



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.

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.