law by the police or other investigation body, if any? If yes, at which stage and by which means of control?

**Article 170 Paragraph 2 of CCP of RL: in cases where pre-trial investigation or individual actions thereof are being conducted by pre-trial investigation officers, the prosecutor must control how the pre-trial investigation is being proceeded with. Paragraph 3 of this Article entitles the prosecutor to revoke unlawful or invalid decisions made by the pre-trial investigation officer, and this is applicable during the entire term of the pre-trial investigation.**

*F. Common principles concerning the police*

14. Are there written regulations concerning the conduct of criminal investigations by the police or other investigation body?

**Pre-trial investigation is being conducted and organised in accordance with the procedure prescribed by CCP of RL, additionally some questions are specified in the recommendations of the Prosecutor General.**

15. What are these regulations about? (for instance, the way to carry out interrogations, deprivation of liberty etc.)

**These are various recommendations approved by the Order of the Prosecutor General, e.g. on the commencement of pre-trial investigation and procedures for registration thereof; on the procedures for monitoring the compliance with the conditions set by constraint measures (with the exception of arrest); on the interviews of minor witnesses and minor victims; methodical recommendations on the specificity of organisation of pre-trial investigation into criminal offences committed on racial, nationalist, xenophobic, homophobic or any other grounds of discriminatory nature, direction of such pre-trial investigations and conduct thereof, etc.**

*G. General control over police*

16. What is the general control system of the police or other investigation body, if any (internal/external?) Does the prosecutor play a role in this system?

*External:* prosecutor directing pre-trial investigation – in cases where pre-trial investigation or individual actions thereof are being conducted by pre-trial investigation officers, the prosecutor shall be obliged to control the course of pre-trial investigation. Paragraph 3 stipulates that the prosecutor shall give mandatory orders to pre-trial investigation officers, revoke their decisions which are unlawful or invalid <...> (Article 170 Paragraphs 2 and 3 of CCP of RL).

*Internal:* the head of a pre-trial investigation authority or branch thereof, shall, within the limits of his/her competence: organise and control the conduct of pre-trial investigation actions; ensure that the pre-trial investigation officers subordinate to him/her carry out pre-trial investigations within the shortest terms possible and duly disclose criminal offences; organise and control the compliance with the instructions or assignments by the prosecutor in respect of procedural actions and decisions.

17. Is the prosecutor competent to take sanctions?

**Prosecutor ensures legitimacy of procedural actions, i.e. revokes unlawful or ungrounded decisions made by pre-trial investigation officers, and can initiate disciplinary proceedings against the pre-trial investigation officer.**

#### *H. Conclusions*

18. What are the major challenges in relations between prosecutors and investigation bodies in your country?

**Major challenges occur only as a result of heavy workload of prosecutors and pre-trial investigation officers.**

## Monaco

### **A. Les relations entre les procureurs et la police**

1. Veuillez décrire brièvement les relations entre les procureurs et la police ou une autre instance chargée d'enquête dans votre pays.

*En Principauté de Monaco la police exerce à la fois des missions administratives et judiciaires. Les relations entre le procureur et la police ne concernent donc que cette dernière matière qui consiste à constater les infractions, à en découvrir les auteurs pour les déférer ensuite au procureur. C'est dans ce cadre que le procureur supervise les activités de police judiciaire de la police et les enquêtes menées par celle-ci pour arrêter les suspects.*

2. Existe-t-il un dialogue avec le procureur concernant le travail de la police ou une autre instance chargée d'enquête ?

*Le procureur dialogue quotidiennement avec la police laquelle est soumise à son contrôle quand elle exerce des missions de police judiciaire. Il leur donne des directives générales de politique pénale ou dirige spécialement les enquêtes menées par la police sur les délits qui lui ont été dénoncés ou qu'elle a pu constater.*

3. Le procureur est-il impliqué dans les formations dispensées à la police ou une autre instance chargée d'enquête ?

*Le procureur est conduit à participer à la formation des policiers en leur dispensant des cours ou à l'occasion de réunions qu'il organise pour évoquer les problèmes relatifs aux enquêtes et à leurs suites devant le tribunal. Le procureur participe également aux épreuves de recrutement des policiers.*

### **B. Dispositions actuelles légales et réglementaires**

4. Les relations entre les procureurs et les instances chargées d'enquête sont-elles déterminées par la loi ou par d'autres normes écrites ? Décrivez-les brièvement.

*Les relations entre les procureurs et les instances chargées d'enquêtes dont la police sont très précisément organisées par la loi et notamment le code pénal et le code de procédure pénale. Des décrets, des règlements ou encore des circulaires complètent ce cadre en détaillant l'organisation de ces relations.*

### **Responsabilité du procureur dans l'établissement des priorités pour les enquêtes sur les infractions**

5. Comment les priorités pour initier des enquêtes pénales dans votre pays sont-elles déterminées ?

*Des directives de politique pénale générale peuvent être adressées au procureur par le Directeur des Services Judiciaires (par exemple : lutte contre les violences, l'insécurité routière ou les trafics de substances stupéfiantes...). Le procureur répercute ces instructions générales aux services de police et vérifie que ces services les mettent en œuvre.*

6. Les procureurs ou le ministère public ont-ils une influence de façon directe sur la détermination de ces priorités ?

*En traitant les procédures établies par les services de police, le procureur est en mesure de déterminer les contentieux qui suscitent le plus de difficultés et d'imposer en conséquence à la police des objectifs prioritaires.*

### **C. Responsabilité du procureur durant l'enquête**

7. Les procureurs sont-ils responsables de la conduite des enquêtes dans votre pays ? Si ce n'est pas le cas, qui endosse cette responsabilité ?

*Le procureur a la direction de la police judiciaire. En conséquence il supervise la conduite des enquêtes et donne des instructions très précises aux policiers pour permettre l'élucidation des affaires et l'arrestation des suspects.*

8. Durant quelle phase de la procédure le procureur reçoit-il les plaintes (dès lors qu'elle est déposée ou après que la police a mené son enquête) ?

*Les plaintes peuvent être déposées directement à la police qui en informe le procureur. Le procureur peut aussi recevoir directement des plaintes et les transmettre ensuite à la police pour que celle-ci puisse mener son enquête. Le procureur est également informé par la police de toutes les infractions que celle-ci a pu constater.*

9. Quel est le degré d'autonomie de la police ou de toute autre instance chargée d'enquête durant la phase d'enquête ?

*Les enquêtes de la police sont soumises au contrôle du procureur. Les policiers doivent toutefois faire preuve d'initiatives. Il leur est loisible de procéder à des arrestations et de placer en garde à vue, c'est-à-dire de retenir à leur disposition des suspects pour les interroger en présence d'un avocat. La durée de la garde à vue est toutefois réglementée (24 heures susceptibles d'une prolongation de 24 heures) et elle est soumise au contrôle du procureur qui en est immédiatement avisé, et peut, le cas échéant, y mettre fin ou la faire prolonger.*

10. Le procureur a-t-il le pouvoir d'empêcher ou de mettre fin à une enquête ?

*Le procureur peut empêcher une enquête ou mettre fin à une enquête s'il estime que les faits objets des investigations de la police ne constituent pas une infraction pénale.*

11. Comment est décidé la compétence d'enquêter du service de police ou d'une autre instance ?

*C'est le procureur qui choisit le service qui sera chargé d'enquêter lorsqu'il est informé de la constatation d'une infraction ou du dépôt d'une plainte.*

12. Si le procureur dirige la police ou une autre enquête pénale dans votre pays, a-t-il le pouvoir de contrôler le respect de l'application des instructions qu'il a données ? Si oui, veuillez décrire brièvement.

*Le procureur vérifie effectivement la bonne exécution des instructions d'enquête qu'il a directement données aux services de police. Ses instructions peuvent être verbales mais aussi écrites et les services de police sont tenus de s'y conformer.*

**D. Responsabilité du procureur dans le respect de la loi**

13. Le contrôle du respect de la loi par la police ou toute autre instance chargée d'enquête fait-il partie des responsabilités du procureur ? Si oui, durant quelle(s) phase(s) et par quels moyens de contrôle ?

*Garant des libertés individuelles comme les juges, le procureur doit veiller au respect de celles-ci et de la loi par la police. Informé de toute arrestation et garde à vue, il a la possibilité de contrôler cette mesure et de rencontrer à tout moment le suspect pour s'entretenir avec lui et vérifier que ses droits ont été scrupuleusement respectés. Dans l'hypothèse où il serait conduit à constater des illégalités ou des irrégularités, le procureur doit immédiatement y mettre fin et en tirer les conséquences pénales ou disciplinaires envers le policier fautif.*

**E. Principes communs concernant la police**

14. Existe-t-il des règlements écrits concernant la conduite des enquêtes criminelles par la police ou autre instance chargée d'enquête ?

*Le code de procédure pénale monégasque décrit très précisément la procédure qui doit être suivie dans la conduite des enquêtes par les services de police. Ce code est complété par des notes ou des circulaires ainsi que par des recommandations du procureur auquel les policiers doivent se référer dans l'exercice de leur mission de police judiciaire.*

15. Sur quoi portent ces règlements ? (par exemple, la manière de procéder à des interrogatoires, la privation de liberté, etc.)

*Le code de procédure pénale régit très précisément les conditions de l'interpellation des suspects, les droits qui sont les leurs ainsi que les délais à l'issue desquels ils doivent être relâchés ou présentés à la justice. Les modalités des interrogatoires sont également prévues comme celles des perquisitions ou encore des écoutes téléphoniques. Le code organise également des techniques spéciales d'enquête. Enfin, une charte déontologique suggère aux policiers l'attitude qu'ils doivent adopter avec les suspects et les victimes d'infractions pénales.*

**F. Contrôle général sur la police**

16. En quoi consiste le système de contrôle de la police (interne/externe) ? Le procureur joue-t-il un rôle dans ce système ?

*Le procureur contrôle l'exercice de la police judiciaire et adresse aux policiers les observations ou recommandations que ce contrôle lui suggère. Les policiers sont aussi soumis au contrôle de leur hiérarchie administrative.*

17. Le procureur a-t-il le pouvoir de prononcer des sanctions ?

*Le procureur et le premier président de la cour d'appel notent les officiers de police judiciaire. Si nécessaire, le procureur général peut les sanctionner mais ce pouvoir disciplinaire appartient surtout à la cour d'appel.*

## **G. Conclusions**

18. S'agissant des relations entre les procureurs et les instances chargées d'enquête dans votre pays, quels en sont les principaux enjeux actuels ?

*Il s'agit de faire en sorte que les services de police mettent en œuvre suffisamment de moyens notamment en termes d'effectifs de policiers pour traiter les priorités qui leur ont été assignées par le procureur. A cet égard, des divergences peuvent apparaître entre le souhait des procureurs et les objectifs retenus par les responsables des services de police.*



## Netherlands / Pays-Bas

### **A. Relationship between prosecutors and the police**

1. Please briefly describe the relationship between prosecutors and the police or other investigation body in your country.

In short, the prosecutors are responsible for the conduct of the police when this conduct concerns investigation activities. Police officers often need the permission of a prosecutor when they wish to undertake activities within the context of investigation. The main aim of a prosecutor is to maintain the rule of law, when it comes to criminal matters. In very important cases the prosecutor is conducting the police on a daily basis.

2. Is there any dialogue with the prosecutor concerning the work of the police or other investigation body?

As mentioned above, sometimes the permission of a prosecutor is required. For example, a police officer is not allowed to confiscate assets or capital without permission of a prosecutor.

3. Is the prosecutor involved in training the police or other investigation body?  
No.

### **B. Existing legal provisions and regulations**

4. Is any relationship between prosecutors and investigation bodies determined by law or other provisions? Please describe briefly.

There are several sections determining the relationship between prosecutors and investigation bodies. The most important one is probably section 148 of the Code of Criminal Procedure, saying this: **Section 148**

**[1.]** The public prosecutor shall be charged with the detection of criminal offences which are tried by the District Court in the district in which he is appointed, and with the detection of the criminal offences within the area of jurisdiction of that District Court, which are tried by other District Courts.

**[2.]** To that end, he shall give orders to the other persons charged with the detection.

**[3.]** In the event that he carries out the detection personally, he shall report his findings in an official record prepared under oath of office; in addition, the sources of knowledge must also be explicitly stated as much as possible.

### **C. Responsibility of the prosecutor for setting priorities for investigating offenses**

5. How are priorities in starting criminal investigations in your country determined?

In individual cases the prosecutor can decide whether or not it is expedient to start a criminal investigation against someone. In general, priorities are decided upon on a national level between Minister of Justice, the Board of Prosecutors General and the Chief of the National Police. On a local level the local Major, the local Chief prosecutor and the local police Chief will decide on priorities.

6. Do prosecutors or the prosecution service in a direct way have an influence on this?

Yes, the prosecution service as an organisation has a (a large) influence on the priorities, and, as mentioned above, prosecutors have influence on starting an investigation in a very direct way.

**D. Responsibility of the prosecutor during the investigation**

7. Are prosecutors responsible for the conduct of investigations in your country? If no, who is responsible for that?

Yes they are.

8. When does the prosecutor receive a complaint (as soon as the complaint is filed, or after the investigation has been conducted by the police)?

In the majority of cases (the smaller, less important ones, 75%) after the investigations, in the more severe, more important cases, after the complaint is filed.

9. What is the degree of autonomy of the police or other investigation body, if any, during the investigation?

When a person is caught red handed the police are competent to arrest him, search places and confiscate evidence this person is carrying. Outside red-handed matters, police officers will require the permission of a prosecutor to, for example, arrest someone. In the less important cases, the 75% less severe, the police has, except some necessary approvals of the prosecutor, a certain degree of autonomy.

10. Does the prosecutor have the power to prevent or stop an investigation?

To start an investigation, the prosecutor must find it expedient to do so. So yes, he can prevent an investigation. The prosecutor also has the power to stop an investigation, for example when there are no starting suspicions.

11. How is it decided which service of the police or other investigation body, if any, is competent to investigate?

It can depend on the type of crime, for example, when it comes to tax crimes, the investigation service called the FIOD is competent. Rules concerning the competence can be found in several sections and provisions in Dutch Law.

12. If the prosecutor leads the police or other criminal investigation in your country, does the prosecutor have the power to monitor compliance with his/her instructions? If so, please briefly describe.

Because the prosecutor is the leading authority in a criminal investigation, he has to be informed of everything the police officers do within the context of the investigation. Because of this, the prosecutor is able to monitor compliance with his instructions.

**E. Responsibility of the prosecutor for the respect of the law**

13. Is it a responsibility of the prosecutor to control respect for the law by the police or other investigation body, if any? If yes, at which stage and by which means of control?

Yes. From beginning to end, the prosecutor is the responsible authority for the conduct of the police, especially when it comes to respect for the law. Most activities of the police require his permission and therefore the prosecutor can check the legality of his orders and the acts of the police officers.

**F. Common principles concerning the police**

14. Are there written regulations concerning the conduct of criminal investigations by the police or other investigation body?

Yes, the Code of Criminal Procedure and the Police Act contain several sections concerning the conduct of the police when it comes to criminal investigation. Every act of the police must have a statutory basis.

15. What are these regulations about? (for instance, the way to carry out interrogations, deprivation of liberty etc.)

Every act of the police must have a statutory basis. The most general basis can be found in article III of the Police Act, saying that the police has the duty to take care of the maintaining of the legal order in the society.

#### **G. General control over police**

16. What is the general control system of the police or other investigation body, if any (internal/external?) Does the prosecutor play a role in this system?

The prosecutor is the authority that monitors the conduct of the police. See questions 12 and 13. Also the National Chief of police answers the Minister of Justice on this in general

17. Is the prosecutor competent to take sanctions?

Illegal actions by a police officer can be investigated by a special body within the police, disciplinary sanctions can be taken by the police chief. In more severe cases the chief prosecutor can order a special body of investigators within the Prosecution Service do start criminal investigations against the police officer.

#### **H. Conclusions**

18. What are the major challenges in relations between prosecutors and investigation bodies in your country?

The most important challenge for the prosecutor is the balance between standing together with the police, side by side to fight crime and on the other hand the prosecutor as the controller and governor of the police.

## Poland / Pologne

### **A. Relationship between prosecutors and the police**

1. Please briefly describe the relationship between prosecutors and the police or other investigation body in your country.

Prosecutors and the police are two separate state authorities.

Prosecutors and police officers, as well as officers of other organs<sup>7</sup> authorized to conduct preliminary proceedings (hereinafter: other authorized bodies) are not subordinated to one another from the organizational point of view. There is no official relationship between them.

**Mutual relations between those authorities are in the nature of legal – procedural relations.**

According to the Polish criminal procedure, in preliminary proceedings, i.e. at the stage of the process preceding judicial proceedings, a prosecutor serves a managerial and monitoring role, in other words he is a host of this stage of proceedings. Such positioning of the prosecutor in the criminal procedure determines his relations with other procedural authorities.

According to the code of criminal procedure (Law of 6 June 1997), a the prosecutor may conduct or supervise all preliminary proceedings, and, to the extent stipulated by law, such proceedings are conducted by the police.

The police is the most (after prosecutors) significant and involved state institution at the stage of preliminary proceedings.

Preliminary proceedings bodies are entities authorized (obliged) to conduct such proceedings **in the matters and in the form stipulated by the relevant provisions of law** (more on this in point 14)

Preliminary proceedings - depending on the type of offence which constitutes the subject of the proceedings - may be conducted in two forms, namely as:

- 1) **an inquiry or**

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<sup>7</sup> Preliminary proceedings may be conducted by the following authorities: Border Guards, Internal Security Agency, Central Anti-Corruption Office, Revenue Office, Fiscal Control Inspector, Customs Office, Military Police, Business Inspection, State Sanitary Inspection, Forest Guards, Hunting Guards.

## 2) an investigation.

Such a division affects the shape of legal - procedural forms of co-operation between the prosecutor, police officers and officers of other authorized bodies.

**An inquiry** – is a form of preliminary proceedings implemented in the case of matters with high gravity due to the subject of the offence, the identity of the victim or perpetrator.

An inquiry may be obligatory, which means that proceedings must be conducted in the form of an inquiry, and optional, which occurs when the prosecutor decides that the matter in which an investigation is to be conducted should be covered by an inquiry due to the importance of complexity of the case.

An inquiry is conducted by the prosecutor. The prosecutor may entrust the police with the conduct of the inquiry in whole or in a certain part, or he may delegate certain tasks to the police.

**An investigation** is conducted by the police or by bodies which hold the authority of the police, unless it is conducted by the prosecutor. This form of preliminary proceedings is anticipated mainly for matters with lesser gravity, which are less complicated, both from the actual and legal points of view.

**If the prosecutor does not conduct an inquiry or investigation in person, he supervises such proceedings.**

The prosecutor is obliged to oversee proper and efficient conduct of the whole proceedings he supervises. This concerns the correctness of individual procedural activities, correctness of collection, security and evaluation of evidence, as well as of actual findings and relevance of procedural decisions. Supervision of proper and efficient work also means monitoring of activities performed by persons exercising their authority, as well as of duties of participants in the proceedings, including, in particular, parties to the proceedings.

2. Is there any dialogue with the prosecutor concerning the work of the police or other investigation body ?

As stated in point 1, **the prosecutor is the host of preliminary proceedings, which means that any decisions, regulations and guidelines issued by him in the course of the proceedings are binding for the police and other authorized bodies. This does not, of course, overrule, a working dialogue regarding the conduct of the proceedings.** Official meetings are organized on a regular basis of the heads of prosecutor's offices of different levels with the heads of relevant police units, during which key issues are discussed. Also, individual consultations are held between the prosecutor working on the case and the officer conducting the case. Nevertheless, it is the prosecutor's prerogative to take decisions which are of key importance for the proceedings, in particular with regard to the scope, direction and forms of the proceedings, contents of any charges and the method of completing the proceedings. In this regard, the prosecutor's decisions may be verified by means of application of procedurally-

admitted remedies, but they may not form an object of a dialogue with other procedural authorities involved in preliminary proceedings.

The enactment of the Code of Criminal Procedure which will come into force on 1 July 2015 has a significant impact on the shape of relations between prosecutors and the police and other authorized bodies in this dialogue between the said bodies (more on this in point 18 of the questionnaire).

