



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 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.

