



CCPE (2015)1

## CONSULTATIVE COUNCIL OF EUROPEAN PROSECUTORS (CCPE)

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

#### 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).