3. Is the prosecutor involved in training the police or other investigation body?

**Both initial training and continuous training for prosecutors, the police and other authorized bodies is conducted separately for each of those authorities.**

This is the consequence of organizational separation between prosecutors, the police and other authorized bodies.

**This does not mean that joint training is excluded**, police officers are invited as lecturers or participants in training organized for prosecutors, and, similarly, prosecutors are invited as lecturers and participants in training organized within the organizational structure of the police or other authorized bodies.

On a regular basis, at the initiative of prosecutors conducting or supervising proceedings, a regional training is organized for police officers regarding general rules of substantive and procedural criminal law, as well as a training devoted to specific problems of co-operation, taking into account the categories of most commonly encountered forms of criminality in a given territory. For example, in 2014, a total of 4638 meetings and training sessions were organized.

Officers of the police and other authorized bodies also participate, together with prosecutors, in training sessions and conferences organized by various international organizations.

For example, co-ordination meetings organized by Eurojust also have a training character. In 2014, 18 such meetings were organized with participation of prosecutors, police officers, officers of the Boards Guards and the Internal Security Agency, during which general issues were discussed concerning certain institutions of law, as well as specific actions and forms of co-operation were discussed regarding pending trans-border proceedings.

The problem of common training becomes particularly valid in connection with the changes introduced by the amendment to the Code of Criminal Procedure coming into force on 1 July 2015 (more on the topic of the amendment in point 18 of the questionnaire).

**B. Existing legal provisions and regulations**

4. Is any relationship between prosecutors and investigation bodies determined by law or other provisions? Please describe briefly.

**The legal - procedural framework of co-operation** between prosecutors, the police and other authorized bodies is set at the level of legal acts having the rank of statutory law. The fundamental legal acts in this regard include:

- the Law of 6 June 1997 - **the Code of Criminal Procedure**,
- the Law of 10 September 1999 - **the Fiscal Criminal Code**,
- the Law of 24 August 2001 – **the Code of Proceedings in Misdemeanour Cases**.

**At the level of executive proceedings, the most important legal act is the Regulation of the Minister of Justice of 11 September 2014 - Regulations of office of common organizational units of prosecutor service.** Moreover, the method of implementation of certain procedural institutions of preliminary proceedings is also regulated at the level of other regulations of the Minister of Justice, issued on the basis of statutory delegation.

The prosecutor also enjoys the authority of supervision of performance of certain operational-investigative activities of the police and other authorized bodies (i.e. at the stage preceding the institution of preliminary proceedings). In this regard, the amended provisions of the Law on the Police apply (which entered into force on 11 June 2011) and of the Regulation of the Minister of Justice of 9 June 2011 regarding prosecutor's supervision of operational–investigative activities.

It is believed that this regulation contributed significantly to an improvement of the quality of the level of applications for operational supervision submitted by the Police, Border Guards, Central Anti-Corruption Bureau, Internal Security Agency, General Fiscal Control Inspector or by the Military Police or the Military Counterintelligence Service.

**The status of the prosecutor in preliminary proceedings is determined by the provisions of the Law of 20 June 1985 on the Prosecutor's Service, and as far as the Police is concerned, this is the Law of 6 April 1990 on the Police.**

**Other authorized bodies are governed, respectively, by the relevant aforementioned procedural regulations and system statutory laws regulating their status and merits of their competence** (more on this topic in point 11).

**C. *Responsibility of the prosecutor for setting priorities for investigating offences***

5. How are priorities in starting criminal investigations in your country determined?

In the Polish law, **the principle of legality applies.** Pursuant to Art. 10 of the Code of Criminal Procedure, the body responsible for prosecuting offences shall have the duty to institute and conduct the preparatory proceedings, and the public prosecutor shall also be obliged to bring and support charges, with respect to an offence prosecuted ex officio. With an exception of the cases specified by

the statutory law or by international law, no-one may be released from liability for a committed offence.

In view of the adopted model of the criminal process, this question is irrelevant.

6. Do prosecutors or the prosecution service in a direct way have an influence on this?  
as above

***D. Responsibility of the prosecutor during the investigation***

7. Are prosecutors responsible for the conduct of investigations in your country? If no, who is responsible for that?

**According to the Polish criminal procedure, the prosecutor is responsible for the conduct of preliminary proceedings.**

In addition to the serving of the function of a public prosecutor in judicial proceedings - according to the provisions of law - the prosecutor institutes and conducts preliminary proceedings or orders the conduct of such proceedings to another authorized body. The prosecutor supervises preliminary proceedings conducted by another body authorized in this regard, and any dispositions of the prosecutor in preliminary proceedings are binding.

This does not mean that only the prosecutor is authorized to institute criminal proceedings in the form of an investigation. A procedural body which is most involved in initiation of preliminary proceedings is, of course, the police.

As described in detail in point 1 of the questionnaire, the prosecutor is obliged to conduct preliminary proceedings in the form of an inquiry and he may entrust the police or another authorized body with the conduct of the inquiry in whole or in certain parts, or may delegate certain activities to it. The police or another authorized body may be entrusted with the conduct of the inquiry, in whole or in a certain part, in particular in the situation when a need arises to use, to a wide extend, the operational-technical means which are at the disposal of such bodies.

In the event of preliminary proceedings conducted in the form of an investigation, the role of the prosecutor concentrates on the supervision of the proceedings conducted by the police or another authorized body. However, there are no obstacles for an investigation to be conducted by the prosecutor as well.

8. When does the prosecutor receive a complaint (as soon as the complaint is filed, or after the investigation has been conducted by the police)?

A complaint (notification of an offence) may be submitted directly to the prosecutor and then it is the prosecutor that issues a decision on an institution of



preliminary proceedings. However, in practice, in the event of investigations, the police is the authority to which complaints are filed and the police issues decisions on institution of preliminary proceedings.

**The currently-binding procedural provisions do not require the notification of the prosecutor of an institution of the investigation.** This means that throughout the investigation the prosecutor may not be informed of the course thereof. In such situation, the prosecutor serves the post-factum supervisory function, e.g. in connection with an issue of a decision on refusal of institution of proceedings or discontinuation of proceedings, such decisions - according to the current legal procedure - require the approval by the prosecutor.

If the investigation does not end within a period 2 months set by the law, then the duration thereof should be extended, and the body authorized to extend the same is the prosecutor. In practice, this is exactly the time when the prosecutor usually finds out about the conducted investigation.

The amendment of the Polish penal procedure which will come into force on 1 July 2015 will change the regulations in this regard. **According to the new provisions, immediately upon the institution of an investigation, police officers or officers of other authorized bodies will be obliged to provide the prosecutor with information about initiated procedures.**

9. What is the degree of autonomy of the police or other investigation body, if any, during the investigation?

So far, according to the procedural provisions, the prosecutor, unless he conducted the inquiry himself or assumed the conduct of the investigation, exercised the supervision over such proceedings.

However, as was stated in point 8, in practice, it is very often the police or another authorized body that independently conducts the investigation, and the prosecutor's supervision has the post-factum nature.

It is at the discretion of the police to take procedural decisions under the binding law, in the form of decisions and dispositions and to independently perform procedural activities which are not reserved for other authorities.

The police has a high degree of freedom at the stage of verification proceedings which precede the institution of preliminary proceedings. According to the code of criminal procedure, a duty to extend prosecutor's supervision to the verification proceedings is of an optional character, and the authority undertaking certain actions aimed at verifying the reliability of a complaint is not obliged to notify the prosecutor of this fact.

**The amendment to the penal procedure which will come into force on 1 July 2015 will increase the level of independence of the police in the conduct of investigations. According to the amendment, decisions issued by the police on refusal to institute an investigation or on discontinuation of an investigation in the matter (in rem) will not require the approval by the prosecutor.**

The solution proposed in the amendment is an object of quite common criticism of practitioners and representatives of the doctrine.

10. Does the prosecutor have the power to prevent or stop an investigation?

As has been stated in the preceding points, according to the Polish criminal procedure, the prosecutor, unless he performs activities under preliminary proceedings in person, supervises the course thereof.

As part of such supervision, the prosecutor may, in particular:

- 1) review the intentions of the person conducting the proceedings, indicate the directions of the proceedings and issue relevant dispositions regarding the same;
- 2) request submission of the materials gathered in the course of preliminary proceedings; participate in activities performed by the persons conducting the proceedings, perform such activities in person or take over the matter to conduct it himself; issue decisions, dispositions or instructions and **amend and revoke decisions and dispositions issued by the person conducting the proceedings. This means, among other things, that the prosecutor may take a decision on refusal to institute the proceedings, as well as on an amendment or revocation of a decision of the police or another authority, ending the proceedings.**

**This situation will change in connection with the amendment to the criminal procedure** which will come into force, as indicated in the preceding point, decisions on refusal to institute an investigation or discontinue an investigation in the matter (in rem), issued by the person conducting the proceedings in the form of an investigation, will not require an approval by the prosecutor, which means that they will be subject to verification, if any, only on the basis of a general procedure of an appeal against a procedural decision.

11. How is it decided which service of the police or other investigation body, if any, is competent to investigate?

The principle is such that preliminary proceedings are conducted or supervised by the prosecutor, and to the extent specified by the statutory law, they are conducted by the police (the Laws referred to in point 4).

It is stated directly in the code of the criminal procedure that the rights of the police are vested in the Border Guards, Internal Security Agency, the Customs Agency and the Central Anti-Corruption Office **within the scope of their respective competences**.

For instance, the exercise of the rights of the police vested in the authorities of the Border Guards, within the scope of their competence, means that the Border Guards may conduct an investigation, as well as any tasks of the inquiry entrusted by the prosecutor only in the matters which, according to the law governing such authority, i.e. the Law of 12 October 1990 on Border Guards, fall within the scope of its competence. A similar situation applies in the case of the Internal Security Agency (the authority competent for protection of internal security of the state and the constitutional order). The officer of ISA perform activities with the scope of their **substantive** competence, as specified by the Law of 24 May 2002 on the Internal Security Agency.

Executive acts of a lower rank regulate the framework of co-operation between certain levels of prosecutor's offices and the police or other authorized bodies, as indicated by the code of criminal procedure. Namely, in the majority of cases, regional prosecutor's offices co-operate with heads of police units competent for the same region. Incidentally, co-operation is established with other authorities and police units. Prosecutors from district prosecutor's offices and organized crime and corruption divisions of appeal prosecutor's offices co-operate, on a regular basis, with the Central Investigation Bureau of the Main Police Headquarters, the Internal Security Agency, the Central Anti-Corruption Office and the Internal Affairs Bureau of the Main Police Headquarters, depending on the type of cases conducted and supervised by those prosecution units. +

Other authorities authorized, in addition to the police, to conduct investigations, are specified by the Regulation of the Minister of Justice, issued on the basis of statutory delegation (of the Code of Criminal Procedure), dated 13 June 2003.

In the case of those entities, the determining factor is the **substantive scope of competence of such authorities**.

Co-operation of prosecutors with authorities which have the rights referred to in the aforementioned Regulation of the Minister of Justice depends on whether authorized bodies function within the territory of the prosecution's competence and on their activity with regard to institution of preliminary proceedings. Such co-operation, in addition to supervisory functions of the proceedings, mainly has the consultation-instructing and training character. Moreover, on-going business contacts are maintained with such authorities, and this is expressed by prosecutors' participation in meetings and training organized by such bodies.

12. If the prosecutor leads the police or other criminal investigation in your country, does the prosecutor have the power to monitor compliance with his/her instructions? If so, please briefly describe.

If the police or another authorized body is entrusted with the conduct of an inquiry in whole or to a certain extent, the prosecutor issues guidelines and specifies the deadline by which the inquiry plan has to be presented if there is a need of drawing-up the same, or a plan of activities covered by the inquiry. The plan is subject to the prosecutor's control, who, in the event of such necessity, makes relevant corrections and additions thereto and indicates procedural activities which he will perform himself or in which he wishes to participate.

**The prosecutor, while exercising supervision over the justification, legality and correctness of activities undertaken by police officers and other authorized bodies, may amend their decisions issued in the course of preliminary proceedings.**

An important means of supervision and co-operation between the supervising body and the procedurally-subordinate body entrusted with the inquiry or conducting the investigation, is the institution of **guidelines**. Guidelines are aimed at giving a proper direction and conduct of the procedural activities. In particular, they serve to indicate a proper concept, focus evidence activities or criminal-procedural evaluations concerning identified acts. At the same time, they provide for on-going supervision of the matter and enforcement of execution of the instructions issued by the prosecutor.

*E. Responsibility of the prosecutor for the respect of the law*

13. Is it a responsibility of the prosecutor to control respect for the law by the police or other investigation body, if any? If yes, at which stage and by which means of control?

**The prosecutor is obliged to oversee the compliance of the course of preliminary proceedings with the provisions of law, throughout the duration thereof, and in particular to oversee the respect of the rights of the suspect, victim and other participants in the proceedings and to provide prosecuting bodies with assistance in settlement of legal issues.**

A duty to undertake the measures provided by law and aimed at ensuring proper and uniform application of the law in the conducted criminal proceedings derives directly from the Law on Prosecution Service. One of the forms of exercising such supervision is, for instance, monitoring, at the level of the General Prosecutor's Office, of preliminary proceedings conducted in matters concerning certain types of crimes and co-ordination

of activities of common prosecutor units with regard to overcoming certain categories of crime.

The prosecutor, while undertaking the activities specified in the law, is obliged to follow the principle of impartiality and equal treatment of all citizens. Being a body of preliminary proceedings, it is obliged to follow the principle of objectivity and the principle of free evaluation of evidence.

As has already been noted, in the course of preliminary proceedings, the prosecutor supervises the activities of the police by issue of decisions, dispositions, instructions or guidelines. A failure to perform them or material misperformance thereof by an officer may entail the prosecutor's application for an institution of official or disciplinary proceedings. In the event that such breach constitutes an offence, the prosecutor may institute criminal proceedings against such officer.

**F. Common principles concerning the police**

14. Are there written regulations concerning the conduct of criminal investigations by the police or other investigation body ?

The rules of conduct of criminal proceedings by the police or other authorized bodies **are precisely specified at the level of statutory laws and executive acts** in the form of regulations (see point 4).

General recommendations concerning the conduct of certain categories of matters or implementation of legal institutions may be issued in the form of guidelines of the Prosecutor General. The guidelines of the Prosecutor General are binding for procedural bodies involved in preliminary proceedings.

The guidelines, of a general character, addressed to police officers, are also issued by the Chief Commander of the Police and by the heads of other authorized bodies.

15. What are these regulations about? (for instance, the way to carry out interrogations, deprivation of liberty etc.)

**All basic procedural institutions are regulated at the level of statutory laws**, e.g. all regulations concerning the application of preventive measures. **At the level of regulations, executive provisions are given regarding statutory dispositions.** They may not constitute duties and rights which are independent of the law. For instance, the Regulation of the Minister of Justice of 11 September 2014 Regulations of office of common organizational units of prosecutor service constitutes an executive act to the provisions of the Code of Criminal Procedure and provides for practical implementation of the statutory institutions.

On the other hand, general guidelines constitute a group of recommendations concerning individual categories of procedural activities, e.g. recommendations concerning the method of interviewing juvenile victims or, generally, the conduct of certain category of cases, e.g. hate crimes.

The guidelines of the Prosecutor General often constitute a reaction to judgements of the European Court of Human Rights. For instance, in consequence of an analysis of judgements of ECHR and an analysis of the results of the conducted monitoring of preliminary proceedings, on 27 June 2014, the Prosecutor General issued *Guidelines regarding the conduct by prosecutors of proceedings in matters concerning crimes of deprivation of life and inhuman or abusive treatment or punishment, committed by police officers or other public officers*. The guidelines are aimed at unification of the practice and elimination of any irregularities occurring therein in connection with the conduct of preliminary proceedings in this type of matters.

In the case of the police, an example of such guidelines of a general nature may be the guidelines of the Chief Commander of the Police *regarding the performance of investigative-inquiry activities by policemen* (guidelines of 15 February 2012).

#### **G. General control over police**

16. What is the general control system of the police or other investigation body, if any (internal/external?) Does the prosecutor play a role in this system?

**The observations and remarks deriving from the supervision of the work of the police authorities or other authorized bodies conducting the investigation or entrusted with the conduct of the inquiry, are notified by the prosecutor to the head of the relevant organizational unit of the police, and in particularly severe cases of failure to follow the prosecutor's instruction in preliminary proceedings, the prosecutor applies to the superior of such officer with a request for an institution of official or disciplinary proceedings against him, and, the superior office is obliged to notify the prosecutor of the outcome of such proceedings.**

The rules of exercising supervision over the investigative work of the police apply, respectively, to the prosecutor's supervision of the work of other bodies authorized to conduct the investigation. The regional prosecutor or a prosecutor appointed by him carries out, at least once a year, a control of investigations conducted by state authorities which have the rights of a public prosecutor and, if necessary, provides such authorities with the required instructions.

Any irregularities identified by prosecutors in pending preliminary proceedings are discussed and solved on an on-going basis during individual consultations between the prosecutor working on the case and the officer conducting the case, they also form the subject matter of instruction letters and comments submitted on an on-going basis to

superior officers of relevant policemen, and they are discussed during official meetings with the Police.

17. Is the prosecutor competent to take sanctions?

We should emphasize that **the prosecutor's supervision of preliminary proceedings is only of a procedural nature. The prosecutor does not exercise any official supervision of police officers and officers of other authorized bodies.** That is because a characteristic feature of official supervision is that there is organizational hierarchy and an official relationship between the supervised and supervising party.

Official supervision has the nature of internal control. Under this supervision, disciplinary or official proceedings may be implemented, and, in consequence, sanctions are imposed.

**The prosecutor is not authorized by law to apply any sanctions against police officers.** As stated in point 16, the prosecutor is only capable of launching an official or disciplinary proceedings.

#### **H. Conclusions**

18. What are the major challenges in relations between prosecutors and investigation bodies in your country?

In the current year, the greatest challenge for the relations between prosecutors and another procedural body of preliminary proceedings is connected with the enactment of the new criminal procedure.

The Polish criminal procedure is currently undergoing very significant modifications. A decision was taken on re-modelling the judicial proceedings in the direction of a higher degree of contradictoriness of criminal proceedings.

**The amendments which will come into force on 1 July 2015, introduced by means of the Law of 27 September 2013, as well as their essence and scope, have a significant impact on the conduct of preliminary proceedings by the police and performance of activities in the course of criminal proceedings.**

Starting on 1 July 2015, the purpose of preliminary proceedings will not be - as so far - collection, securing and consolidation of evidence for the court, but, according to the principles of contradictoriness - **for the public prosecutor to whom, to a great extent, responsibility will be shifted for the outcome of the proceedings.** This means that the police will collect evidence for the prosecutor, so that he, acting as the public prosecutor, can prepare the bill of indictment.

The prosecutor, in consultation with the person conducting the proceedings will take a decision on limitation of the scope of preliminary proceedings to the evidence which gives grounds for verification whether a given act which is an object of the process is an offence and for gathering basic evidence which will provide for the lodging of the bill of indictment. As far as less relevant evidence is

concerned, it will be possible to submit the same only at the stage of court proceedings. Such solution is aimed at concentration of the evidence material in the court room.

To sum up, the achievement of the underlying assumptions of the reform of the criminal procedure at the stage of preliminary proceedings will require **the tightening of co-operation of the prosecution with the police and determination of the rules thereof, with regard to:**

- 1) a change of the methodology of conducting proceedings in individual cases,
- 2) learning to formulate motions concerning evidence by police officers,
- 3) consultation of a selection of materials attached to the bill of indictment, reaching an agreement regarding withdrawal from some of the activities - so that they are performed before the court, thanks to which the case may reach the court sooner.

**It is obvious that the achievement of the anticipated goal will require a number of training sessions, some of which have been conducted already, some are pending and some are planned. It is necessary to develop a new model of co-operation between the prosecution and the police.**

Prosecutor General appointed a special Team composed of representatives of all levels of the prosecution service, judges, representatives of the National Prosecution Council and representatives of the Minister of Justice – whose task is to prepare the prosecution service, and indirectly also the police and other authorized bodies to forthcoming changes.

