

## **A. Relations between prosecutors and police**

**Q: 1.** Please briefly describe the relationship between prosecutors and the police or other investigation body in your country.

**A:** Relations between prosecutors, police or other investigation and inquiry bodies in Azerbaijan in the field of joint fight against crime, protection of human rights and freedoms of citizens are carried out by interrelated activities, procedural supervision over preliminary investigation conducted in these bodies, as well as in the form of supervision on the enforcement and application of laws by the police or other investigation and inquiry bodies.

Thus, under Article 84 of the Criminal Procedure Code of the Republic of Azerbaijan the prosecutor shall:

- examine applications and other documents on offences which have been committed or are planned, launch the criminal case if there are sufficient reasons and grounds for doing so and, if so, exercising powers of the investigator, conduct the preliminary investigation or delegate it to inquirer or investigator;

- manage the procedural aspects of the preliminary investigation of the case;

- ensure that the inquiry and preliminary investigation authorities observe the legal requirements in their reception, registration and processing of applications and other information on offences committed or planned;

- obtain material and documents on the criminal case and information about the progress of the investigation from the inquirer or investigator, and check the material and documents on the criminal case and acquaint himself with the course of the investigation;

- excluding cases of transferring the criminal cases from one authority to another, withdraw the criminal case from one inquirer or investigator and transfer it to another in order to guarantee the thorough, full and objective conduction of the investigation, and in cases of the law violation during the investigation;

- charge the investigating group with the criminal investigation and appoint the members of the group;

- examine objections to the inquirer or investigator as well as their requests to withdraw;

- give written instructions to the inquirer or investigator concerning the investigation of the offence, the choice, alteration or discontinuation of restrictive measures, the search for the guilty party, the contents of the indictment, the adoption of decisions and investigative or other procedures;

- cancel an illegal or groundless decision of the inquirer or investigator;

- (consider) examine complaints concerning decisions or acts of the inquirer or investigator;

- confirm the indictment and the decisions of the inquirer or investigator in the circumstances provided in CPC or if not, refer the criminal case to the investigator with mandatory instructions;
- refer the criminal case or other prosecution matter to the court for examination on the merits;
- take the appropriate decisions on the criminal case and conduct different investigative and other procedures;
- order search operations in order to detect offences and find missing persons or property, and receive information on the measures taken;
- obtain documents and other material on criminal acts and the persons connected with them;
- verify the legality of detention, forced appearance before the prosecuting authority and other coercive procedural measures taken by the inquirer or investigator, as well as charge the inquiry authorities to conduct the relevant procedures;
- release the suspect from custody or the accused from detention on remand if there are no longer legal grounds for holding them or if the detention periods provided in CPC have been exceeded;

Relations between prosecutors, police or other investigation-inquiry bodies in our country are governed by the orders and instructions of the Prosecutor General, orders and guidelines signed by the directing units of police or other investigation and inquiry bodies along with the applicable criminal procedure legislation.

**Q: 2.** Is there any dialogue with the prosecutor concerning the work of the police or other investigation body?

**A:** Dialogue with the prosecutor in connection with the work of the police or other investigation and inquiry bodies is performed in the form of a daily procedural supervision of the preliminary investigation, supervision over the enforcement and application of laws, preparation and execution of joint investigation-operational plans on criminal cases, if appropriate, in the form of obtaining and examination of criminal cases and materials by prosecutors, as well as reporting of criminal cases and materials to prosecutors by police officers or other investigation and inquiry bodies, prior notification of prosecutors on the implementation of important investigating acts.

## **B. Existing legal provisions and regulations**

**Q: 4.** Is any relationship between prosecutors and investigation bodies determined by law or other provisions? Please describe briefly.

**A:** Relations between prosecutors, police and investigation and inquiry bodies, procedural aspects of the investigative activities of these bodies, supervision over the enforcement and implementation of the laws are established

in accordance with the criminal procedure legislation, the Laws of the Republic of Azerbaijan “On Prosecutor's Office”, “On Police”, “On the operational-search activity” and other laws, as well as orders and instructions of the Prosecutor General, Guidelines and other regulatory documents signed by the heads of investigation and preliminary investigation bodies.

