



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.

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.