The co-operation with the police has also taken the shape of a platform of official co-operation and exchange of information between the General Prosecutor's Office and the Main Police Headquarters with regard to preparation of those authorities to implementation of the tasks deriving from the Law of 27 September 2013. The effect of this co-operation was, in particular, the development by the General Prosecutor's Office of a position concerning legal problems raised by the plenipotentiary of the Chief Commander of the Police responsible for the implementation of changes in criminal procedure within the police, including, in particular, the permitted participation of the police in inquiries conducted personally by the prosecutor, a duty to inform the prosecutor of an institution by the police of the investigation and the method of preparation of files of the case by the body conducting the investigation, before such



files are submitted to the prosecutor, depending on the manner of completion of preliminary proceedings.

Another, still valid challenge and problem of preliminary proceedings, both for the police and the prosecutors, is the conduct of cases characterised by a complicated legal and actual status, in particular as far as large financial cases are concerned **as** well as trans-border crime connected, in particular, with money laundering, cybercrime and drug crimes.

**It is justified to try to conduct mutual workshops and training sessions aimed at professional development in the conduct of such cases and looking for common solutions and establishment of algorithms of conduct of such cases. They are challenges exceeding the scope of national co-operation and they require the commitment both from prosecutors and the police of many states.**

With the present level of international co-operation in criminal matters, a problem is often not the knowledge of regulations of the convention, but difficulties connected with a lack of knowledge concerning mutual solutions implementing international law within the framework of the national law, or a need of development of common prevention mechanisms or mechanism fighting a certain type of trans-border crime.

Another challenge faced by Polish preliminary proceedings is to find a solution for a problem prevailing for years and connected with the inefficiency of forensic laboratories and restriction on cases when experts may be appointed who do not work for laboratories operating at the Main Police Headquarters and provincial police headquarters. The waiting time required to obtain opinions prepared by forensic laboratories was different in different police headquarters, but it amounted to a few months on average. On the other hand, finding experts who guarantee an appropriate level and reliability of opinions, within the limits of the finances which the prosecution may allocate for such opinions is not an easy task.

Another challenge **is also the continuation of database construction. Even though a significant progress may be noted in this regard**, the problem is the functioning of a large number of databases characterized by a similar scope of gathered information and no synchronization of data gathered by the prosecutors and the police. **A solution would be to create central registers having a legible and comprehensible scope of access to information.**

## Portugal

### **A. Les relations entre les procureurs et la police**

1. Veuillez décrire brièvement les relations entre les procureurs et la police ou une autre instance chargée d'enquête dans votre pays.

La direction de l'enquête appartient au Ministère Public, assisté par les différents corps de police, lesquels agissent sous la directe orientation du Ministère Public et sous sa dépendance fonctionnelle. Dans ce cadre, le Ministère Public peut déléguer dans des corps de police la réalisation de toute diligence et de toute investigation se rapportant à l'enquête (articles 263 et 270 du Code de Procédure Pénale et article 2 de la Loi d'Organisation de l'Enquête Criminelle).

2. Existe-t-il un dialogue avec le procureur concernant le travail de la police ou une autre instance chargée d'enquête ?

Vu la réponse à la première question et la dépendance fonctionnelle existante, il s'avère nécessaire de procéder à des contacts et à entretenir des dialogues fréquents entre le Procureur et les différents corps de Police, ayant notamment en vue la délimitation de l'objet de l'enquête, la définition de la stratégie de l'investigation, l'éventuel changement de cette stratégie, la définition du moment opportun pour la réalisation de diligences concrètes d'investigation et l'éclaircissement de doutes éventuels de la part de la Police.

3. Le procureur est-il impliqué dans les formations dispensées à la police ou une autre instance chargée d'enquête ?

Malgré le fait que ceci n'a pas un caractère obligatoire et régulier, les procureurs interviennent souvent dans des sessions spécifiques de formation dans les écoles de formation des différents corps de Police ou dans des actions de formation promues par les commandements respectifs.

### **B. Dispositions actuelles légales et réglementaires**

4. Les relations entre les procureurs et les instances chargées d'enquête sont-elles déterminées par la loi ou par d'autres normes écrites ? Décrivez-les brièvement.

Oui, voir la réponse à la question sous A.1.

### **C. Responsabilité du procureur dans l'établissement des priorités pour les enquêtes sur les infractions**

5. Comment les priorités pour initier des enquêtes pénales dans votre pays sont-elles déterminées ?

Les priorités se rapportant à l'investigation criminelle sont établies par une loi biennale qui définit les objectifs, priorités et orientations de la politique criminelle pour une telle période et qui doit être élaborée selon les termes de la Loi Cadre de la Politique Criminelle (Loi 17/2006, du 23 mai).

Cependant, la dernière loi publiée d'une telle nature a été la Loi 38/2009, du 20 juillet, qui a établi les orientations pour les années 2009-2011, aucune autre loi du même type n'ayant été publiée depuis.

En vue de l'absence d'une nouvelle loi de politique criminelle, les priorités sont actuellement fixées en fonction de critères d'urgence découlant de la loi (par exemple, enquêtes avec des prévenus en détention provisoire ou condamnés à des peines d'emprisonnement,, enquêtes concernant des cas de violence domestique) et de critères objectifs ayant trait à la nature de la criminalité et à la nécessité d'une intervention prioritaire (par exemple, enquêtes de corruption et d'incendie, enquêtes concernant la protection de victimes spécialement vulnérables, y inclus des enfants, des femmes enceintes, des personnes âgées, des malades ou porteurs de déficiences et des migrants, enquêtes dans lesquelles le rassemblement de la preuve doit se faire rapidement de par sa nature et de façon à éviter qu'elle ne disparaisse, comme c'est le cas en ce qui concerne l'investigation de la criminalité informatique et économique-financière, enquêtes où il puisse y avoir le risque de prescription).

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6. Les procureurs ou le ministère public ont-ils une influence de façon directe sur la détermination de ces priorités ?

L'article 219º, nº 1, de la Constitution de la République Portugaise, et l'article 1 du Statut du Ministère Public déterminent que le Ministère Public participe à l'exécution de la politique criminelle définie par les organes de souveraineté.

De ce fait, une fois la politique criminelle définie dans les termes référés sous C.5., le Ministère Public, sans préjudice de son autonomie et du respect pour le principe de légalité, doit poursuivre son actuation selon les priorités définies.

Le Procureur-Général de la République, dans le cadre des attributions du Ministère Public au sein de la procédure pénale, peut émettre des directives, ordres et instructions destinées à permettre l'exécution de la loi sur la politique criminelle.

En dehors des lois de politique criminelle, le Procureur-Général de la République peut aussi émettre des directives garantissant une nature prioritaire à l'investigation de certains types de crimes, selon les critères d'urgence qui découlent de la loi et des circonstances objectives entourant ce genre de criminalité.

Les magistrats du Ministère Public peuvent également attribuer nature urgente à une procédure particulière, selon des critères objectifs qu'ils doivent énoncer et motiver.

#### ***D. Responsabilité du procureur durant l'enquête***

7. Les procureurs sont-ils responsables de la conduite des enquêtes dans votre pays ? Si ce n'est pas le cas, qui endosse cette responsabilité ?

Oui, voir réponse sous A.1.

8. Durant quelle phase de la procédure le procureur reçoit-il les plaintes (dès lors qu'elle est déposée ou après que la police a mené son enquête) ?

Le Ministère Public prend connaissance immédiate d'une plainte, si celle-ci est déposée devant ses services. Si une telle plainte est déposée devant les corps de police, celle-ci doit être transmise au Ministère Public dans les plus brefs délais, qui ne pourront pas dépasser les 10 jours après sa déposition (article 248 du Code de Procédure Pénale).

9. Quel est le degré d'autonomie de la police ou de toute autre instance chargée d'enquête durant la phase d'enquête ?

Ainsi que décrit sous A.1., les corps de police agissent sous l'orientation directe du Ministère Public et sous sa dépendance fonctionnelle. Le Ministère Public peut toutefois déléguer, de façon générique, dans des corps de police la réalisation de toute diligence et de toute investigation se rapportant à l'enquête, en leur accordant, dans ce cadre, une plus ample autonomie dans la réalisation des diligences d'investigation à réaliser; cependant, les corps de police ne peuvent pas déterminer, de leur seule initiative, la réalisation d'expertises, fouilles et perquisitions.

Dans le cadre de cette délégation générique, les corps de police promeuvent et développent, de leur propre initiative, les diligences légalement admissibles, même si le Ministère Public peut, à tout moment, faire l'auto-saisine d'une affaire, surveiller son déroulement et contrôler sa légalité et donner des instructions spécifiques sur la réalisation de tout acte (article 2, n° 7 de la Loi d'Organisation de l'Investigation Criminelle).

Avant de recevoir l'ordre du Ministère Public de procéder à des investigations, les corps de police doivent pratiquer les actes préliminaires nécessaires et urgents en vue d'assurer les moyens de preuve; même après un tel ordre du Ministère Public, les corps de police doivent assurer, en plus, tout nouveau moyen de preuve dont ils auront connaissance (article 249 du Code de Procédure Pénale).

10. Le procureur a-t-il le pouvoir d'empêcher ou de mettre fin à une enquête ?

La nouvelle d'un crime ou d'un délit donne toujours lieu à l'ouverture d'une enquête (article 262, n° 2, du Code de Procédure Pénale).

L'enquête comprend l'ensemble de diligences permettant d'investiguer l'existence d'un crime, déterminer ses agents et leur responsabilité et découvrir et rassembler les preuves afin que soit rendue une décision sur l'accusation. Le Ministère Public est tenu de pratiquer les actes et assurer les moyens de preuve nécessaires à la réalisation des finalités de l'enquête (articles 262, n° 1 et 267 du Code de Procédure Pénale).

L'enquête ne peut être conclue que par la formulation d'une accusation ou du classement sans suite par le Ministère Public.

Le Ministère Public ne pourra clôturer une enquête par un classement sans suite que s'il y a preuve suffisante pour permettre de conclure que le crime n'a pas eu lieu ou lorsque la procédure pénale n'est pas légalement admissible; le Ministère Public doit rendre, de même, une décision de classement sans suite, lorsqu'il n'a pas à sa disposition de preuve suffisante sur la pratique du crime ou de celui qui en a été l'auteur.

En ce qui concerne la réalisation de diligences d'investigation par les corps de police, et comme souligné sous D.9., le Ministère Public peut, à tout moment, faire l'auto-saisine d'une affaire, en retirant l'investigation des corps de police et en effectuant lui-même directement les diligences qui s'avèrent nécessaires (article 2, n° 7, de la Loi d'Organisation de l'Investigation Criminelle).

11. Comment est décidé la compétence d'enquêter du service de police ou d'une autre instance ?

La compétence pour la participation d'un déterminé corps de police dans une investigation est déterminée par la loi; cependant, le Procureur-Général de la République, après avoir entendu les corps de police concernés, peut attribuer l'investigation d'un crime, dont la compétence relève d'un corps de police, à un autre corps de police, si une telle décision s'avère, dans le cas d'espèce, plus adéquat à la bonne marche de l'investigation.

12. Si le procureur dirige la police ou une autre enquête pénale dans votre pays, a-t-il le pouvoir de contrôler le respect de l'application des instructions qu'il a données ? Si oui, veuillez décrire brièvement.

Oui. Comme souligné sous A.1., la direction de l'investigation relève de la compétence du Ministère Public, aidé par les organes de police criminelle. Dans l'ordonnance de délégation de la compétence d'investigation dans les organes de police criminelle, le Ministère Public peut/doit déterminer les diligences d'investigation qu'il estime nécessaires; ultérieurement, il pourra désigner de nouvelles diligences, requises par l'avancement de l'investigation. Le Ministère Public doit également fixer un délai pour la réalisation des diligences d'investigation et accompagner leur déroulement, en vue de quoi il pourra demander des informations aux corps de police chargés de l'investigation ou solliciter que le procès-verbal lui soit remis, lorsque qu'une telle remise n'a pas lieu à la fin de la période impartie pour la réalisation de l'enquête. Le Procureur peut, à tout moment, si cela s'avère nécessaire, demander des informations sur la réalisation et le résultat de diligences concrètes.

***E. Responsabilité du procureur dans le respect de la loi***

13. Le contrôle du respect de la loi par la police ou toute autre instance chargée d'enquête fait-il partie des responsabilités du procureur ? Si oui, durant quelle(s) phase(s) et par quels moyens de contrôle ?

Oui. De façon générale, le Ministère Public, en tant qu'entité qui dirige l'enquête et contrôle l'observance de la légalité, a la responsabilité de veiller à ce que la loi soit respectée au cours de l'enquête. De ce fait, chaque fois que l'enquête lui est présenté avec des diligences réalisées par la police, le Ministère Public devra évaluer leur légalité, et déterminer si les formalismes légaux ont été respectés, aussi bien que respectés les droits et garanties des parties à la procédure affectées par ces mêmes diligences.

Dans des cas spécifiques, la loi détermine que certains actes pratiqués par les corps de police au cours de l'investigation devront être validés par le Ministère Public ou par le juge d'instruction, dans un délai établi par la loi, comme il arrive, par exemple, dans le cas de fouilles, perquisitions et saisies et lorsque que quelqu'un est mis en examen.

***F. Principes communs concernant la police***

14. Existe-t-il des règlements écrits concernant la conduite des enquêtes criminelles par la police ou autre instance chargée d'enquête ?

Oui, il y a des normes d'actuation prévues dans le Code de Procédure Pénale et dans de la législation séparée, comme c'est le cas, par exemple, de la Loi de l'Organisation de l'Investigation Criminelle, les lois organiques des différents corps de police, la loi sur les agents infiltrés, la loi de protection des témoins et la loi qui établit des mesures pour combattre la criminalité organisée.

15. Sur quoi portent ces règlements ? (par exemple, la manière de procéder à des interrogatoires, la privation de liberté, etc.)

Le Code de Procédure Pénale, aussi bien que les autres instruments législatifs règlent, matérielle et formellement, toutes les procédures auxquelles doivent obéir les diligences diverses de l'investigation, et tous les actes de la procédure devant être pratiqués lors de son déroulement (arrestations, interrogatoires, fouilles, saisies, interceptions téléphoniques). Ces procédures doivent être observées sous peine d'invalidité procédurale.

#### ***G. Contrôle général sur la police***

16. En quoi consiste le système de contrôle de la police (interne/externe) ? Le procureur joue-t-il un rôle dans ce système ?

Le contrôle de l'activité procédurale des corps de police relève du Ministère Public, aux termes de l'article 3, alinéa n) du Statut du Ministère Public et de l'article 16 de la Loi d'Organisation de l'Investigation Criminelle.

En ce qui concerne le contrôle de l'activité matérielle fonctionnelle des corps de police, le Ministère Public n'exerce aucun rôle en ce domaine. En effet, cette activité relève de la compétence de différentes inspections générales, lesquelles devront assurer les fonctions d'audit, inspection et contrôle de haut niveau, pour ce qui a trait à toute entité, service ou organisme sous la tutelle légale ou réglementaire du membre du Gouvernement responsable de ce corps de police. À titre d'exemple, la Police de Sécurité Public (PSP) et la Gendarmerie - Guardia Nacional Republicana (GNR) sont placées sous le contrôle de l'Inspection Générale de l'Administration Interne (sous la tutelle du Ministre de l'Administration Interne) et la Police Judiciaire est placée sous le contrôle de l'Inspection Générale des Services de Justice (sous la tutelle du Ministre de la Justice).

17. Le procureur a-t-il le pouvoir de prononcer des sanctions ?

Non.

#### ***H. Conclusions***

18. S'agissant des relations entre les procureurs et les instances chargées d'enquête dans votre pays, quels en sont les principaux enjeux actuels ?

De façon générale, les rapports entre les corps de police, ayant de la compétence en matière d'investigation et le Ministère Public sont plutôt positifs, en raison d'une adéquate articulation et coopération dans le domaine de l'investigation des concrets procès-verbaux.

Cependant, il arrive parfois une tension naturelle, en particulier avec des corps de police ayant une compétence spécifique, notamment pour ce qui a trait à ce qui, dans le domaine de la Loi de l'Organisation et de l'Investigation Criminelle, est désigné d'«autonomie technique» des corps de police. Ces corps de police considèrent parfois qu'il leur revient de décider, du point de vue stratégique et tactique, la réalisation des diligences, sans intervention ou connaissance préalable du Ministère Public, ou souvent sans respecter ce qui a déjà été déterminé par le magistrat en charge de l'investigation. Il s'agit d'un domaine où il s'avère toujours nécessaire de définir l'exact concept d'une telle autonomie de façon à éviter des situations de conflit qui ont déjà eu lieu.

Le partage et l'échange d'information est, de même, une question qui demande de la réflexion et un débat, dans la mesure où les corps de police ont tendance à gérer l'information selon les intérêts qu'ils considèrent déterminants pour leur actuation, sans la partager ou la transmettre au Ministère Public.

Au niveau de la communication externe de l'information sur les investigations, il y a un défi important en ce qui concerne la coordination entre le Ministère Public et les corps de police. De même pour ce qui a trait aux «fuites d'information» dans des investigations soumises au secret judiciaire.

On pourra ajouter que l'articulation de la participation de plusieurs corps de police dans une même investigation s'avère un autre défi, auquel le Ministère Public doit faire face; ce qui arrive également dans le domaine de la détermination de la compétence, lorsque plusieurs corps de police se considèrent compétents pour une même investigation ou lorsqu'un corps de police, auquel n'a pas été délégué la compétence pour l'investigation, se considère compétent pour la mener à bout.

Finalement, il faudra mentionner le besoin du renforcement des compétences de contrôle du Ministère Public vis-à-vis les différents corps de police, domaine qui a déjà fait l'objet d'un large débat mais qui, du moins pour l'instant, n'a pas encore trouvé l'indispensable point d'équilibre.

## Romania / Roumanie

### **A. Relationship between prosecutors and the police**

1. Please briefly describe the relationship between prosecutors and the police or other investigation body in your country.

The prosecutor is nominally in charge of the criminal action, but it's the police who has the mission to discover crimes and identify their perpetrators. The prosecutor runs and controls in a direct manner the activity of criminal investigation conducted by the judicial police or other special investigation bodies and sees that the criminal investigation acts are performed in compliance with the legal provisions.

2. Is there any dialogue with the prosecutor concerning the work of the police or other investigation body?

There are:

- ❖ dialogue and communication for the precise settlement of cases,
- ❖ work meetings organized by the heads of various prosecution units and/or and heads of various police units on issues of interest for joint activity and for the management of certain problems,
- ❖ participation in joint work sessions/groups initiated by other institutions.

3. Is the prosecutor involved in training the police or other investigation body?

The involvement of prosecutors is not stipulated as an obligation but, when invited, prosecutors take part in various professional training sessions/meetings of police officers or of other special investigation bodies, disseminating the knowledge they have on various topics/subjects.

The prosecutor's office also organizes seminars, conferences, scientific sessions to which they invite representatives of police or other special investigation bodies.

### **B. Existing legal provisions and regulations**

4. Is any relationship between prosecutors and investigation bodies determined by law or other provisions? Please describe briefly.

In compliance with art. 56 of the Code of criminal procedure, "*A prosecutor coordinates and controls directly criminal investigation activities performed by the judicial police and by special criminal investigation bodies set by law. Also, a prosecutor makes sure that criminal investigation acts are performed in compliance with the legal stipulations.*" A prosecutor may perform any criminal investigation act in the cases they coordinate and supervise. In certain cases, expressly set by law, the criminal investigation is mandatorily carried out by the prosecutor.

### **C. Responsibility of the prosecutor for setting priorities for investigating offenses**



5. How are priorities in starting criminal investigations in your country determined?

6. Do prosecutors or the prosecution service in a direct way have an influence on this?

5. and 6. The prosecutor supervises the activity of the criminal investigation bodies so that any crime should be revealed and any person who committed an offense should be held accountable.

Prosecutors working for a hierarchically superior prosecutor's office may take over, with a view to conducting or supervising the criminal investigation, cases falling under the competence of hierarchically inferior prosecutor's offices, by means of a reasoned disposition of the head of the hierarchically superior prosecutor's office.