### **C. Prosecutor’s responsibility for setting priorities for investigating offenses**

**Q: 5.** How are priorities in starting criminal investigations in your country determined?

**A:** The sequence of investigation of the established offence in our country starts with the reception and registration of information on offences which have been committed or planned. –

Information on the committed or planned offences may consist of information provided by individuals, legal persons and the media, and such information can be revealed directly by the prosecuting authority (Articles 204-208 of the CPC of the Republic of Azerbaijan);

After the registration of the information on the offences it is sent to competent authorities, or if it refers to their powers, a preliminary examination is conducted to establish the sufficient grounds for launching a criminal case by the prosecutor's office, the police and the investigation-inquiry bodies (Article 207 of the CPC of the Republic of Azerbaijan);

If the evidence obtained as a result of the conducted examination is sufficient, the investigation is conducted after launching proceedings on the case, or the case is sent for investigation, or the decision to refuse to start a criminal case on the collected materials is adopted (Articles 207 and 212 of the CPC of the Republic of Azerbaijan);

The sequence of investigative actions to be conducted on criminal cases is established depending on the nature of criminal incidents, conditions and other circumstances.

Furthermore, in all cases with reasons and grounds provided in the Criminal Procedure Code of the Republic of Azerbaijan, the inquirer, the investigator or the prosecutor in charge of the procedural aspects of the investigation shall immediately institute criminal proceedings (Article 209 of the CPC of the Republic of Azerbaijan).

**Q: 6.** Do prosecutors or the prosecution service in a direct way have an influence on this?

**A:** Prosecutors or Prosecution Service affect it directly as follows:

- examine applications and other documents on offences which have been committed or are planned, launch the criminal case if there are sufficient reasons and grounds for doing so and, if so, exercising the powers of the investigator,

conduct the preliminary investigation or delegate it to the inquirer or investigator;

- manage the procedural aspects of the investigation of the case;
- ensure that the investigating and inquiry authorities observe the legal requirements in their reception, registration and processing of applications and other information on offences committed or planned;
- obtain material and documents on the criminal case and information about the progress of the investigation from the detective or investigator, and check the material and documents on the criminal case and acquaint himself with the course of the investigation;
- excluding cases of transferring the criminal case from one authority to another, withdraw the criminal case from one inquirer or investigator and transfer it to another in order to guarantee the thorough, full and objective conduction of the investigation, and in cases of the law violation during the investigation;
- charge the investigating group with the criminal investigation and appoint the members of the group;
- examine objections to the inquirer or investigator as well as their requests to withdraw (Article 84 of the CPC of the Republic of Azerbaijan).

#### **D. Prosecutor's responsibility during the investigation and preliminary investigation process**

**Q: 7.** Are prosecutors responsible for the conduct of investigations in your country? If no, who is responsible for that?

**A:** Prosecutors in our country take charge of conducting investigations-inquiries.

Thus, under Articles 84.2.2 and 84.3 of the CPC of the Republic of Azerbaijan prosecutor along with other duties attributed to his powers in the cases and manner prescribed by the criminal procedure legislation, shall take charge of the procedural aspects of the investigation of the criminal case and the prosecutor being in charge of the procedural aspects of the preliminary investigation bears responsibility for the enforcement and application of the CPC during the pre-trial proceeding of the criminal case.

**Q: 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)?

**A:** Pursuant to the applicable Criminal Procedure Code of the Republic of Azerbaijan and other laws and regulations, a prosecutor shall receive complaints at all stages of the preliminary investigation, as well as during the implementation of the inquiry by police, consider them within the terms established by law, and take appropriate measures to execute these decisions.

**Q: 9.** What is the degree of autonomy of the police or other investigation body, if any, during the investigation?

**A:** The degree of autonomy of police or other investigation / inquiry bodies during the investigation / inquiry is established in accordance with the CPC of the Republic of Azerbaijan, the Laws of the Republic of Azerbaijan "On Police", "On the operational-search activity" and other regulatory documents.

