



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.

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.

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

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.

## **2. 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 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.

**3. 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.

**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 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.

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

**5. 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.

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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

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:

- the defendant is in pre-trial detention, or there is a restraint order against him;
- 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;
- immunity of the defendant has been waived;
- criminal proceedings have been initiated for bribery of public officials;
- 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 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,
    - 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,
    - participation in a criminal organization,
    - any crime committed by a criminal organization,
    - crimes for which, according to Section 26 (3) of the Criminal Code, no statute of limitation applies,
    - 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;
    - 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.

**6. 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.

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

**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 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.

**9. 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

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

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.

**10. 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.

(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,

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



*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.

**11. 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 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

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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.

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.

- 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 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.

***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, 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.

#### **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 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.

#### **15. 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.

**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 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.

**17. 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.

**H. Conclusions**

**18. 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.