A prosecutor may order, as the case may be, that the criminal investigation in a case should be conducted by another investigation body than the one receiving the notification/intimation. Taking over of a case by a hierarchically superior criminal investigation body is decided by the prosecutor working for the prosecutor's office which supervises the criminal investigation in that respective case, on the basis of the reasoned affidavit issued by the criminal investigation body taking over the case.

#### **D. Responsibility of the prosecutor during the investigation**

7. Are prosecutors responsible for the conduct of investigations in your country? If no, who is responsible for that?

See answer to question no. 4. Moreover, we should mention the provisions of art. 63 of the Law no. 304/2004 *on judicial organization*, according to which the Romanian Public Ministry, by way of its prosecutors, conducts the criminal investigation in the cases and under the conditions provided by law, it runs and supervises the criminal investigation activity of the judicial police, it runs and controls the activity of other criminal investigation bodies.

8. When does the prosecutor receive a complaint (as soon as the complaint is filed, or after the investigation has been conducted by the police)?

As a general rule, the prosecution units are immediately informed as to a criminal complaint being issued, but the effective complaint usually gets to the case prosecutor after verifications are made or when the criminal investigation starts. There are also cases in which the complaints or denunciations are issued and directly filed with the prosecutor's office.

9. What is the degree of autonomy of the police or other investigation body, if any, during the investigation?

According to art. 306 of the Code of criminal procedure,

“(1) To achieve the goal of the criminal investigation, the criminal investigation bodies must, after receiving the referral, seek out and collect data or information concerning the existence of the offenses and the identity of the individuals who committed the offenses, take steps to limit their consequences, collect and present evidence...

(2) The criminal investigation bodies are under an obligation to perform the investigative steps that are stringently necessary, even if those do not pertain to a case where they have authority to perform a criminal investigation.

(3) After the start of the criminal investigation, the criminal investigation bodies shall collect and present evidence both in favor and against the suspect or defendant.

[...]

(5) When the criminal investigation body deems it necessary to collect evidence or use special surveillance methods that can only be authorized or ordered, at the stage of criminal investigation, by a prosecutor or, as the case may be, by the Judge for Rights and Liberties, they shall submit reasoned affidavits that must comprise all the data and information that is mandatory under this procedure. The affidavit shall be submitted to the prosecutor together with the case file.”

On the other hand, according to art. 300 of the Code of criminal procedure:

“(3) In exercising their responsibilities to oversee the criminal investigation the prosecutor shall take the necessary steps or order the criminal investigation bodies to take those steps. The prosecutor can attend any criminal investigation act or perform it personally.

(4) In exercising their responsibilities to supervise the criminal investigation the prosecutor can ask to see any case file held by the criminal investigation body, and the latter is under an obligation to submit it without delay, complete with all the documents, materials and data concerning the offense that makes the object of the investigation. The prosecutor can keep any case for themselves so as to perform the criminal investigation.”

10. Does the prosecutor have the power to prevent or stop an investigation?

The prosecutor may adopt resolutions of dropping the charges and non prosecution. Therefore, after analyzing the notification, when he/she considers the necessary evidence was gathered, the prosecutor, upon proposal of the criminal investigation body or *ex-officio*, resolves the case by ordering:

√ **Classification (closing a case)**, when the prosecutor does not initiate criminal action or, as the case may be, ends the started criminal action, as it fits one of the cases expressly set by the Code of criminal procedure.

- √ **dropping prosecution (charges)**, when there isn't any public interest in prosecuting the defendant.

11. How is it decided which service of the police or other investigation body, if any, is competent to investigate?

There are provisions in laws and orders delivered by the Minister of Internal Affairs.

Also, according to art. 302 of the Code of criminal procedure:

“(1) The prosecutor can order, as necessary, that a criminal investigation in a case be performed by a different criminal investigation body than the one that received the referral.

(2) Having a criminal investigation reassigned to a hierarchically superior criminal investigation body shall be ordered by the prosecutor from the prosecutor's office that exercises supervision of the criminal investigation in that case, based on a reasoned proposal from the criminal investigation body that takes over the case.”

12. If the prosecutor leads the police or other criminal investigation in your country, does the prosecutor have the power to monitor compliance with his/her instructions? If so, please briefly describe.

A prosecutor may order as to the accomplishment of any act of criminal investigation by the criminal investigation bodies of the judicial police or by the special investigation bodies, as the case may be.

The dispositions given by the prosecutor as to the accomplishment of the criminal investigation acts are mandatory and urgent for the investigation authority, as well as for other bodies with tasks in finding crimes under the law. The hierarchically superior bodies of judicial police or of the special criminal investigation bodies cannot give directions or dispositions in relation to the criminal investigation.

In case the criminal investigation body fails to accomplish or accomplishes in a faulty manner the dispositions given by the prosecutor, the latter may notify the head of the criminal investigation body, who has the obligation, within 3 days of the notification, to inform the prosecutor as to the measures taken, or the prosecutor may order the penalty of the judicial fine for judicial defaults or he/she may request that the notice of the judicial police be rescinded.

#### ***E. Responsibility of the prosecutor for the respect of the law***

13. Is it a responsibility of the prosecutor to control respect for the law by the police or other investigation body, if any? If yes, at which stage and by which means of control?

According to art. 300 of the Code of criminal procedure:

“(1) In exercising their responsibilities to oversee and supervise the activity of criminal investigation bodies the prosecutor shall see to it that criminal investigations are performed in compliance with the requirements of the law.

(2) After referral, the criminal investigation bodies are under an obligation to inform the prosecutor of the activities they are undertaking or intend to undertake.

(3) In exercising their responsibilities to oversee the criminal investigation the prosecutor shall take the necessary steps or order the criminal investigation bodies to take those steps. The prosecutor can attend any criminal investigation act or perform it personally.

(4) In exercising their responsibilities to supervise the criminal investigation the prosecutor can ask to see any case file held by the criminal investigation body, and the latter is under an obligation to submit it without delay, complete with all the documents, materials and data concerning the offense that makes the object of the investigation. The prosecutor can keep any case for themselves so as to perform the criminal investigation.”

#### **F. Common principles concerning the police**

14. Are there written regulations concerning the conduct of criminal investigations by the police or other investigation body?

There are provisions in the Code of criminal procedures and in various laws (*for instance, the Law on the enforcement of penalties and imprisonment measures taken by the judicial bodies during the criminal trial, etc.*) regulations, etc.

15. What are these regulations about? (for instance, the way to carry out interrogations, deprivation of liberty etc.)

Hearing of the persons (hearing of the suspect/defendant, hearing of the injured party and of the responsible person in a civil lawsuit, hearing of the witness), investigation of the crime scene and re-enactment, search and taking objects and writs, enforcement of the imprisonment measures, etc.

#### **G. General control over police**

16. What is the general control system of the police or other investigation body, if any (internal/external?) Does the prosecutor play a role in this system?

Under the direct subordination of the Minister of Internal Affairs there is the Minister's Control Corps which has material and general territorial competence in conducting controls over the entities of the Ministry of Internal Affairs (MAI). In order to achieve its goals, they cooperate with other

structures within the MAI, as well as public institutions, specialized authorities and bodies of public administration, on issues of common interest, according to the legal provisions in force.

17. Is the prosecutor competent to take sanctions?

The responsibilities of the criminal investigation bodies of the judicial police are accomplished by specialized officers within the Ministry of Administration and Interior appointed under a special law, who received the assent of the prosecutor general of the Prosecutor's Office attached to the High Court of Cassation and Justice or the assent of the prosecutor appointed for this purpose.

The responsibilities of the special criminal investigation bodies are achieved by officers appointed under the special law, who received the assent of the prosecutor general of the Prosecutor's Office attached to the High Court of Cassation and Justice.

In case the criminal investigation body fails to accomplish or accomplishes in a faulty manner the dispositions given by the prosecutor, the latter may notify the head of the criminal investigation body, who has the obligation, within 3 days of the notification, to inform the prosecutor as to the measures taken, or the prosecutor may order the penalty of the judicial fine for judicial defaults or he/she may request that the notice of the judicial police be rescinded.

#### **H. Conclusions**

18. What are the major challenges in relations between prosecutors and investigation bodies in your country?

Not as major challenges, but among the important points in improving the results of the common work, we would mention: a better involvement of the prosecutors in the promotion/sanction of the police officers and common training on different topics.

## Russian Federation / Fédération de Russie

### A. Relations between Prosecutors and the Police

1. Describe in general the relations between prosecutors and the police and other investigative bodies in Your country.

The relations between the prosecutors and the police (the bodies of preliminary investigation) are conducted on the basis of Criminal Procedure Code of the Russian Federation (CPC RF), other legislative acts (for instance, Federal Laws #2202-1 “On the Prosecutor’s Office of the Russian Federation” (Law on the Prosecutor’s Office) , dated January 17, 1992; #144-FZ “On Operative and Search Activities”, dated August 12, 1998; #119-FZ “On State Protection of the Victims, Witnesses and Other Participants of the Criminal Law Proceedings”, dated August 20, 2004)<sup>8</sup>.

Each of the above mentioned participants of the legal relations acts in accordance with the volume of powers, preconditioned by their procedural functions. In Russia the prosecutor and the bodies of preliminary investigation (inquiry bodies and investigation authorities<sup>9</sup>) perform the function of criminal prosecution in criminal law proceedings. Moreover, the prosecutor has a function of supervision over the procedural activities of the bodies of preliminary investigation at the pre-trial stages of criminal law proceedings. These activities include constant control over the legality of procedural decisions and actions of the officials of the inquiry bodies and investigation authorities.

Alongside with the standards and principles of international law, which are implemented in the Russian legislation and which regulate the format of legal relations of the bodies of prosecution, police and other investigative bodies, the prosecutors also take into account the international standards of non-legal nature, including Recommendation # R (2000) 19 of the Committee of Ministers of the Council of Europe, dated October 06, 2000, “On the Role of the Prosecutor’s Office in the Criminal Justice System”.

2. Is there any dialogue with the prosecutor about the work of the police or another investigative body?

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<sup>8</sup> You can familiarize with the text of the Criminal Procedure Code of the Russian Federation and other legal acts at the Russian official Internet-portal of Legal Information: <http://www.pravo.gov.ru>

<sup>9</sup> The preliminary investigation in Russia is conducted in the form of preliminary investigation or in the form of inquiry.

Investigation is a form of preliminary investigation which is conducted by the investigator in grave and very grave criminal cases and also in cases when the personality of the suspect has not been identified.

Inquiry is a form of the preliminary investigation which is conducted by the inquirer (investigator) in the criminal case, in which the conduction of the preliminary investigation is not necessary (compulsory). Inquiry is conducted in the general order or in summary.

Article 150 of the Criminal Procedure Code of the Russian Federation states which crimes are to be investigated in the form of inquiries. Preliminary investigation is conducted in all other crimes.

The dialogue as a form of interaction between the prosecutors and the bodies of inquiry or investigation is conducted within the framework of criminal procedure law and according to the function, performed by the prosecutor's office, concerning the coordination of the activities of law enforcement bodies in the fight against crime.

Within the framework of permanent supervision, the bodies of the prosecutor's office conduct monitoring of the state of legality in general at the pre-trial stage of criminal proceedings. The results of such monitoring are discussed at joint working meetings, meetings of the working groups and in other formats.

The most resonant problems are put on discussion at coordination meetings with participation of the heads of law enforcement bodies at the regional and federal levels, the aims of which is to elaborate coordinated decisions on conduction of organizational and practical events to prevent crimes, and these decisions are aimed at improving the situation with the crime in Russia<sup>10</sup>.

As it is viewed, the volume of the powers, entrusted by the legislator to the prosecutor's office and the bodies of investigation, also preconditions the opportunity to organize constructive work and eliminates the advantages on the part of the bodies of the prosecutor's office or the body of investigation.

Thus, the Russian legislation entrusted the prosecutor with the right to return the criminal case for conduction of the preliminary investigation, though it excludes the possibility of procedural management in respect of the investigator, but it allows to minimize the number of poorly investigated criminal cases and violations of the rights of persons who are involved in the criminal proceedings.

In his turn, the investigator has a right to appeal such procedural decision to the upper prosecutor in compliance with the procedure, established by law.

3. *Does the prosecutor participate in training of the police officers or employees of any other investigative body?*

The law of Russia does not in general contain the direct indication about participation of the bodies of prosecution in training of police officers or employees of another investigative body. At the same time, the employees of the prosecutor's office organize conduction of organizational and practical events which

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<sup>10</sup> Such meetings are one of the forms in which the prosecutor's office performs its function on coordination of the activities of law enforcement bodies in the sphere of combat against crime (article 8 of the Law on the Prosecutor's Office).

envisage improvement of professional qualification and sharing of work practices and they are also invited to participate in such events which are conducted by the bodies of investigation.

## **B. Existing Legal Standards and Rules.**

4. *Does the law and other standards regulate the relations between prosecutors and bodies of investigation? Explain in general.*

The relations between prosecutors and investigators are conducted within the framework of the uniform procedural order which is established by the provisions of the Criminal Procedure Code of the Russian Federation when each participant of the legal relations acts in accordance with the rights and duties, established by law and preconditioned by their procedural functions. The prosecutor, bodies of inquiry and investigation in criminal law proceedings perform the function of criminal prosecution, and besides that the prosecutor is entrusted with the function of supervision over the procedural activities of the bodies of inquiry and investigation at the pre-trial stages of criminal law proceedings.

The essence of supervision is to constantly and comprehensibly maintain the regime of legality by applying the measures of prosecutor's action (reaction) to the actions and decisions of the bodies of inquiry and investigation which violate the requirements of criminal procedure law.

## **C. The role of the prosecutor in setting the priority when investigating crimes**

5. *How is priority in initiating criminal cases defined in Your country?*

Russia is the country where there is mandatory prosecution for the committed crime.

The order of initiating criminal cases is regulated by the Criminal Procedure Code of the Russian Federation. In each case when the signs of crime are revealed, the prosecutor, investigator, the body of the inquiry or the inquirer take the measures which are envisaged by the Criminal Procedure Code of the Russian Federation to define the event of the crime, to identify and charge the person or persons who are guilty in commission of the crime. The exceptions are the criminal cases of private and private-public accusation.

Criminal cases of private accusation are initiated upon the statement of the victim or his/her legal representative and are subject to termination due to reconciliation of the victim with the accused. These are such crimes as deliberate infliction of light damage to health, assault and battery, defamation without aggravating circumstances.

Criminal cases of private-public accusation are initiated only upon the statement of the victim or his legal representative, but they are not terminated due to reconciliation of the victim with the accused. These are such crimes as rape, forced actions of sexual nature, violation of privacy, violation of the confidentiality of correspondence, telephone talks, postal, telegraph or other messages, violation of integrity of the



dwelling, unsubstantiated refusal to hire for work or unsubstantiated dismissal of a pregnant woman or a woman who has children of up to three years, violation of copyright and adjacent rights, violation of inventor's and patent rights, fraud and etc.

Criminal case of private or private-public accusation may be initiated by the head of the investigative body, an investigator and upon the consent of the prosecutor by an inquirer and in the absence of the application of the victim or his/her legal representative, if such crime was committed in respect of the person who cannot protect his/her rights and legal interests due to the dependent or powerless state or due to any other reasons.

The Criminal Procedure Law of Russia defines the reasons and bases to initiate a criminal case and regulate the order of initiation of the criminal case in the cases of private accusation. Taking into account the factual circumstances, the criminal case may be initiated either based on the fact of commission of the crime and against specific persons if these persons had been identified by the bodies of investigation by the moment such a decision was taken.

Moreover, there is a special order of initiation of the criminal case against specific categories of persons (for instance, the members of the Federation Council and the deputies of the State Duma<sup>11</sup>, the deputies of the Legislative (Representative) body of the state power of the subject of the Russian Federation, the deputies and members of the elected body of local self-government, elected officials of the bodies of local self-government, judges of the Constitutional Court of the Russian Federation, judges of federal courts of common jurisdiction and federal arbitration courts, juries or arbitration judges when they are administering justice; prosecutors, investigators, attorneys of defence and others).

To arraign the above mentioned persons to criminal liability, the consent of the relevant state body or an official is needed.

For instance, the criminal case against the members of the Federation Council and the deputy of the State Duma is initiated by the Chairman of the Investigative Committee of the Russian Federation upon the consent, respectively, of the Federation Council and the State Duma which was received on the basis of representation of the Prosecutor General of the Russian Federation.

The criminal case against the prosecutor of the district, city, and prosecutors equal to them, the director and the investigator of the investigative body for the district, city is initiated by the director of the investigative body of the Investigative Committee of the Russian Federation for the subject of the Russian Federation; the criminal case against the upper prosecutors, directors and investigators of the higher investigative bodies is initiated by the Chairman of the Investigative Committee of the Russian Federation or his deputy.

It is viewed as one of the guarantees of independence of a prosecutor and an investigator.

*6. Does the prosecutor or the prosecutor's office have direct influence on this process?*

The prosecutor does not have direct influence on the process of initiation of the criminal case. In the course of pre-trial proceedings the prosecutor is entitled to check the execution of the requirements on the order of acceptance, registration and resolution of the messages about crimes (paragraph 1 part 2 article 37 of the Criminal Procedure Code of the Russian Federation), to cancel illegal or unsubstantiated

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<sup>11</sup> The Federation Council and the State Duma are, correspondingly, the upper and the lower houses of the Federal Assembly—the Parliament of the Russian Federation.

resolutions of the bodies of inquiry and investigation on initiation or refusal to initiate a criminal case (part 4 article 146 and part 6 article 148 of the Criminal Procedure Code of the Russian Federation).

Upon cancellation of the illegal or unsubstantiated procedural decision to refuse the initiation of the criminal case, the prosecutor has a right to state in his/her resolution specific circumstances, subject to additional check.

Apart from the copies of the main procedural documents which are forwarded to the prosecutor's office, the results of the prosecutor's checks are the sources of information for the prosecutor to adopt the relevant decision. In the sphere of supervision over the legality of acceptance, registration and resolution of the messages about crimes, the prosecutor's checks shall be conducted systematically (not less than once a month) and in the presence of the information on violations of the law these checks shall be conducted immediately (Order #277 of the Prosecutor General of the Russian Federation, dated September 05, 2011).

The violations of legality, which were revealed by the prosecutor during the check, serve as basis to apply the measures of the prosecutor's reaction (action), including, inter alia, to adopt motivated resolutions on forwarding materials to the investigative body or the body of inquiry to solve the issue of criminal prosecution (paragraph 2 part 2 article 37 of the Criminal Procedure Code of the Russian Federation).

In cases when there is no application of the victim or his/her legal representative about the crimes, envisaged by parts 2,3 article 20 of the Criminal Procedure Code of the Russian Federation, if such crimes were committed against the person who cannot protect his/her rights and legal interests due to the dependent or powerless state or due to any other reasons or when the above mentioned crimes were committed by the person, the data about whom are unknown, the prosecutor as a carrier of the fundamental role in the protection of rights in the criminal law proceedings shall have direct influence on the process of initiation of the criminal case by giving consent to the inquirer to initiate such a case (part 4 article 20 of the Criminal Procedure Code of the Russian Federation).

#### **D. Accountability of the prosecutor when investigating**

*7. Are prosecutors responsible for conduction of investigations in Your country? If no, who is responsible for it?*

There is no direct indication about the responsibility of the prosecutor for the investigation in the law. The investigator and the inquirer,—who enjoy procedural independence and who are obliged to use the whole complex of investigative and other procedural actions, aimed at full, comprehensive and objective investigation of crimes within the reasonable period of time, —are responsible for the results of investigation.

At the same time, within the framework of the supervision function, the prosecutor shall undertake all necessary measures, aimed at improving the efficiency of work of the bodies of investigation and inquiry in the sphere of revealing and investigating crimes. All procedural actions and decisions of the prosecutor shall meet the requirements of the legality, substantiation and motivation (part 4 article 7 of the Criminal Procedure Code of the Russian Federation). Taking into account the above mentioned provisions, if the prosecutor violates the requirements of the criminal procedure law which regulates the procedural order of his participation in the criminal law proceedings, including in conducting supervision over the

procedural activities of the bodies of inquiry and investigation when investigating crimes, the prosecutor is subject to disciplinary liability.