Thus, under Articles 85.1 and 86.1 of the CPC of the Republic of Azerbaijan during the criminal prosecution, the inquirer shall take the necessary procedural decisions pursuant to the law, on the basis of the prosecutor's instructions and his own conscience, and shall carry out investigative or other procedures within his powers.

Article 84 of the Criminal Procedure Code states that, a prosecutor in charge of the procedural aspects of the preliminary investigation shall:

- excluding cases of transferring of the criminal cases investigation from one authority to another, remove withdraw the criminal case from one preliminary investigator inquirer or investigator and transfer it to another in order to guarantee the thorough, full and objective conduction of the investigation, and in cases of where the law is violationed during the investigation;

- charge the investigating authority group with the criminal investigation and appoint its member the members of the group;

- examine objections to the inquirer or investigator as well as their requests to withdraw;

- give written instructions to the inquirer or investigator concerning the investigation of the offence, the choice, alteration or discontinuation of restrictive measures, the search for the guilty party, the contents of the indictment, the adoption of decisions and investigative or other procedures;

- cancel an illegal or groundless decision of the inquirer or investigator;

- (consider) examine complaints concerning decisions or acts of the inquirer or investigator;

- confirm the indictment and the decisions of the inquirer or investigator in the circumstances provided for in the CPC or if not, refer the criminal case to the investigator with mandatory instructions;

- refer the criminal case or other prosecution matter to the court for examination on the merits;

- take the appropriate decisions on the criminal case and conduct different investigative and other procedures;

- direct the conduct of operational-search measures on crime disclosure, or search for the missing person or missing property and receive reports on the measures taken;

- obtain documents and other material on criminal acts and the persons connected with them;

- verify the legality of detention, forced appearance before the prosecuting authority and other coercive procedural measures taken by the inquirer or

investigator, as well as charge the inquiry authorities to conduct the relevant procedures;

- has the right to release the suspect from custody or the accused from detention on remand if there are no longer legal grounds for holding them or if the detention periods provided for in CPC have been exceeded.

It should be noted that under Article 84.5 of the CPC of the Republic of Azerbaijan, if the prosecutor in charge of the procedural aspects of the investigation disagrees with the instructions on the prosecution of the accused, the choice of restrictive measures or changes to them, the classification of the offence, the scale of the charge, the termination of the case or committal for trial, he shall have the right to send his reasoned objection to the senior prosecutor. If the latter agrees with the arguments he shall rescind his written instructions; if he disagrees, he shall transfer responsibility for the investigation to another prosecutor. An objection to the prosecutor's written instructions shall not stay the execution of those instructions.

**Q: 10.** Does the prosecutor have the power to prevent or stop an investigation?

**A:** Article 84 of the CPC of the Republic of Azerbaijan provides that, the prosecutor in charge of the procedural aspects of the preliminary investigation shall:

- cancel an illegal or groundless decision of the inquirer or investigator;
- take the appropriate decisions on the criminal case and conduct different investigative and other procedures;
- discontinue the criminal prosecution against the accused or refrain from prosecution in circumstances provided for in Articles 39 and 40 of the CPC.

According to this article, a prosecutor has the right to suspend the investigation and inquiry, as well as to prevent the groundless criminal prosecution setting aside decisions to launch the groundless criminal prosecution.

**Q: 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:** Under article 84 of the CPC of the Republic of Azerbaijan, a prosecutor in charge of the procedural aspects of the preliminary investigation shall:

- give written instructions to the inquirer or investigator concerning the investigation of the offence, the choice, alteration or discontinuation of restrictive measures, the search for the guilty party, the contents of the indictment, the adoption of decisions and investigative or other procedures;
- confirm the indictment and the decisions of the inquirer or investigator in the circumstances provided for in this Code or if not, refer the criminal case to the investigator with mandatory instructions;

- direct the conduct of operational-search measures on crime disclosure, or search for the missing person or missing property and receive reports on the measures taken.

Prosecutor while being in charge of procedural aspects of the preliminary investigation supervise the execution of his instructions, constantly checks the execution of these instructions, and takes necessary steps prescribed by law in respect of persons responsible for the execution of the instructions.