8. *When does the prosecutor receive the claim (immediately as soon as the claim was filed or after the police have conducted investigation)?*

Constitutional guarantees (article 46 of the Constitution of the Russian Federation) and the procedural order of filing a claim grant an opportunity to the participants of the criminal proceedings to challenge before the prosecutor, director of the investigative body or the court any procedural action (inaction) or a decision in the part in which the conducted procedural activities and the adopted procedural decisions touch their interests at the pre-trial stages of criminal proceedings (articles 124, 125 of the Criminal Procedure Code of the Russian Federation).

In case the claim is immediately forwarded to the prosecutor, he is obliged to consider it within 3 days from the moment he received it. In exceptional cases, when it is necessary to request additional materials or take other measures for the check, it is permitted to consider the claim within 10 days and the claimant shall be informed thereof. Upon the results of consideration of the claim, the prosecutor adopts the resolution on full or partial satisfaction of the claim or on refusal to satisfy it.

9. *What is the degree of independence of the police or any other body of investigation in the course of investigation?*

The Criminal Procedure Code of the Russian Federation empowers the investigator to independently define the course of the investigation, to adopt decisions on investigative and other procedural actions except for the cases when according to the law it is necessary to obtain a court decision or consent of the director of the body of investigation (paragraph 3 part 2 article 38 of the Criminal Procedure Code of the Russian Federation).

The inquirer independently conducts investigative and other procedural actions and adopts procedural decisions except for the cases when according to the Criminal Procedure Code of the Russian Federation it is necessary to obtain consent of the director of the body of inquiry, consent of the prosecutor (for instance, when it is necessary to initiate a certain category of criminal cases (deliberate infliction of light damage to health, assault and battery and other violent actions which caused physical pain; defamation); when the criminal case is initiated against a person who is suspected in or accused of the crime of a light or medium gravity on the basis of the application of the victim or his/her legal representative if this person reconciled with the victim and restituted the damage incurred to him/her and etc.) and (or) when it is necessary to obtain a court decision (paragraph 1 part 3 article 41 of the Criminal Procedure Code of the Russian Federation).

Thus, according to the requirements of the Criminal Procedure Code of the Russian Federation, the investigator and the inquirer have the right to independently conduct most procedural actions (interview of the witness, detention of a person who is suspected in commission of the crime, examination of the site, examination and etc.).

10. *Does the prosecutor have a right to prevent or terminate investigation?*

The prosecutor's activities on protection of rights when investigating crimes include the duty to take all the measures, envisaged by law, so that in case of adoption of illegal, ungrounded or unmotivated decision by the inquirer or the investigator to initiate a criminal case, the prosecutor could cancel it by his/her resolution so that such a procedural decision should not infringe the constitutional guarantees of rights and freedoms of a human being and a citizen. The prosecutor shall also cancel illegal and ungrounded

resolution of the bodies of inquiry and bodies of preliminary investigation on suspension of a criminal case.

The prosecutor has a right to give consent to the inquirer to terminate the criminal case due to reconciliation of the parties ( article 25 of the Criminal Procedure Code of the Russian Federation) and due to the active repentance (article 28 of the Criminal Procedure Code of the Russian Federation). The prosecutor has also a right to terminate the criminal case upon the adoption of the Bill of Indictment on the grounds, stipulated by articles 24-28<sup>1</sup> of the Criminal Procedure Code of the Russian Federation (paragraph 3 part 1 article 226, paragraph 4 part 2 article 226<sup>8</sup> of the Criminal Procedure Code of the Russian Federation).

These grounds include, for instance:

-absence of the event of the crime;

-absence of corpus delicti in the action;

-expiry of periods of limitations for criminal prosecution;

-death of the accused or suspect, except for the cases when conduction of the criminal case is necessary to rehabilitate the late person;

-absence of the statement of the victim of the criminal case may be initiated only upon his/her statement except for the cases, envisaged by part 4 article 20 of the Criminal Procedure Code of the Russian Federation;

-absence of the conclusion of the court on the presence of indicia of the crime in the actions of one of the persons, mentioned in paragraphs 2 and 2.1 part 1 article 448 of the Criminal Procedure Code of the Russian Federation or absence of the consent of the Federation Council, the State Duma, the Constitutional Court of the Russian Federation, the Qualification Panel of Judges correspondingly to initiate a criminal case and to arraign as an accused one of the persons who are mentioned in paragraphs 1 and 3-5 part 1 article 448 of the Criminal Procedure Code of the Russian Federation;

-reconciliation of the parties;

-active repentance.

Moreover, the prosecutor has a right to conclude a plea bargain with the suspect or the accused after the initiation of the criminal case.

*11. How is decision taken what service of the police or another investigative body, if such exists, shall conduct investigation?*

In the Russian Federation, there are bodies of preliminary investigation in the Investigative Committee, the Ministry of the Interior, the Federal Security Service and Federal Service for Control over the Turnover of Drugs.

In the Russian criminal proceedings the issue about which of the bodies of preliminary investigation will conduct a criminal case is defined according to the rules of investigative jurisdiction, established by article 151 of the Criminal Procedure Code of the Russian Federation. The essence of this order is in distribution of investigative workload among different law enforcement bodies, taking into account the corpus delicti,

complexity of investigation, participants of the criminal proceedings (the suspect, accused and the victim), territorial jurisdiction and etc.

Part 2 article 151 of the Criminal Procedure Code of the Russian Federation contains a list of articles of the Criminal Code of the Russian Federation, under which the preliminary investigation is conducted by the investigators of the Investigative Committee of the Russian Federation, bodies of Federal Security Service, bodies of the Interior (the Ministry of the Interior) of the Russian Federation, bodies for the control over the turnover of drugs and psychotropic substances.

Part 3 article 151 of the Criminal Procedure Code of the Russian Federation contains a list of articles of the Criminal Code of the Russian Federation, under which the inquirers of the bodies of the Interior (the Ministry of the Interior) of the Russian Federation, border authorities of the Federal Security Service, Federal Service of Court Bailiffs, State Fire Supervision of the Federal Fire-Fighting Service and Customs bodies of the Russian Federation conduct inquiries.

Under a number of articles of the Criminal Code of the Russian Federation, the preliminary investigation may be conducted either in the form of preliminary investigation or in the form of inquiry (the authority which was the first to discover the crime is to investigate it).

The prosecutor is entrusted with settlement of all disputes on investigative jurisdiction (parts 8 and 7 article 151 of the Criminal Procedure Code of the Russian Federation).

Moreover, the prosecutor has a right

- to withdraw any criminal case from the body of inquiry and transfer it to the investigator with the mandatory indication of the grounds for such transfer;

- to transfer the criminal case or the materials of the check of the message about the crime from one body of preliminary investigation to the other (except for the transfer of the criminal case or materials of the check of the message about the crime within the system of one body of preliminary investigation) according to the rules, established by article 151 of the Criminal Procedure Code of the Russian Federation.

- to withdraw any criminal case or any materials of the check of the message about the crime from the body of preliminary investigation of the federal body of the executive power (at the Federal body of the executive power) and transfer it (them) to the investigator of the Investigative Committee of the Russian Federation with mandatory indication of the grounds for such transfer.

*12. If the prosecutor directs the investigation which is conducted by the police or any other body in your country, does the prosecutor have a right to control execution of his/her instructions? If yes, please, explain in general.*

According to the provisions of the criminal procedure law, the prosecutor does not have a right to direct investigation. This is the duty of the director of the investigative body and the head of the subdivision of inquiry.

Nevertheless, the prosecutor has a number of powers in respect of the bodies of inquiry, namely:

- to give written instruction to the inquirer on direction of the investigation, conduction of the procedural actions;

-to give consent to the inquirer to file a motion with the court to select, cancel or change the preventive measure or to conduct any other procedural action which is permitted according to the court decision;

-to suspend the inquirer from the further investigation if he/she commits violation of the requirements of the Criminal Procedure Code of the Russian Federation;

-to withdraw any criminal case from the body of inquiry and transfer it to the investigator with the mandatory indication of the grounds for such transfer;

-to transfer the criminal case or materials of the check of the message about the crime from one body of preliminary investigation to another (except for transfer of the criminal case or materials of the check of the message about the crime within the system of one body of preliminary investigation) according to the rules, established by article 151 of the Criminal Procedure Code of the Russian Federation;

-to withdraw any criminal case or any materials of the check of the message about the crime from the body of preliminary investigation of the federal body of executive power (at the federal body of the executive power) and transfer it (them) to the investigator of the Investigative Committee of the Russian Federation with mandatory indication of the grounds for such transfer (paragraphs 4-5, 10-12 part 2 article 37 of the Criminal Procedure Code of the Russian Federation).

Moreover, when adopting decision in the criminal case which was received by him/her with the Bill of Indictment (Resolution, Act), the prosecutor may return it (with his/her written instructions) to the investigator in order to conduct additional investigation, to change the volume of accusation or qualify the actions of the accused or to recompile the Bill of Indictment and to eliminate the drawbacks which have been revealed (paragraph 2 part 1 article 221 of the Criminal Procedure Code of the Russian Federation).

Control over the execution of the instructions of the prosecutor is conducted both at the inter-departmental level (according to the principles of centralization of the prosecutor's office) and at the outside level (the court control).

#### **E. Responsibility of the Prosecutor for Law Abidance by the Police**

*13. Does the prosecutor have a duty to control law abidance by the police or other investigative body, if there is such? If yes, at what stage and what measures of control?*

According to the Russian law, the state control over the activities of the police is conducted by the President of the Russian Federation, the houses of the Federal Assembly of the Russian Federation and the Government of the Russian Federation within the powers, defined by the Constitution of the Russian Federation, Federal Constitutional Acts and Federal Laws.

Supervision over abidance of laws by the police is conducted by the Prosecutor General of the Russian Federation and his subordinate prosecutors according to the powers, granted by the federal law.

These powers are exercised in the whole course of pre-trial proceedings in the criminal case from the moment of registration and beginning of the check of the message about the crime till the criminal case is forwarded to court to start examination on its merits.

For instance, the prosecutor is empowered

-to adopt a motivated resolution on forwarding the relevant materials to the investigative body or the body of inquiry to decide the issue of criminal prosecution on the facts of violations of criminal law, revealed by the prosecutor;

-to demand from the bodies of inquiry and investigative bodies to eliminate the violations of the federal law, committed in the course of inquiry or preliminary investigation;

-to give the inquirer the written instructions on the direction of the investigation and conduction of procedural actions;

-to demand and check the legality and substantiation of the decisions of the investigator or the director of the investigative body on refusal to initiate, suspend or terminate the criminal case and to adopt the decision thereof according to the Criminal Procedure Code of the Russian Federation.

## **F. General Principles in Respect of the Police**

*14. Are there any written standards concerning conduction of criminal investigations by the police or any other investigative body?*

The order of investigation of the crimes and the bodies, empowered to conduct it, are defined by the Criminal Procedure Code of the Russian Federation. In particular, the list of authorities, investigators and inquirers who are entitled to conduct criminal prosecution are established by article 151 of this Federal Law (see the reply to question #11).

*15. What is the essence of these standards (for instance, the way of conducting interviews, deprivation of liberty and etc.)?*

The Criminal Procedure Code of the Russian Federation strictly regulates the order of conduction of investigative and other procedural actions (including the application of preventive measures, including detention and custody) which are based on observance of human rights and freedoms.

According to part 4 article 15 of the Constitution of the Russian Federation (1993) the commonly recognized principles and standards of international law and international treaties of the Russian Federation are the integral part of its legal system. If the international treaty of the Russian Federation establishes rules other than envisaged by the Criminal Procedure Code of the Russian Federation, the rules of international treaty are applied (for instance, in the issues of extradition, legal assistance in criminal cases and transfer of criminal proceedings).

## **G. General Control over the Police**

*16. What is the general system of control in the police or in any other investigative body, if there is such (internal/external)? Does the prosecutor play any role in this system?*

The general system of control in the bodies of inquiry and preliminary investigation is reflected in the provisions of the Criminal Procedure Code of the Russian Federation. Here the universally applied approach of departmental subordination is used. The legislator included such participants of criminal proceedings as the director of the investigative body (article 39 of the Criminal Procedure Code of the Russian Federation) and the director of the subdivision of the inquiry (article 40<sup>1</sup> of the Criminal Procedure Code of the Russian Federation), who perform procedural management when conducting preliminary investigation, in the system of internal control of the above mentioned bodies.

The system of external control include the prosecutor and the court. The court control is performed in the form of court examination of the claims of the participants of the criminal proceedings and other interested

persons and also in the form of consent to conduction of investigative and other procedural actions which limit the constitutional rights and freedoms of a human being and a citizen.

See the reply to question #13 about the prosecutor's supervision.

*17. Does the prosecutor have competence to appoint sanctions?*

The Criminal Procedure Code of the Russian Federation does not grant the prosecutor a right to appoint sanctions within the framework of criminal law proceedings. According to the principle of an adversarial system, only the court has a right to recognize a person to be guilty and appoint the punishment for him/her on the basis of evidence which was immediately examined in the court proceedings. Taking into account the procedural function of conduction of criminal prosecution, the prosecutor, as a representative of the prosecution, has a duty to support state prosecution and to participate in court proceedings by supplying evidence and participating in examination of such evidence, stating his/her opinion on the merits of the accusation and also on other issues that may appear in the course of court proceedings, making proposals to the court on application of criminal law and appointment of punishment for the accused. The prosecutor also files or supports the civil lawsuit which is filed in the criminal case if it is necessary for protection of the rights of the citizens, public or state interests—for instance, the lawsuit of the victim on compensation for the damage of the crime (parts 5,6 article 246 of the Criminal Procedure Code of the Russian Federation).

At the same time, at the pre-trial stages of criminal proceedings, the prosecutor has a right and in some cases is obliged

- to check execution of the requirements of federal law when accepting, registering and solving the messages about crimes;

- to issue a motivated resolution on direction of relevant materials to the investigative body or the body of inquiry to solve the issue on criminal prosecution on the facts of violations of criminal law which were revealed by the prosecutor;

- to demand from the bodies of the inquiry and investigative bodies that the violations of the federal law which were committed in the course of inquiry or preliminary investigation should be eliminated;

- to give the inquirer the written instructions on direction of the investigation, conduction of procedural actions;

- to give consent to the inquirer to file a motion with the court on selection, cancellation or change of the preventive measure or on conduction of any other procedural action which is permitted according to the court decision;

- to permit application on the challenge of the inquirer and also self-disqualification (self-withdrawal) of the latter. The above mentioned list of the rights of the prosecutor at the pre-trial stages is not absolute (complete).

## **H. Conclusion**

*18. What are the main problems in relations between prosecutors and investigative bodies in Your country?*

The main problem of relations between prosecutors and investigative bodies in Russia is the level of sense of justice (legal consciousness) and qualification of employees (officers) of these bodies.



Unfortunately, experts register the stable tendency of annual increase (for the last 5 years) in violations of the requirements of law by the investigator and the inquirer at the pre-trial stages of criminal proceedings.

Under these conditions the rights of supervision, available to the prosecutor now, are not enough to efficiently use professional opportunities and experience of the prosecutors in order to more fully ensure the preventive and efficient supervision, operatively prevent violations of law and liquidate damaging consequences which have occurred.

## Slovak Republic / République slovaque

### **A. Relationship between prosecutors and the police**

#### 1. Please briefly describe the relationship between the prosecutors and the Police.

Criminal Complaint/report of commission of a criminal act is filed with a prosecutor or the Police. Prosecutor may further proceed himself or he can forward the case to the Police and supervise legality of the Police procedure prior to commencement of criminal prosecution and in the course of it. Prosecutor may issue binding instruction to the Police, request for files and reports regarding the state of play, participate in the Police acts, to execute individual acts in person or to carry out whole investigation and issue a decision regarding any matter. Prosecutor may withdraw a case to a Police officer and to assign it to another Police officer, he/she can cancel unlawful or ungrounded Police decisions and to replace it by his/her own decisions.

#### 2. Is there any dialogue with the prosecutor concerning the work of the police?

Prosecutor has the obligation to supervise legality of Police actions in any criminal matter. Intergovernmental meetings of top managers of the Prosecution Service and the Police have been organized on any level of the Public Prosecution Service (district, region, State).

#### 3. Is the prosecutor involved in training the police?

Prosecutors have been invited to participate in educational activities organized by the Police Forces. There is also the Judicial Academy which organizes joint/common seminars for the Police and the Prosecution Service regarding various topics.

### **B. Existing legal provisions and regulations**

#### 4. Is any relationship between prosecutors and investigation bodies determined by law or other provisions?

Relationship between prosecutors and investigation bodies is provided for by the law i.e. the Code of Criminal Procedure No. 301/2005, Collection of Laws. The relationship is described in the answer to the question no. 1.

### **C. Responsibility of the prosecutor for setting priorities for investigating offenses**

#### 5. How are priorities in starting criminal investigations in your country determined?

Prosecutor and the Police have the obligation to prosecute any criminal act they are aware of/they have learned.

#### 6. Do prosecutors or the prosecution service in a direct way have an influence on this?

Yes. They can commence criminal proceedings themselves/on their own initiative or they can issue an instruction for the Police to commence criminal proceedings; the prosecutor also can cancel a Police decision to commence criminal proceedings.

#### **D. Responsibility of the prosecutor during the investigation.**

7. Are prosecutors responsible for the conduct of investigation in your country? If no. who is responsible for that?

Prosecutor has authority to carry out whole investigation but in practice this has been exceptional. Quite always, the investigation is executed by the Police bodies. Prosecutor supervises the legality of the Police actions. In some cases, prosecutor has executed some investigation actions.

8. When does the prosecutor receive a complaint (as soon as the complaint is filed, or after the investigation has been conducted by the Police?).

Prosecutor is notified since the very beginning of the investigation. Criminal Complaint may be filed directly with the prosecutor. If it is filed with the Police, the prosecutor is informed within 48 hours after the Police dismissed the complaint or issued decision to commence criminal proceedings (or any other decision). Such a decision is issued by the Police without immediately after service of Criminal Complaint, or within 30 days in the latest if criminal complaint needs to be supplemented.

9. What is the degree of autonomy of the Police if any, during the investigation?

The Police act autonomously with exception made of acts for which decision/approval of Judge of Pre-Trial Proceedings or Prosecutor is required. The Police have the obligation to observe the law and prosecutor's instructions (if any instruction was issued).

10. Does the prosecutor have the power to prevent or stop an investigation?

Yes. Prosecutor can dismiss a Criminal Complaint. If a complaint was filed with the Police, prosecutor may cancel the Police decision to commence criminal prosecution.

11. How is it decided which service of the Police or other investigation body, if any, is competent to investigate?

Competence of courts and prosecution service is defined in the law. Material and territorial competence of the Police is not strictly defined by the law. It is governed by the Order of the Minister of Interior regarding competencies of the police bodies and units of the Ministry of Interior in detecting crime, finding offenders and procedures within criminal proceedings. However, the law defines some framework for material competence of the Police. For the purposes of criminal prosecution these are: the investigating officer and authorized member of the Police Forces (Police agent in charge of a matter), investigating officer and authorized member of the Tax Administration Office (regarding violations of the customs laws or some tax laws), authorized member of the Military Police (criminal acts committed by members of the

Armed Forces), member of the Prison and Judicial Guard (criminal acts committed by members of the Prison and Judicial guards and in the premises of the Prison and Judicial Guards, or committed by a staff there, and also regarding criminal acts committed by persons serving their sentence of deprivation of liberty or held in custody), commander of a vessel (criminal acts committed aboard).

Material competence of the Police members also depends on category of crime (crime or minor crime), on the fact whether accused is held in custody or in prison in relation to another criminal act etc. and also on type of criminal act. Territorial competence is connected with the place of commission of a criminal act.

12. If the prosecutor leads the police criminal investigation, does the prosecutor have the power to monitor compliance with his/her instructions? If so, please briefly describe.

Prosecutor has power to monitor how his instructions have been complied with. In any time, he can check/examine the investigative file or request for submission of a file or report of implementation of his instruction.

### **E. Responsibility of the prosecutor for the respect of the law**

13. Is it a responsibility of the prosecutor to control respect for the law by the police or other investigation body, if any? If yes, at which stage and by which means of control?

Yes, prosecutor carries out supervision over legality of the police actions prior to commencement of criminal prosecution as well as in the course of it until end of the investigation. Any police decision has to be served on prosecutor and he/she can cancel it. As regards persons concerned, they can file complaints with the prosecutor and request for prosecutor's check of any police decision. Prosecutor can request the police for files and reports. As regards essential decisions after termination of investigations (e.g. to submit indictment, to decide to discontinue criminal prosecution of an accused or to approve conciliation) they can be made by a prosecutor only.

### **F. Common principles concerning the police**

14. Are there written regulations concerning the conduct of criminal investigations by the police or other investigation body?

Police procedure for investigating crime is regulated by the Act No. 301/2005 Collection – Code of Criminal Procedure. Some details have been dealt with by the Order/decrees of the Minister of Interior e.g. regarding definition of competencies of various Police units and units of the Ministry of Interior while revealing criminal offences, detecting offenders and also regarding procedure within criminal proceedings, No. 175/2010. It has been published in the Official Journal of the Ministry of Interior of the Slovak Republic (part 71). There are also some methodical guidelines regarding specific categories of crime and execution of complex investigation acts by a specialized team.

15. What are these regulations about? (for instance, the way to carry out interrogations, deprivation of liberty etc.)

The act on Criminal Proceedings – the Code of Criminal Procedure provides for basic principles of procedure and decision-making as well as for basic rules of court procedures, prosecutors and police procedures. It defines conditions for execution of various acts and rules that have to be observed (rights of the accused person, rights of injured party, rules applicable to seizure of things, arrest, home search, seizure of mail, interception of telecommunication operation etc.).

## **G. General control over police**

16. What is the general control system of the police, if any (internal/external?). Does the prosecutor play a role in this system?

Heads of relevant investigating units carry out day-to-day general control over investigating bodies. They also assign cases to them and issue methodical guidelines. Prosecutor oversees how the law is respected by investigating bodies in different cases. In general, prosecutor does not manage/direct or monitor them

17. Is the prosecutor competent to take sanctions?

No, prosecutor has no power to impose sanctions to the members of the Police Forces. He only can withdraw a case from them and order another member of the Police to proceed further or to take a measure with the objective to have a case ordered to another police officer.

## **H. Conclusions**

18. What are the major challenges in relations between prosecutors and investigation bodies in your country?

Communication between prosecutors and the Police has been made difficult because of the fact that not all police investigators have graduated from Law Schools and the authorized police have law education and that there is quite high level of job-switching in the police bodies. Stabilization and higher qualification/education and specialization of investigating bodies would improve the co-operation.

## Slovenia / Slovénie

### A. *Relationship between prosecutors and the police*

1. Please briefly describe the relationship between prosecutors and the police or other investigation body in your country.

**In the Republic of Slovenia the police are independent of the public prosecutor's office in organisational terms, while closely linked with it in the discharge of their tasks, above all during the pre-trial procedure. The police are a body attached to the Ministry of the Interior and are an agency of the executive branch of power. The police are an agency engaged in the detection of crime, and the prosecutor is the only agency engaged in the ex officio prosecution of criminal offences.**

**The police must gather data and information and decide whether there is a case for police investigation. The prosecutor can take part in deciding the kind and extent of investigative measures after the police have informed him of grounds for suspicion that a specific criminal offence has been committed or a specific person has committed it.**

2. Is there any dialogue with the prosecutor concerning the work of the police or other investigation body?

**In the majority of cases the moment when the prosecutor starts sharing responsibility for correct investigation in the pre-trial procedure is the moment when the police inform him that a specific crime has been committed and the prosecutor takes up the directing, i.e. begins to cooperate with the police, is present during police activities, provides the police with proposals and directs the pre-trial procedure. If the prosecutor is to direct the work of the police in the pre-trial procedure, he must be informed of their activity. The police inform the prosecutor of all cases in which well-founded reasons for suspicion that a crime has been committed exists. The police officers are obliged to refer to prosecutors all information on relevant circumstances that prosecutors can be comprehensively informed on factual situation in a particular case.**

**A prosecutor may in exercising his authority set directions for work of police and military police, work of members of a joint investigation team, work of other competent national authorities and institutions working in the area of taxes, customs, financial operations, securities, protection of competition, prevention of money laundering, prevention of corruption, prevention of illicit drugs and inspection. A prosecutor directs their work by giving mandatory instructions, expert opinions and proposals for collecting information and the implementation of measures within their competence.**

**Heads of the competent Prosecutor's Offices may establish a specialised investigation team in particular cases of complex criminal offences, especially in the area of the economy, corruption and organised crime that demand longer and directed operations of a number of authorities and institutions. A Specialised investigation team is led and directed by a prosecutor. The operative manager, who is a criminal police officer, leads the operations of the team in performing investigative and other tasks. Thus, the responsibility is shared for timely, efficient and proper performing of their duty between the prosecutor and the operative manager.**

In the case which is the subject to the pre-trial procedure, investigation or court proceedings in one or more countries, the police and prosecutors may also cooperate with the authorities of other countries Slovenia within the framework of the joint investigation team (JIT).

3. Is the prosecutor involved in training the police or other investigation body?

**A prosecutor may be invited to police training in order to set presentations to the police officers on the particular topics. The police officials are frequently invited to the annual training of prosecutors.**

***B. Existing legal provisions and regulations***

4. Is any relationship between prosecutors and investigation bodies determined by law or other provisions? Please describe briefly.

**Yes. It is determined in the Criminal Procedure Act, the State Prosecutor's Office Act, the Police Tasks and Powers Act, the Police Organisation and Work Act and in the Decree on the cooperation of the state prosecutorial service, Police and other competent state bodies and institutions in detection and prosecution of perpetrators of criminal offences and operation of specialised and joint investigation teams. Joint investigations teams are determined in the Cooperation in Criminal Matters with the Member States of the European Union Act**

***C. Responsibility of the prosecutor for setting priorities for investigating offenses***

5. How are priorities in starting criminal investigations in your country determined?

**The Prosecution Policy that has defined types of cases that are given priority has been adopted by the State Prosecutor General of the Republic of Slovenia. The police have their own priorities set in their annual guidelines that are coordinated with the Office of the State Prosecutor's Office.**

6. Do prosecutors or the prosecution service in a direct way have an influence on this?

**Yes. The Prosecution Policy is adopted by the State Prosecutor General.**

***D. Responsibility of the prosecutor during the investigation***

7. Are prosecutors responsible for the conduct of investigations in your country? If no, who is responsible for that?

**Preliminary investigation (pre-trial procedure) is conducted by the police and may be directed by a prosecutor (see the answer to the 2<sup>nd</sup> question). After the prosecutor files a demand for an investigation to the court, the investigation judge decides on opening a judicial investigation. The investigation judge is responsible for the conduct of further judicial investigation. In general sense of responsibility the prosecutor is treated as a master (dominus litis) of the pre-trial procedure.**

8. When does the prosecutor receive a complaint (as soon as the complaint is filed, or after the investigation has been conducted by the police)?

**When a victim files a complaint, the police notify the prosecutor. The police conduct preliminary investigation. After the investigation the police send a criminal complaint (criminal report) with victim's complaint and collected evidence to the prosecutor.**

9. What is the degree of autonomy of the police or other investigation body, if any, during the investigation?

**The police must carry out their tasks in conformity with the principle of legality and deal with all the events and occurrences characteristic of crimes that are prosecutable ex officio. The police must gather data and information and decide whether there is a case for police investigation. In cases, the state prosecutor is not informed at the outset of the activities of the police or the initial information available to them, except where the police wish to consult him. The decision whether or not to take police measures still rests with the police.**

**The state prosecutor can take part in deciding the kind and extent of investigative measures after the police have informed him of grounds for suspicion that a specific criminal offence has been committed or a specific person has committed it.**

**When a preliminary investigation is directed by the prosecutor, her or his instructions are obligatory to the police, but when executing the instructions the police has their professional autonomy within the framework of the rules of criminalist tactics, techniques and methods.**

**When a specialised investigation team is established, it is leaded and directed by the prosecutor.**

10. Does the prosecutor have the power to prevent or stop an investigation?

**Not in the phase of pre-trial police investigation. Between and after the judicial investigation is introduced by a special court warrant, the prosecutor may issue a declaration to withdraw his demand for judicial investigation.**

11. How is it decided which service of the police or other investigation body, if any, is competent to investigate?

**It is provided by the Police Organisation and Work Act.**

**National Bureau of Investigation (NBI) is specialised criminal investigation unit within the Police, established for the detection and investigation of most complex criminal offences, in particular: economic crime, corruption and organised crime. The general director of the Police adopts upon the motion of the director of the NBI the internal document setting down which investigations are conducted by the NBI. NBI conducts an investigation in all cases when an initiative for an investigation is received by the head of the Specialised State Prosecutor's Office or the head of a district prosecutor's office.**



12. If the prosecutor leads the police or other criminal investigation in your country, does the prosecutor have the power to monitor compliance with his/her instructions? If so, please briefly describe.

**Yes. When the prosecutor directs the preliminary investigation, the police have to inform and notify her or him on the executed activities and the results. When a specialised investigation team is established, all the information, documents and evidence has to be shared with the prosecutor and when necessary the members exchange information in coordination meetings.**

***E. Responsibility of the prosecutor for the respect of the law***

13. Is it a responsibility of the prosecutor to control respect for the law by the police or other investigation body, if any? If yes, at which stage and by which means of control?

**The Ministry of Interior and internal police supervision are responsible to control respect for the law by the police.**

**Mostly all the police activities are determined in the Article 148 of the Criminal Procedure Act:**

***Article 148***

***(1) If grounds exist for suspicion that a criminal offence liable to public prosecution has been committed, the police shall be bound to take steps necessary for discovering the perpetrator, ensuring that the perpetrator or his accomplice do not go into hiding or flee, detecting and preserving traces of crime or objects of value as evidence, and collecting all information that may be useful for the successful conducting of criminal proceedings.***

***(2) With a view to executing the tasks from the preceding paragraph the police may: seek information from citizens; inspect transportation vehicles, passengers and luggage; restrict movement within a specific area for a specific period of time; perform what is necessary to identify persons and objects; send out a wanted circular for persons and objects; inspect in the presence of the responsible person specific facilities, premises and documentation of enterprises and other legal entities, and undertake other measures necessary. The facts and circumstances established in individual actions which may be of concern for criminal proceedings, as well as the objects found and confiscated, shall be indicated in the record, or an official note shall be made thereon.***

***(3) The police may summon citizens. In summoning them it shall be bound to indicate the reason for this. It may only forcibly bring a citizen who has failed to appear after being summoned if the citizen has been alerted to that possibility in the summons. In performing actions under the provisions of this Article, the police may not examine citizens as accused persons, witnesses or experts, except for the suspect in the instance referred to in Article 148.a of this Act ...***

**A person against whom an action or measure from the second and third paragraphs of the Article 148 has been undertaken shall be entitled to lodge an appeal with the competent public prosecutor within three days.**

**The Department for the Investigation and Prosecution of Officials with Special Authorisations which is a self-dependent internal organisational unit of the Specialised**

**State Prosecutor's Office, has exclusive territorial and *ratione materiae* jurisdiction to deal with criminal offences committed by police officers.**

**F. Common principles concerning the police**

14. Are there written regulations concerning the conduct of criminal investigations by the police or other investigation body?

**A criminal investigation conducted by the police shall be conducted in accordance with the Criminal Procedure Act, the Police Task and Powers Act and internal police instructions.**

15. What are these regulations about? (for instance, the way to carry out interrogations, deprivation of liberty etc.)

**About all police activities (i.e. performing of house searches, interrogation of suspects and witnesses, performing of covert investigative measures etc. )**

**G. General control over police**

16. What is the general control system of the police or other investigation body, if any (internal/external?) Does the prosecutor play a role in this system?

**The general, comprehensive, systematic and planned supervision and control system of the police is performed by the Ministry of Interior. The Ministry controls the legality and professionalism of police work and whether basic human rights and freedoms are respected when carrying out police powers.**

**Prosecutor does not play role in the general control system of the police, except the competences of the Department for the Investigation and Prosecution of Officials with Special Authorisations (see the answer to the 13. question). Some tasks may be performed when a person against whom an action or measure from the second and third paragraphs of the Article 148 lodges an appeal with the competent public prosecutor.**

17. Is the prosecutor competent to take sanctions?

**No.**

**H. Conclusions**

18. What are the major challenges in relations between prosecutors and investigation bodies in your country?

**The major challenges are a comprehensive system of exchange of information between the police and prosecutor's office, sharing the responsibility of a proper pre-trial investigation, police respecting the prosecutor's instructions, directions and legal opinions in particular investigations.**

## Switzerland / Suisse

*A titre préliminaire, je relève qu'en Suisse, les questions de police relèvent de la souveraineté des cantons. Il existe dès lors de nombreux corps de police (cantonaux, municipaux, etc) disposant chacun de leur organisation propre. S'agissant toutefois des relations entre les procureurs ou la police et/ou les autres instances chargées de l'enquête, cette apparente complexité ne pose pas de problèmes particuliers depuis l'entrée en vigueur, le 1<sup>er</sup> janvier 2011, d'un Code de procédure pénale qui régit la poursuite et le jugement par les autorités pénales de la Confédération et des cantons, des infractions prévues par le droit fédéral (Code de procédure pénale du 5 février 2007, Recueil systématique du droit fédéral, RS 312.0, <http://www.admin.ch/opc/fr/classified-compilation/20052319/index.html> ).*

*Les réponses que je fournis ci-dessous concernent les relations entre le Ministère public de la Confédération (ci-après MPC) et la Police judiciaire fédérale (ci-après PJF), étant précisé que le MPC peut aussi recourir aux services des forces de police des cantons (cf. Loi sur l'organisation des autorités pénales de la Confédération du 19 mars 2010 – LOAP – Recueil systématique du droit fédéral, RS 173.71, <http://www.admin.ch/opc/fr/classified-compilation/20072377/index.html> )*

### **A. Les relations entre les procureurs et la police**

1. Veuillez décrire brièvement les relations entre les procureurs et la police ou une autre instance chargée d'enquête dans votre pays.

*Le ministère public est le représentant de l'État. Il a pour mission de garantir l'exercice uniforme de l'action publique, dans le respect de la maxime d'office et du principe de légalité. Il apparaît comme le seul accusateur principal au procès pénal. Le modèle de poursuite pénale choisi dans le CPP est caractérisé par l'absence totale de juge instruction et c'est donc le ministère public qui conduit l'ensemble de la procédure préliminaire, en sa qualité d'autorité l'instruction. Le fait que les investigations, l'instruction et la mise en accusation relèvent de sa seule autorité est de nature à conférer une grande efficacité à la poursuite pénale. Cependant pour contrebalancer ce pouvoir exorbitant du ministère public et cette perte du double regard (juge instruction – ministère public), le CPP instaure un tribunal des mesures de contrainte et consacre le renforcement des droits de la défense.*

*Dans le cadre de la procédure préliminaire, le ministère public occupe une fonction centrale (article 299 ss CPP). En particulier, à l'égard de la police, à qui il peut édicter des directives (art. 306 al.1; 307 al.1 et 2 CPP). Il conduit lui-même, dans la mesure du possible, les premières auditions importantes (article 307 al.2 in fine CPP). Il établit durant l'instruction l'état de fait et l'appréciation juridique du cas pour lui permettre de mettre un terme à la procédure préliminaire (art. 308 al. 1 CPP). C'est à lui d'ouvrir l'instruction (art. 309 CPP), de prononcer, le cas échéant, une ordonnance de non-entrée en matière (art. 310 CPP), de clôturer l'enquête (art. 318 CPP), de prononcer une ordonnance de classement (art. 326 CPP) ou d'établir un acte d'accusation (art. 324ss CPP).*

*Durant la procédure préliminaire, le ministère public agit comme autorité de poursuite et de surveillance de la police. Il doit être informé de tous les actes effectués par la police durant l'enquête ; il porte d'ailleurs la responsabilité de l'enquête, il dirige la procédure et a la compétence de donner des instructions à la police.*

2. Existe-t-il un dialogue avec le procureur concernant le travail de la police ou une autre instance chargée d'enquête ?

*Au vu des explications ci-dessus, il est évident qu'il y a un dialogue permanent entre le procureur et les policiers affectés à son enquête et qu'il est chargé de diriger.*

3. Le procureur est-il impliqué dans les formations dispensées à la police ou une autre instance chargée d'enquête ?

*Pour ce qui concerne la police judiciaire fédérale, le programme de formation est établi d'entente entre le ministère public et la direction de la police. Les procureurs peuvent être appelés à dispenser un enseignement lors de ces formations.*

#### **B. Dispositions actuelles légales et réglementaires**

4. Les relations entre les procureurs et les instances chargées d'enquête sont-elles déterminées par la loi ou par d'autres normes écrites ? Décrivez-les brièvement.

*Cf. ci-dessus, réponse 1 al. 2.*

#### **C. Responsabilité du procureur dans l'établissement des priorités pour les enquêtes sur les infractions**

5. Comment les priorités pour initier des enquêtes pénales dans votre pays sont-elles déterminées ?

*Il existe une planification quadriennale pour les priorités de la poursuite pénale. C'est le Procureur général de la Confédération qui les fixe pour ce qui relève de la juridiction fédérale.*

6. Les procureurs ou le ministère public ont-ils une influence de façon directe sur la détermination de ces priorités ?

*Cf. ci-dessus, réponse 5.*

#### **D. Responsabilité du procureur durant l'enquête**

7. Les procureurs sont-ils responsables de la conduite des enquêtes dans votre pays ? Si ce n'est pas le cas, qui endosse cette responsabilité ?

*Oui. Cf. ci-dessus, réponse 1.*

8. Durant quelle phase de la procédure le procureur reçoit-il les plaintes (dès lors qu'elle est déposée ou après que la police a mené son enquête) ?

*Selon l'article 304 CPP, la plainte pénale doit être déposée auprès de la police, du ministère public ou de l'autorité pénale compétente en matière de contravention, par écrit ou oralement. L'article 306 CPP régit les tâches de la police au stade de l'investigation policière, soit les tâches de police judiciaire, à l'exclusion des missions de prévention criminelle qui sont, elles, réglées par les lois sur la police. Les investigations policières dont il est ici question sont effectuées du propre chef de la police et non sur délégation. La police jouit, en vertu de l'article 4 al.1 CPP, d'une indépendance dans ses investigations et son modus opérationnel, ceci dans les limites assignées par le CCP. L'intervention de la police dans le cadre fixé par l'article 306 CPP est indépendante et ne nécessite pas d'autorisation, à ce stade, du ministère public ; ceci dans un but de rapidité et d'efficacité de la poursuite pénale. Le message du Conseil fédéral rappelle que, forte de son savoir-faire et de sa proximité des événements, la police doit pouvoir entreprendre les premières investigations même sans ordre du ministère public (Feuille fédérale 2006, page 1244). Le but de cette disposition est de réglementer l'activité policière tout en laissant à la police une marge de manœuvre lui permettant d'agir rapidement et efficacement.*

*L'activité policière reste néanmoins sous la surveillance du ministère public (article 15 alinéa 3 CPP) et soumise aux mêmes règles que l'instruction par le ministère public en vertu de l'article 306 alinéa 3 CPP. Ainsi, la police doit rendre compte périodiquement de ses activités au ministère public qui pourra, le cas échéant donner des instructions ou des directives (article 307 alinéa 2 et 3 CPP). Il s'agit, selon le message du Conseil fédéral, de parer au risque d'une expansion trop importante et incontrôlée des activités de la police en matière d'investigations au détriment de l'instruction.*

*L'article 307 CPP règle la collaboration de la police avec le ministère public dans ce type d'investigation. Selon cette disposition, la police informe sans retard le ministère public sur les infractions graves et tout autre événement sérieux. Le but de cette disposition est d'assurer que le ministère public se rende immédiatement sur les lieux de manière à prendre la direction de la procédure préliminaire et donne ainsi au ministère public un instrument lui permettant d'exercer efficacement sa fonction de direction, limitant en même temps l'autonomie de la police dans l'exercice de son activité d'investigation.*

*D'ailleurs, selon l'alinéa 2 de l'article 307 CPP, le ministère public peut en tout temps donner des directives à la police et lui confier des mandats ou se saisir d'un cas.*

*Enfin, selon l'alinéa 3 de cette disposition, la police établit régulièrement des rapports écrits sur les mesures qu'elle a prises et les constatations qu'elle a faites. Elle les transmet au ministère public accompagnés des dénonciations, des procès-verbaux, des autres pièces ainsi que des objets de valeur mise en sûreté. Les rapports, pièces et objets devront être suffisamment complets pour permettre au ministère public de décider de la suite nécessaire à donner à l'affaire.*

*On voit donc par le biais de ces dispositions que si la plainte est adressée directement au ministère public, ce dernier la transmet à la police pour qu'elle procède aux investigations nécessaires. Dans le cas où la plainte est déposée directement auprès de la police, celle-ci mène elle-même ses investigations avec les cautions rappelées ci-dessus et avec l'obligation d'informer le procureur et de lui transmettre les pièces nécessaires*

9. Quel est le degré d'autonomie de la police ou de toute autre instance chargée d'enquête durant la phase d'enquête ?  
*Cf. réponse ci-dessus.*
10. Le procureur a-t-il le pouvoir d'empêcher ou de mettre fin à une enquête ?  
*Oui, cf. art. 310 et 326 CPP.*
11. Comment est décidée la compétence d'enquêter du service de police ou d'une autre instance ?  
*La question ne se pose pas puisque seules la police et le ministère publics sont des autorités de poursuite pénale (art. 2 al. 1 LOAP).*
12. Si le procureur dirige la police ou une autre enquête pénale dans votre pays, a-t-il le pouvoir de contrôler le respect de l'application des instructions qu'il a données ? Si oui, veuillez décrire brièvement.  
*Cf. art. 15 al. 2 et 3 CPP qui confie au ministère public la surveillance de la police à tous les stades de l'enquête.*

#### **E. Responsabilité du procureur dans le respect de la loi**

13. Le contrôle du respect de la loi par la police ou toute autre instance chargée d'enquête fait-il partie des responsabilités du procureur ? Si oui, durant quelle(s) phase(s) et par quels moyens de contrôle ?