### **E. Responsibility of the prosecutor for the respect of the law**

**Q: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?

**A:** The prosecutor bears legal liability for violation of laws by the police or other preliminary investigation bodies.

Article 4 of the Law of the Republic of Azerbaijan “On Prosecutor’s Office” states that, the prosecutor's office in cases stipulated by law and order shall:

- manage of the preliminary criminal investigation and ensure the enforcement of laws;
- supervise the implementation and enforcement of laws in the activity of inquiry and operational search bodies.

Under Article 84 of the CPC of the Republic of Azerbaijan, s prosecutor shall:

- manage the procedural aspects of the investigation of the case;
- ensure that the investigation / inquiry authorities observe the legal requirements in their reception, registration and processing of applications and other information on offences committed or planned;
- obtain material and documents on the criminal case and information about the progress of the investigation from the inquirer or investigator, and check the material and documents on the criminal case and acquaint himself with the course of the investigation;
- cancel an illegal or groundless decision of the inquirer or investigator;
- examine complaints concerning decisions or acts of the inquirer or investigator;
- obtain documents and other material on criminal acts and the persons connected with them;
- verify the legality of detention, forced appearance before the prosecuting authority and other coercive procedural measures taken by the inquirer or investigator, as well as charge the inquiry authorities with the conduct of procedures;
- release the suspect from custody or the accused from detention on remand if there are no longer legal grounds for holding them or if the detention

periods provided for in Articles 148.4, 158 and 159 of the CPC have been exceeded.

As is obvious, verification of compliance with the law by the police or other investigation / inquiry authorities under the law and relevant regulations was established as a duty of prosecutor. Prosecutor fulfill this obligation at any stage of the preliminary investigation constantly checking reception, registration and processing of applications and other information on offences committed or planned by the police or other investigation / inquiry authorities, obtaining and examining criminal cases and materials, and conducting generalizations on the implementation of laws within the stipulated terms.

## **F. Common principles concerning the police**

**Q: 14.** Are there written regulations concerning the conduct of criminal investigations by the police or other investigation body?

**A:** There exist written rules for the implementation of criminal investigations / inquiries by the police or other investigation / inquiry bodies, and they are regulated by relevant norms of the CPC of the Republic of Azerbaijan, as well as by orders and instructions given by police or other investigation / inquiry authorities in this regard.

**Q: 15.** What are these regulations about? (for instance, the way to carry out interrogations, deprivation of liberty etc.)

**A:** These rules apply to all investigative actions (e.g., questioning, confrontation, search, seizure, imprisonment, etc.).

At the same time, guidelines for the implementation of certain investigative actions and the investigation of specific crimes are prepared and used in practice.

## **G. General control over police**

**Q: 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?

**A:** The main supervision/control system of the police or other investigation-inquiry bodies is prosecuting authorities.

Under Article 12 of the Law of the Republic of Azerbaijan “On Police”, during the execution of the provisions of this Law shall be the inter-institutional and external-institutional supervision.

The inter-institutional supervision of the police is carried out by the relevant executive authority within the powers established by the legislation of the Republic of Azerbaijan, and the external-institutional supervision is conducted by the relevant executive authority. Supervision over the



implementation of laws in police authorities is performed by courts and prosecution authorities within the competences established by law

**Q: 17.** Is the prosecutor competent to take sanctions?

**A:** Under articles 154-157, 172 of the CPC of the Republic of Azerbaijan, arrest and removal from position on a submission by the prosecutor on the basis of a court decision, under articles 165-171 “a written undertaking not to go elsewhere”, “personal surety”, “surety offered by an organisation”, “police supervision”, “supervision” and “military observation” as restrictive measures are implemented on the basis of prosecutor’s decision.

In addition, under Article 243.1 of the CPC of the Republic of Azerbaijan, search and seizure, and under article 249.2.1, attachment of property is executed on the basis of a reasoned application by the investigator and the relevant submissions by the prosecutor in charge of the procedural aspects of the investigation.

In accordance with the applicable laws, in some other cases prosecutor shall have certain powers in connection with the adoption of legal sanctions.