*Oui, cf. ci-dessus, réponse 12.*

#### **F. Principes communs concernant la police**

14. Existe-t-il des règlements écrits concernant la conduite des enquêtes criminelles par la police ou autre instance chargée d'enquête ?

*Cela dépend naturellement de la manière dont les cantons sont organisés. Pour la Confédération, il existe un Manuel de police judiciaire fédérale qui compile, voire remplace les directives internes et qui codifie les bonnes pratiques dont doivent user le ministère public et la police judiciaire fédérale. Si la forme varie, pratiquement tous les cantons ont aussi, à ma connaissance, une telle codification.*

15. Sur quoi portent ces règlements ? (par exemple, la manière de procéder à des interrogatoires, la privation de liberté, etc.)

*Ils portent sur les bonnes pratiques à appliquer pour tous les actes d'enquête, y compris pour les mesures de contrainte.*

#### **G. Contrôle général sur la police**

16. En quoi consiste le système de contrôle de la police (interne/externe) ? Le procureur joue-t-il un rôle dans ce système ?

*Cf. art 15 CPP. devoir de surveillance du ministère public sur les actes de la police et possibilité de donner des directives ou instructions.*

17. Le procureur a-t-il le pouvoir de prononcer des sanctions ?

*Non mais il dénonce les manquements à la direction de la police judiciaire qui dispose, elle, du pouvoir de conduire des enquêtes disciplinaires et de sanctionner.*

#### **H. Conclusions**

18. S'agissant des relations entre les procureurs et les instances chargées d'enquête dans votre pays, quels en sont les principaux enjeux actuels ?

*Avant 2011, la Confédération et chaque canton avait son propre code de procédure pénale. Le nouveau code limite considérablement l'autonomie de la police qui, même dans le domaine de ses tâches propres de police judiciaire, reste soumise à la surveillance du ministère public qu'elle doit informer régulièrement de l'état et de l'avancement de ses investigations. Cela a été parfois ressenti comme une capitis diminutio par les policiers et ce changement nécessite beaucoup d'efforts et d'énergie de la part du ministère public pour qu'une saine compréhension des rôles permette de conserver une efficacité optimale de la poursuite pénale par le biais d'une autonomie contrôlée des investigations policières.*

## Turkey / Turquie

### A. Relationship between prosecutors and the police

1. Please briefly describe the relationship between prosecutors and the police or other investigation body in your country.

*Pursuant to Article 164 of the Code of Criminal Procedure (Law No.5271), the law enforcement officers conduct the investigation proceedings in accordance with the orders and instructions of the public prosecutor. The law enforcement officers follow the public prosecutor's orders that are related to judicial duties. Pursuant to Article 161 of the said Code, the law enforcement officers are obligated to immediately report the incidents they handle, persons they arrest and the measures they take to the public prosecutor under whose service they are, and to carry out all the judiciary-related orders of the public prosecutor without any delays.*

2. Is there any dialogue with the prosecutor concerning the work of the police or other investigation body?

*In the Turkish justice system, the investigation stage is conducted by the public prosecutor and the law enforcement officers are obligated to immediately report the incidents they handle, persons they arrest and the measures they take to the public prosecutor under whose service they are, and to carry out the orders of the public prosecutor without any delays. According to Article 161 of the Code of Criminal Procedure (Law No.5271), the public prosecutor gives written orders, verbal in emergencies, to the law enforcement officers. Verbal order is also communicated in written form as soon as possible.*

3. Is the prosecutor involved in training the police or other investigation body?

*Regarding the pre- and in-service trainings of the law enforcement officers, the last paragraph of Article 9 of the Regulation on the Law Enforcement Officers states that "In the training of the law enforcement officers, the Ministry of Justice shall appoint trainer personnel provided that a demand is made by the Ministry under which the law enforcement unit serves. The opinions of the Ministry of Justice or the authorized Chief Public Prosecutor's Office are also taken regarding the planning of the in-service trainings". Within this scope, it is possible for the public prosecutors to be appointed as trainers on condition that the necessary procedures are followed.*

### B. Existing legal provisions and regulations

4. Is any relationship between prosecutors and investigation bodies determined by law or other provisions? Please describe briefly.

*The work principles of the law enforcement officers are regulated by Article 161 of the Code of Criminal Procedure and the Regulation on the Law Enforcement Officers.*

**C. Responsabilité du procureur dans l'établissement des priorités pour les enquêtes sur les infractions**

5. How are priorities in starting criminal investigations in your country determined?

*In our Criminal Justice System, while some offences are investigated ex-officio, others are investigated upon complaint. While an investigation upon complaint may be carried out upon the complaint of the aggrieved if the offence is indicated to be within the scope of complaint pursuant to the related statute or article.; an ex-officio (without the requirement of a complaint) investigation shall be carried out by the investigation authorities as regards to the offences that require relatively heavier punishments or that constitute severity. In any case of a perpetration of either of these offences, all the necessary research and examinations are carried out indiscriminately by the investigation authorities.*

*On the other hand; the matters that should be taken into consideration when conducting an investigation -such as the nature of an offence, public interest, and the indignation aroused in the society- are announced to all the judicial bodies with the circulars published by the General Directorate of Criminal Matters of the Ministry of Justice. For instance, awareness was raised in all the bodies through the announcement of the points to take into consideration regarding issues such as "Investigations and Prosecutions into the International Corruption Incidents" and "Investigations into the Allegations of Human Rights Violations or Torture and Ill-Treatment".*

6. Do prosecutors or the prosecution service in a direct way have an influence on this?

*The public prosecutors may give orders to the law enforcement officers if necessary, since there are some liabilities attributed to the public prosecutors regarding the matters to especially focus on pursuant to the abovementioned secondary legislation. For example, pursuant to the Circular No. 155 of the Ministry of Justice titled "Prevention of the Whitewashing of the Assets Gained from Crimes and the Financing of the Terrorism", since the investigation into these offences must be conducted by the Chief Public Prosecutor himself/herself or the public prosecutor s/he appoints, all necessary actions must be taken for the immediate transfer of the relevant case file to the public prosecutor's office if an investigation has been initiated by the law enforcement officers.*

**D. Responsibility of the prosecutor during the investigation**



7. Are prosecutors responsible for the conduct of investigations in your country? If no, who is responsible for that?

*After a public prosecutor is informed -via denunciation or by other means- of a situation giving the impression of an offence having been committed, s/he immediately starts criminal proceedings. In order to make it possible for the material truth to be researched and a fair trial to take place, the public prosecutor is obligated to gather and secure the evidence in favour of and against the suspect and protect the rights of the suspect, through the law enforcement officers under her/his service. The public prosecutor may conduct all kinds of research directly or via the law enforcement officers under her/his service.*

8. When does the prosecutor receive a complaint (as soon as the complaint is filed, or after the investigation has been conducted by the police)?

*Public prosecutors may receive the complaint themselves or get the police to receive it. In both situations, the public prosecutors are in charge of conducting the investigation, directly or by giving orders to the police.*

9. What is the degree of autonomy of the police or other investigation body, if any, during the investigation?

*Pursuant to the provisions of the Regulation on the Law Enforcement Officers, the investigation proceedings have the law enforcement officers be carried out principally by the investigation authorities in accordance with the orders and instructions of the public prosecutor. The law enforcement officers follow the judiciary-related orders of the public prosecutor without delay. The law enforcement officers are obligated to immediately report the denunciations and complaints regarding an offence, incidents they handle, persons they arrest and the measures they take to the public prosecutor, and to initiate the necessary investigation proceedings to bring the incident to light, in line with the order of the public prosecutor. In order to make it possible for the material truth to be researched and a fair trial to take place, the law enforcement officers are also obligated to collect and secure the evidence in favour of and against the suspect with the orders of the public prosecutor and in line with the requirements stated in the law, and submit them to the public prosecutor with a summary. If it is found out that evidence has been collected unlawfully, the summary must include this information as well. The law enforcement officers carry out the other investigation procedures with the same level of rigorousness. The law enforcement officer, who initiates the procedures regarding her/his duty at the scene of the incident, verbally warns the persons who prevent him from doing so or act in breach of the measures s/he has taken within her/his authority until the procedures are concluded; and if the person does not obey, s/he takes the person*

*away from the scene of the incident by using force. If the person persists, s/he is arrested. In brief, they cannot carry on an investigation without informing the relevant public prosecutor and taking order from him/her except taking immediate precautions.*

10. Does the prosecutor have the power to prevent or stop an investigation?

*The public prosecutor is not authorized to stop or prevent an ongoing investigation. In the circumstance that permission for investigation must be taken because of special investigation procedure, the prosecutor has to freeze the prosecution in order to take permission from relevant authorities (for example from governors or district governors for civil servants). In the circumstance of lack of complaint regarding an offence within the scope of complaint, the prosecutor makes decision on not prosecuting.*

11. How is it decided which service of the police or other investigation body, if any, is competent to investigate?

*Pursuant to the provisions of the Regulation on the Law Enforcement Officers, regarding the law enforcement officers' assignments, the Security General Directorate, the Gendarmerie General Command, the Coast Guard Command, and the Customs Enforcement General Directorate are the authorities in charge. Public prosecutors do not have any authorizations or duties on this matter.*

12. If the prosecutor leads the police or other criminal investigation in your country, does the prosecutor have the power to monitor compliance with his/her instructions? If so, please briefly describe.

*In our judicial system, investigations are carried out by the public prosecutors. As to the case files that are considered more appropriate to be carried out by the law enforcement officers due to their nature, the law enforcement unit is sent a writ within a reasonable time to ask for information on the outcomes of the investigation, is sent additional writ for further examination, or can be ordered to stop and take all relevant documents and evidence to prosecution office in order to be continued by prosecutor.*

**E. Responsibility of the prosecutor for the respect of the law**

13. Is it a responsibility of the prosecutor to control respect for the law by the police or other investigation body, if any? If yes, at which stage and by which means of control?

*Since the investigations are carried out by public prosecutors in our Criminal Justice System, all the stages of an investigation are under the supervision and control of the public prosecutor. Regarding the case files s/he handles, the public prosecutor is in charge of evaluating all the actions and procedures carried out by the law enforcement officers under her/his service, and the complaints submitted to her/him in terms of the*

*approaches to parties, and taking the necessary actions. The public prosecutors may get a law enforcement officer showing weakness in these matters to be excluded from the case file, as well as launch investigations ex officio against the law enforcement officers' actions that constitute crime. However, these kinds of controls are mostly indirect.*

**F. Common principles concerning the police**

14. Are there written regulations concerning the conduct of criminal investigations by the police or other investigation body?

(Yes.)

15. What are these regulations about? (for instance, the way to carry out interrogations, deprivation of liberty etc.)

*The general principles of carrying out an investigation are regulated in Article 160 and following articles of the Second Section titled "Investigation Procedures" of the Code of Criminal Procedure (Law No.5271).*

*Issues such as witnessing, expert examination, supervision, medical examination, scrutinizing and autopsy, seizure and custody, detention, supervised release, search and seizure, wiretapping, eavesdropping, , , electronically surveillance, statement and interrogation, confidentiality of the investigation and denunciation of offences are regulated in the Code of Criminal Procedure; and are binding for all investigation authorities.*

*Furthermore, detailed regulations regarding the conducting of an investigation have been made with several secondary legislations such as the Regulation on Judicial and Preventive Searches, the Regulation on Physical Examinations, the Regulation on Crime Objects, the Regulation on Seizure, Detention and interrogation, and the Regulation on Surveillance and undercover Investigators.*

**G. General control over police**

16. What is the general control system of the police or other investigation body, if any (internal/external?) Does the prosecutor play a role in this system?

*Pursuant to the provisions of the Regulation on the Law Enforcement Officers, the public prosecutors always monitor the judicial procedures conducted by the law enforcement officers in order for the law enforcement services to be carried out actively and efficiently. The public prosecutor may examine the investigation document anytime and anywhere if necessary, may order the completion of the parts s/he considers lack, and may order the case file to be referred to the chief public prosecutor's office on the*

*grounds of the investigation documents and the circumstances of the parties. As part of their judicial duty, chief public prosecutors or public prosecutors check the detention houses/rooms where the persons in custody will be kept, and if any, interrogation rooms, the circumstances of the detained or interrogated persons, durations of custody, and all the procedures and records regarding custody; and write down a record of the outcomes to the record book for detainees.*

*Moreover, at the end of every year, chief public prosecutors prepare an evaluation report regarding the persons responsible of the law enforcement unit in the regions, and send it to governors in provinces and district governors in districts in order for them to communicate it to the chiefs of registry. The competency of the law enforcement officers in investigations and prosecutions, their hard work in these procedures, work discipline and success rates are stated in these evaluation reports. These evaluation reports are taken into consideration when the registry of the relevant person is prepared.*

17. Is the prosecutor competent to take sanctions?

*What a public prosecutor is judicially capable of doing in a case where it is determined that the judicial police are not conducting the necessary actions their duty requires have been mentioned before. Regarding the administrative aspect, since the judicial law enforcement officers are a part of the law enforcement unit they serve under, public prosecutors do not have any authorizations on this matter.*

## **I. Conclusions**

18. What are the major challenges in relations between prosecutors and investigation bodies in your country?

*In Turkey, administrative and judicial law enforcement officers are only separated in terms of duty. There is no division in terms of organization or personnel. The duties of administrative law enforcement officers and law enforcement officers are connected to each other. Whether there is a need of the establishment of the judicial law enforcement unit separately from the general law enforcement units in order for a more efficient conducting of judicial services has been discussed for a long time. Even though the Regulation on the Judicial law enforcement officers was published and enforced on 1 June 2005, a judicial law enforcement unit has not been established as the regulation requires.*

*In the law enforcement units, the chief of registry and discipline of a policemen working in a judicial law enforcement unit is a policeman. The public prosecutor has no authorization on this matter. The fact that one policeman working in the judicial side is conducting and managing two different chiefs -one from judiciary and one from*

*administration- reduces the efficiency of the services and casts a shadow upon the assurance emerging from the law enforcement units being judicially subordinate to the public prosecutors' office. In order for the efficient conducting of the judicial services, judicial law enforcement body needs to be established as soon as possible.*



## Ukraine

Answers to the questions have been prepared on the basis of the Constitution of Ukraine, Criminal Procedure Code of Ukraine, Law of Ukraine “On Public Prosecutor’s Office” of 14.10.2014, Law of Ukraine “On Police” and other legislative acts of Ukraine.

It should be noted that currently the prosecution bodies of Ukraine undergo the process of reform.

The new Law of Ukraine “On Public Prosecutor’s Office” adopted on October 14, 2014 will come into force in full on 25.04.2015.

From that day the Law of Ukraine “On Public Prosecutor’s Office” of 1991 shall become invalid.

### **A. Relationship between prosecutors and the police**

*1. Please briefly describe the relationship between prosecutors and the police or other investigation body in your country.*

According to the Article 121 of the Constitution of Ukraine the prosecution bodies of Ukraine shall constitute a unified system that is entrusted with supervision over observance of laws by the bodies that conduct detective and search activity, inquiry, pre-trial investigation.

The relationships between prosecutors and the police lie in the fact that the prosecutor within its authority supervises the observance of laws by the police units that conduct detective and search activity, inquiry, pre-trial investigation.

The supervision over observance of laws in the course of pre-trial investigation is realized in the form of providing procedural guidance in a pre-trial investigation.

The powers of prosecutors in supervising the observance of laws by the bodies conducting pre-trial investigation shall be determined by the criminal procedural law.

If necessary, a prosecutor shall have the right to entrust the heads of pre-trial investigation and internal affairs bodies to carry out inspections within departments under their control to address violations and ensure full detection of actions that contain elements of a criminal offense.

In addition, in order to increase efficiency of combating crime and corruption a prosecutor coordinates the activities of law enforcement bodies in regard to these issues.

Pursuant to the Article 25 of the Law of Ukraine “On Public Prosecutor’s Office” of 14.10.2014 the Prosecutor General of Ukraine and prosecutors subordinate to him, while exercising supervision over observance of laws by the bodies that conduct detective and search activity, inquiry, pre-trial investigation, shall coordinate actions of law enforcement bodies of the respective level in the field of combating crime.

Public prosecutors shall exercise the coordination powers by holding joint meetings, establishing multi-agency working groups, holding coordinated measures and carrying out analytical activities.

Procedure for organization of the work to coordinate activities of law enforcement bodies and cooperation of prosecution bodies and agencies combating crime shall be established by the Regulations approved by a joint order of the Prosecutor General of Ukraine and heads of other law enforcement bodies.

The main form of coordination of activities of law enforcement bodies is to conduct coordination meeting of its heads under the chairmanship of appropriate prosecutor.

Decisions of coordination meetings shall be binding for the law enforcement bodies referred to therein.

*2. Is there any dialogue with the prosecutor concerning the work of the police or other investigation body?*

Dialogue between the prosecutor and the police and exchange of relevant information takes place during coordination and multi-agency meetings of law enforcement bodies, where joint actions aimed at early detection, solution, suppression and prevention of crime and corruption are developed and coordinated.

Also, the dialogue between the prosecutor and investigators of pre-trial investigation bodies is ensured during the execution by the prosecutor of his powers related to procedural guidance in pre-trial investigation.

*3. Is the prosecutor involved in training the police or other investigation body?*

The current legislation of Ukraine does not provide for the powers of the prosecution bodies related to training of law enforcement officers.

However, the Regulation “On Coordination of the Activity of Law Enforcement Bodies in Combating Crime and Corruption” of 11.02.2013, approved by the joint order of the Prosecutor General of Ukraine and heads of law enforcement bodies, provides for the mutual use of resources of law enforcement bodies for the preparation and training of staff, its professional development, holding joint seminars, conferences and other educational and practical measures.

## **B. Existing legal provisions and regulations**

*4. Is any relationship between prosecutors and investigation bodies determined by law or other provisions? Please describe briefly.*



The relationships between prosecutors and investigation bodies are determined by the Constitution of Ukraine, the Criminal Procedure Code of Ukraine (hereinafter - CPC), Regulation “On Coordination of the Activity of Law Enforcement Bodies in Combating Crime and Corruption”, regulations on procedure for conducting specific investigative actions approved by joint orders of heads of law enforcement bodies, and other statutory instruments.

### **C. Responsibility of the prosecutor for setting priorities for investigating offenses**

*5. How are priorities in starting criminal investigations in your country determined?*

The priorities of criminal proceeding are the protection of individuals, society and the state from criminal offences, the protection of rights, freedoms and legitimate interests of participants in a criminal proceeding, as well as ensuring quick, comprehensive and impartial investigation and trial in order that everyone who committed a criminal offence is prosecuted in proportion to his guilt, any innocent person is not accused or convicted, and no one is subjected to unreasonable procedural coercion, and that an appropriate legal procedure is applied to each party to a criminal proceeding.

The main objective at the initial stage of investigation into criminal offense is to collect as more information as possible in relation to all the elements of crime: offender, accomplices, victim, witnesses; purpose, motivation; circumstances of offense and its consequences etc.

At the initial stage of investigation into any type of criminal offence it is necessary to take decisions as to the appointment of investigator, prosecutor-procedural leader, the need to create investigative group, develop investigation plan with regard to general versions and received information.

The complex of investigative and search actions in the course of investigation into crime is defined by existing criminological (investigative) situation at the initial stage of the proceedings. It is necessary to take into account peculiarities of crime, the way it was committed, used instruments, information about identity of the deceased and individuals allegedly involved in the offense, motives and so on. The plan defines the timeframes, sequence of investigative (search) and covert investigative (search) actions.

The typical list of investigative actions at the initial stage of investigation include: viewing the crime scene; questioning eyewitnesses, other witnesses (among relatives, friends, neighbours, co-workers etc.); commission and execution of expert examinations; detention, personal search, examination and interrogation of a suspect;

preparation and presentation of a suspect for identification; search at the place of residence and work of a suspect etc.

*6. Do prosecutors or the prosecution service in a direct way have an influence on this?*

According to the Article 36 of the Criminal Procedure Code of Ukraine a public prosecutor, while supervising the compliance with law during pre-trial investigation in the form of providing procedural guidance in a pre-trial investigation, shall have the right to assign investigator, pre-trial investigation body to conduct investigative (search) actions, covert investigative (search) actions or other procedural actions within a time limit set by the public prosecutor, or give instructions in respect of conducting such actions, or participate in them, and where necessary - to conduct investigative (search) and procedural actions by himself in accordance with the procedure set forth by this Code; assign the conduct of investigative (search) actions, covert investigative (search) actions to the relevant operational units; overturn illegitimate and ungrounded rulings of investigators etc.

#### **D. Responsibility of the prosecutor during the investigation**

*7. Are prosecutors responsible for the conduct of investigations in your country? If no, who is responsible for that?*

Investigator of pre-trial investigation body is responsible for the legality and timeliness of the conduct of procedural actions (paragraph 1 of the Article 40 of the CPC of Ukraine).

The influence of a public prosecutor on a pre-trial investigation shall consist in the exercise of his powers in the form of providing procedural guidance in a pre-trial investigation (paragraph 2 of the Article 36 of the CPC of Ukraine).

*8. When does the prosecutor receive a complaint (as soon as the complaint is filed, or after the investigation has been conducted by the police)?*

According to the Article 306 of the Criminal Procedure Code of Ukraine a complaint against decision, act or omission of investigator or public prosecutor shall be considered by investigating judge.

Besides, a suspect, accused person, victim may lodge a complaint with a superior public prosecutor against the failure to respect reasonable time.

The superior public prosecutor shall be required to consider the complaint within three days after its lodging and, if there are grounds to sustain it, issue binding instructions to the relevant public prosecutor as to the time limits for conducting

specific procedural actions or making procedural decisions. A person who has lodged a complaint shall be promptly notified of the results of its consideration (paragraph 1 and 2 of the Article 308 of the CPC of Ukraine).

*9. What is the degree of autonomy of the police or other investigation body, if any, during the investigation?*

Police officer, while performing his duties, shall be governed by law, act within its limits and be subject to his immediate and direct superiors. No one else, except for authorized officers in certain cases provided for by the law, shall have the right to interfere with the legitimate activities of a police officer (paragraph 3 of the Article 20 of the Law of Ukraine “On Police”).

According to the paragraph 5 of the Article 40 of the Criminal Procedure Code of Ukraine investigator in the course of performing his duties is independent in his procedural activities, and any interference therein on the part of persons who have no legitimate authority shall be forbidden.

The exception, in certain cases provided for by the Criminal Procedural Code of Ukraine, is the head of pre-trial investigation body, the prosecutor supervising the observance of laws during pre-trial investigation in the form of providing procedural guidance, and the investigating judge.

*10. Does the prosecutor have the power to prevent or stop an investigation?*

The prosecutor has no authority to prohibit pre-trial investigation.

However, the public prosecutor is authorized to take decision to close criminal proceedings against the suspect based on grounds referred to in the CPC of Ukraine (paragraph 3 of the Article 284 of the CPC of Ukraine), namely if:

- 1) absence of occurrence of criminal offence has been established;
- 2) absence of elements of criminal offence in the act concerned has been established;
- 3) no sufficient evidence has been obtained to prove the person’s guilt in court, and options to obtain such evidence have been exhausted;
- 4) a law which abolishes criminal liability for the action committed by the person concerned has entered into force;
- 5) the suspect, accused died, except when proceedings are necessary to vindicate the deceased;
- 6) there is a judgment rendered based on the same charges which has entered into legal force, or court’s ruling to close criminal proceedings based on the same charges has been adopted;
- 7) victim, and in cases specified by the present Code, his representative, waived the accusation in criminal proceedings in the form of private accusation;

8) in case of criminal offence where no consent of the state that has surrendered a person has been obtained.

*11. How is it decided which service of the police or other investigation body, if any, is competent to investigate?*

The issue of investigative jurisdiction (competence) is determined by the Article 216 of the Criminal Procedure Code of Ukraine.

According to the Article 38 of the Criminal Procedure Code of Ukraine the pre-trial investigation bodies (bodies that carry out inquiry and pre-trial investigation) shall be:

- 1) investigation units of:
  - a) internal affairs bodies;
  - b) security agencies;
  - c) agencies supervising compliance with the tax legislation;
  - d) bodies of the State Bureau of Investigation.

2) unit of detectives, unit of internal control of the National Anti-Corruption Bureau of Ukraine.

Besides, in cases prescribed by the CPC of Ukraine, prosecutor shall be entitled to define the body of pre-trial investigation responsible for the conduct of criminal proceeding (paragraph 5 of the Article 36, Article 218 of the CPC of Ukraine).

*12. If the prosecutor leads the police or other criminal investigation in your country, does the prosecutor have the power to monitor compliance with his/her instructions? If so, please briefly describe.*

Pursuant to the Article 25 of the Law of Ukraine “On Public Prosecutor’s Office” a public prosecutor shall supervise the observance of laws by the bodies that conduct detective and search activity, inquiry, pre-trial investigation, enjoying his rights and fulfilling the duties as stipulated in the Law of Ukraine “On Detective and Search Activity” and the Criminal Procedure Code of Ukraine.

Written instructions of the public prosecutor issued within his powers to the bodies that conduct detective and search activity, inquiry, pre-trial investigation shall be binding upon these agencies and immediately executed.

A public prosecutor who gives instructions beyond his powers shall be held liable under the law.

## **E. Responsibility of the prosecutor for the respect of the law**

*13. Is it a responsibility of the prosecutor to control respect for the law by the police or other investigation body, if any? If yes, at which stage and by which means of control?*

The supervision of the observance of laws by the police units that carry out detective and search activity, inquiry, pre-trial investigation shall be performed by prosecutor (Article 27 of the Law of Ukraine “On Police”, Article 25 of the Law of Ukraine “Public Prosecutor’s Office”).

The prosecutor begins to supervise the observance of laws in the course of pre-trial investigation in the form of procedural guidance from the moment when information about committed criminal offense is entered into the Unified Register of Pre-Trial Investigations.

According to the Article 36 of the Criminal Procedure Code of Ukraine a public prosecutor, in the course of such supervision, shall have the right to:

- 1) start pre-trial investigation if there are grounds specified in the present Code;
- 2) have full access to materials, documents, and other details related to pre-trial investigation;
- 3) assign pre-trial investigation body to conduct pre-trial investigation;
- 4) assign investigator, pre-trial investigation body to conduct investigative (search) actions, covert investigative (search) actions or other procedural actions within a time limit set by a public prosecutor, or give instructions in respect of conducting such actions, or participate in them, and where necessary - personally conduct investigative (search) and procedural actions in accordance with the procedure set forth by this Code;
- 5) assign the conduct of investigative (search) actions, covert investigative (search) actions to the relevant operational units;
- 6) institute audits and examinations in accordance with the procedure established by law;
- 7) overrule illegitimate and ungrounded rulings of investigators;
- 8) initiate with the head of the pre-trial investigative body the issue of suspending the investigator from pre-trial investigation and the appointment of another investigator if there are grounds for his disqualification specified in the present Code or in case of inefficient pre-trial investigation;
- 9) take procedural decisions in cases specified by the present Code, including with regard to termination of criminal proceedings and extending the time limits for pre-trial investigation if grounds as prescribed in the present Code are present;
- 10) support or refuse to support the motions of investigator addressed to investigating judge on the conduct of investigative (search) actions, covert investigative (search) actions, other procedural actions in cases specified by the present Code or individually submit such motions to the investigating judge;
- 11) notify the individual of suspicion;

12) enter civil action in the interests of the State and those individuals who are unable to defend their rights pursuant to this Code and the law due to their physical or economic circumstances, being underage or elderly age, incompetence or limited legal capacity;

13) approve or refuse to approve indictments, requests for application of coercive measures of medical or educational nature, modify an indictment drawn up by the investigator or the abovementioned requests, draw up indictments or the requests concerned by himself;

14) refer to court with indictment, request for application of coercive measures of medical or educational nature, or request for discharge of an individual from criminal liability;

15) prosecute on behalf of the State in court, resign to support public prosecution, alter the charges or bring additional charges according to the procedure specified by the present Code;

16) approve requests of pre-trial investigation body for international legal assistance or transfer of criminal proceedings, or independently file such requests in accordance with the procedure specified by the present Code;

17) assign pre-trial investigation body to execute a request (commission) for international legal assistance or transfer of criminal proceedings made by a competent authority of a foreign state, verify the completeness and legitimacy of executed procedural actions as well as completeness, comprehensiveness and objectiveness of investigation under the transferred criminal proceeding;

18) verify the documents provided by a pre-trial investigation body concerning surrendering a person (extradition) prior to referring them to a higher-level prosecutor, and return these documents to the relevant body with written comments, if these documents are unjustified or fail to meet the requirements of international treaties, to which the Verkhovna Rada of Ukraine consented to be bound, or laws of Ukraine;

19) assign pre-trial investigation bodies to conduct searches and apprehension of those individuals who committed a criminal offense outside Ukraine, and carry out specific procedural actions to surrender (extradite) a person at the request made by a competent authority of a foreign state;

20) appeal court decisions in accordance with the procedure established by the present Code;

21) exercise other powers provided for by the present Code.

## **F. Common principles concerning the police**

*14. Are there written regulations concerning the conduct of criminal investigations by the police or other investigation body?*

The rules of criminal proceedings in the territory of Ukraine are defined only by the criminal procedural law of Ukraine, which consists of relevant provisions of the Constitution of Ukraine, international treaties, which the Verkhovna Rada of Ukraine has given its consent to be bound by, the Criminal Procedure Code and other laws of Ukraine.

*15. What are these regulations about? (for instance, the way to carry out interrogations, deprivation of liberty etc.)*

The provisions of the Criminal Procedure Code of Ukraine set general principles of criminal proceedings, the concept of evidence, procedural terms, as well as measures to ensure criminal proceedings and related procedural costs.

Besides, its provisions provide for the procedure of pre-trial investigation and court proceedings in the courts of first instance, appeal and cassation courts, as well as basic provisions of international cooperation in criminal proceedings.

### **G. General control over police**

*16. What is the general control system of the police or other investigation body, if any (internal/external?) Does the prosecutor play a role in this system?*

According to the Article 26 of the Law of Ukraine “On Police”, the control over police activities is carried out by the Cabinet of Ministers of Ukraine, Minister of Internal Affairs of Ukraine and councils within their competence.

Local councils, while exercising control over the police activity, do not interfere in its detective and search activity, criminal procedure and administrative activity.

The prosecutor supervises the observance of laws by police units carrying out detective and search activity, inquiry, pre-trial investigation, as well as in the enforcement of judgments delivered in criminal cases and application of other coercive measures related to restriction of personal liberty (Article 27 of the Law of Ukraine “On Police”).

*17. Is the prosecutor competent to take sanctions?*

After submission of a report or information about committed criminal offense (including committed by a law enforcement officer) or after independent identification of circumstances which are likely to indicate about commission of a criminal offence, a public prosecutor shall be required to enter the information concerned into the Unified Register of Pre-Trial Investigations, and to initiate investigation.

A prosecutor has no other powers to directly apply sanctions.

## H. Conclusions

*18. What are the major challenges in relations between prosecutors and investigation bodies in your country?*

There are no significant challenges in relations between prosecutors and investigation bodies in the country.

## United Kingdom / Royaume-Uni

### A. Relationship between prosecutors and the police

1. Please briefly describe the relationship between prosecutors and the police or other investigation body in your country.
  - The Crown Prosecution Service (CPS) is the principal prosecuting authority for England and Wales. Established as an independent body in 1986 to prosecute criminal cases, the role of the CPS is as follows:-
    - (a) To decide which cases should be prosecuted, keeping them all under continuous review;
    - (b) To determine the appropriate charges in more serious or complex cases, in accordance with the Code for Crown Prosecutors – advising the police from the earliest stages of investigations and building strong cases from the start. The police retain the responsibility for deciding the charge in the remaining criminal cases;
    - (c) To prepare cases and present them at court – using a range of in-house advocates, self-employed advocates or agents in court; and
    - (d) To provide information, assistance and support to victims and prosecution witnesses.
  - As the national charging service for the CPS, CPS Direct provides the majority of CPS charging decisions to the police. Operating 24 hours a day, 365 days a year, CPS Direct has a network of dedicated Duty Prosecutors based across England and Wales.
  - Evidence is transmitted digitally between the police and the CPS, and officers can access 'real time' advice via the telephone; in some cases officers can receive a response electronically. For large scale or sensitive cases, such as sexual offences, CPS Area prosecutors will provide police officers with advice and charging decisions by way of face-to-face, telephone or digital consultations.
2. Is there any dialogue with the prosecutor concerning the work of the police or other investigation body?
  - Yes, we work closely with the police and other investigators to advise them on lines of inquiry and decide on appropriate charges or other outcomes, in accordance with the Code for Crown Prosecutors



3. Is the prosecutor involved in training the police or other investigation body?
- Not on a formal basis, although the Central Casework Divisions of the CPS organise ad-hoc training courses for prosecutors on specific topics to which the police are often invited.

**B. Existing legal provisions and regulations**

4. Is any relationship between prosecutors and investigation bodies determined by law or other provisions? Please describe briefly.
- The CPS was established as an independent body in 1986 to prosecute criminal cases. This relationship has its roots in the Prosecution of Offences Act 1985.

**C. Responsibility of the prosecutor for setting priorities for investigating offences**

5. How are priorities in starting criminal investigations in your country determined?
- Priorities are determined either as a reaction to an event or more proactively as a result of intelligence received by the police from sources.
6. Do prosecutors or the prosecution service in a direct way have an influence on this?
- Prosecutors have an influence on this only insofar as we work closely with the police and other investigators to advise them on lines of inquiry and decide on appropriate charges or other outcomes, in accordance with the Code for Crown Prosecutors

**D. Responsibility of the prosecutor during the investigation**

7. Are prosecutors responsible for the conduct of investigations in your country? If no, who is responsible for that?
- No, prosecutors are not responsible for the conduct of investigations in the UK. The police and other investigators are responsible for the conduct of investigations in England and Wales.
8. When does the prosecutor receive a complaint (as soon as the complaint is filed, or after the investigation has been conducted by the police)?
- This depends upon the nature of the offence. Once a suspect is held in furtherance of a complaint, in minor cases the police decide whether to caution them, take no further action, issue a fixed penalty notice or refer to the CPS for a conditional caution, or in the more serious cases, send the papers to the CPS to decide upon prosecution.
  - In very serious cases, we work closely with the police and other investigators from the outset to advise them on lines of inquiry and decide on appropriate charges or other outcomes.

9. What is the degree of autonomy of the police or other investigation body, if any, during the investigation?
- The police and other investigative bodies (see 11 below for list) have a great degree of autonomy during investigations. This is tempered in very serious cases by the fact that prosecutors advise on lines of inquiry.
10. Does the prosecutor have the power to prevent or stop an investigation?
- No but the prosecutor can provide advice to the police on lines of inquiry and on whether the evidence obtained from the investigation as it stands is enough to provide a realistic prospect of conviction or not.
11. How is it decided which service of the police or other investigation body, if any, is competent to investigate?
- It depends upon the type of case it is. Most of the titles below are self-explanatory:-
- Police – There are 43 police forces across England and Wales responsible for the investigation of crime generally, collection of evidence and the arrest or detention of suspected offenders.
  - National Crime Agency – the NCA leads the UK's law enforcement's fight to cut serious and organised crime. The NCA has national and international reach and the mandate and powers to work in partnership with other law enforcement organisations to bring the full weight of the law to bear on serious and organised criminals
  - UK Border Agency
  - Her Majesty's Revenue and Customs
  - Department for Work and Pensions
  - Department for Environment, Food and Rural Affairs
  - Department of Health and
  - Medicines and Healthcare products Regulatory Agency
12. If the prosecutor leads the police or other criminal investigation in your country, does the prosecutor have the power to monitor compliance with his/her instructions? If so, please briefly describe.
- The prosecutor does not lead the police criminal investigation but as set out in 2 above, gives advice as to the direction of the investigation. The prosecutor does not have actual power to monitor compliance but the result of non-compliance with advice given by the prosecutor would be that the prosecutor would be unable to conclude that there was enough evidence to provide a realistic prospect of conviction (as required by the Code for Crown Prosecutors) and therefore would not authorise a prosecution.

**E. Responsibility of the prosecutor for the respect of the law**

13. Is it a responsibility of the prosecutor to control respect for the law by the police or other investigation body, if any? If yes, at which stage and by which means of control?
- No it is not.

**F. Common principles concerning the police**

14. Are there written regulations concerning the conduct of criminal investigations by the police or other investigation body?
- Yes, the law relating to the police's powers to stop and search persons, to enter and search premises and to seize property therein, to make arrests, to detain persons without charge and after charge and to question persons who have been detained is largely contained in the Police and Criminal Evidence Act (PACE) 1984 (The Act). The Act defines the limits of the police officers in these areas and provides a series of checks and controls over the exercise of those powers. The Act is supplemented by a series of Codes of Practice.
  - The Codes of Practice apply to:
    - (a) Police officers (including police forces such as the British Transport Police) and
    - (b) Persons "other than police officers who are charged with the duty of investigating offences or charging offences".Category (b) includes Revenue and Customs officers, officers of the Serious Fraud Office, officers investigating tax fraud, but not local tax inspectors. The codes can also apply to store detectives or similar security officers and are not just restricted to officers of central government or other persons acting under statutory powers. It is a question of fact whether or not a particular individual is a person "charged with the duty of investigating offences".
15. What are these regulations about? (for instance, the way to carry out interrogations, deprivation of liberty etc.)
- See response to question 14 above.

**G. General control over police**

16. What is the general control system of the police or other investigation body, if any (internal/external?) Does the prosecutor play a role in this system?
- Offending police officers are subject to criminal sanctions and prosecution in the same manner as other members of the public.
  - HM Inspectorate of Constabulary (HMIC) independently assesses police forces and policing, asking the questions that citizens would ask and publishing information to allow the public to compare the performance of their force against others
  - The Independent Police Complaints Commission is a non-departmental public body in England and Wales responsible for overseeing the system for handling complaints made against police forces in England and Wales.

17. Is the prosecutor competent to take sanctions?
- Yes, CPS prosecutors are competent to bring offenders (including police officers) to justice. This helps reduce both crime and the fear of crime, thereby promoting public confidence in the rule of law through the consistent, fair and independent review of cases and through their fair, thorough and firm presentation of cases at court.

**H. Conclusions**

18. What are the major challenges in relations between prosecutors and investigation bodies in your country?

This is too broad a question to answer in this questionnaire format