



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 National Police shall investigate ex officio or on the basis of a criminal complaint, but it shall comply with instructions from the Office of the Public Prosecutor. The National Police shall keep records on its investigations, so that the cause, the implementation, and the result of such investigations may be verified; it shall report to the Office of the Public Prosecutor in writing.

The Office of the Public Prosecutor is entitled to have the National Police carry out provisional enquiries.

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

There can be a dialogue between the prosecutor and the police – if necessary – in any case. At least once a year there are meetings between prosecutors of the Office of the Public Prosecutor and the heads of several services of the National Police.

3. Is the prosecutor involved in training the police or other investigation body?

There is no regular involvement of prosecutors in training of the police, but about once a year a prosecutor of the Office of the Public Prosecutor takes part as an instructor in a training of the National Police.

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 relationship between the Office of the Public Prosecutor and the National Police is determined in the CPC (code of criminal procedure):

§ 9

1) The National Police shall take part in the investigation and prosecution of offences in terms of the provisions of this Act. It shall investigate *ex officio* or on the basis of a criminal complaint; it shall comply with instructions from the Office of the Public Prosecutor and the Court.

2) Subject to Art. 21 et seqq. of the Police Act (Polizeigesetz), the National Police shall have authority to apply proportionate and adequate coercion to implement the instructions of the Office of the Public Prosecutor or the Court (Art. 20 of the Police Act) or the powers granted to it by this Act. In this, the National Police shall - subject to the conditions and formal requirements respectively provided in each case - have the power to also use physical force against persons and items as far as this is indispensable for the investigation and less grave means are not suitable. An arrest warrant (§ 128 (1)) shall also provide authority to search the apartment or other places protected by the immunity of the home for the person to be arrested as far as the arrest is to be carried out in these places according to the warrant.

3) As far and as long as this is necessary for carrying out a coercive measure or for the recording of evidence, the National Police shall have the power *ex officio* or on the basis of a direction to close containers or facilities by affixing a seal or to close off crime scenes in order to prevent unauthorised access.

4) If a person refuses an act which such person is legally obliged to carry out, such act may be directly replaced by coercion pursuant to paragraph 2 or by a judicial decision. If this is not possible, the person - unless such person is him-/herself suspect of the offence or privileged from testifying - may be coerced by recurring penalties to comply with such obligation. Recurring penalties may only be applied as far as they are proportionate to the gravity of the offence, to the degree of the suspicion, and to the result that is being striven for.

5) The eligible recurring penalties shall be a fine of up to 10,000 Swiss francs and in important cases up to six weeks of imprisonment. The application and the amount of recurring penalties shall be decided by the Court.

6) The application of direct coercion shall be threatened and announced if the person concerned by it is present. This may only be refrained from if the success of the investigation would be thwarted otherwise.

§ 10

1) The National Police shall be obliged to investigate every criminal offense which is subject to indictment and suspicion of which has been brought to their attention. For this purpose the National Police shall without delay carry out inquiries to ascertain the facts and issue such orders as are necessary to prevent the removal of the traces of the criminal act or the escape of the suspect. The National Police shall only be permitted unsolicitedly to take persons into

custody, and to take other coercive measures, in the cases envisaged in this law. They shall inform the Office of the Public Prosecutor or the investigating judge of their orders and inquiries in accordance with § 11.

2) To perform their duty in accordance with paragraph 1 the National Police shall be entitled,

1. to receive communications and demand information from persons;
2. to ascertain the identity of suspects and persons who can contribute towards clarification of the suspicion (§ 91a);
3. to take fingerprints and photographs of persons who are strongly suspected of a crime or an offense (Art. 24a of the Police Act);
4. to question unsworn witnesses and suspects, whereby the National Police shall apply *mutatis mutandis* the provisions of Titles X. to XII;
5. to search real estate and premises which are not accessible to the general public and do not form part of a household (§ 92 paragraph 1), vehicles or containers, as well as a person, in accordance with § 92 paragraph 2;
6. to carry out a house search in the cases listed under § 94;
7. to arrange the investigation of biological traces at the scene of a crime or the non-invasive sampling of persons (§ 95a paragraph 3, last sentence);
8. to seize items pursuant to § 96a;
9. to monitor the behavior of a person pursuant to § 104a;
10. to carry out an undercover inquiry (§ 104b).

3) Insofar as the National Police are not carrying out an undercover inquiry, they shall point out their official status, unless this is obvious from the circumstances. They are permitted to receive communications or demand information provided this is given voluntarily and is not obtained by compulsion. The provisions concerning the questioning of persons charged and witnesses shall not be permitted to be circumvented thereby. The subject-matter of information provided and other circumstances which has been obtained through such inquiries and which may be of significance for the proceedings shall be recorded in an official memorandum (§ 47 paragraph 2).

4) A deferment of the inquiries incumbent upon the National Police in accordance with this provision is permissible if

1. this promotes the clarification of a substantially more serious criminal act or the gathering of information on a leading accessory to the commission of the punishable act and this

deferment does not involve any serious risk to life, health, physical injury or the freedom of third parties, or

2. otherwise a serious risk to life, health, physical injury or the freedom of a person would arise, which cannot be averted in another manner.

5) The National Police shall without delay inform the Office of the Public Prosecutor about a deferment in accordance with paragraph 4.

§ 11

1) The National Police shall keep records on its investigations, so that the cause, the implementation, and the result of such investigations may be verified. It shall state grounds for the exercise of coercion and of powers that are connected with an infringement of rights, as far as such grounds are not already evident from the order of the Office of the Public Prosecutor or of the Court.

2) The National Police shall report to the Office of the Public Prosecutor in writing (paragraph 1) if and as soon as

1. it learns of the suspicion of a grave crime or another offence of particular public interest (report of occurrence);
2. an order from the Office of the Public Prosecutor or from the Court is required or these demand a report (required report);
3. it has completed its investigation pursuant to §§ 9 and 10, but in any event as soon as three months have passed in proceedings against a certain person since the first investigation against such person without a report having been submitted, or if three months have passed since the last report (interim report);
4. it has completed all investigations ordered or if the facts and suspicions appear sufficiently clarified for a decision of the Office of the Public Prosecutor on indictment, the discontinuation of prosecution, or the closing of proceedings (final report).

3) A report in terms of paragraph 2 shall in particular contain the following, unless these circumstances have not already been reported:

1. the names of the accused persons - or, if these are unknown, the characteristics necessary to seek them out or identify them - , their financial situation, the deeds of which they are suspect, and the legal designation of those deeds;
2. the names of the persons who filed complaints, the victims, and any other persons who may contribute to clarification;

3. a coherent statement of the facts and suggestions for further procedure;
4. any applications from the accused persons or from other participants of the proceedings as well as statements of injured parties to join the criminal proceedings for civil-law claims.
- 4) With each report, the Office of the Public Prosecutor or the Court shall - as far as this has not yet been done - be provided with all records of the National Police necessary for assessing the factual and legal situation.
- 5) The National Police shall permit the inspection of the files only if so ordered by the Court; applications to such effect shall otherwise be handled pursuant to paragraph 2, subparagraph 2.

§ 21a

- 1) For this purpose, the Office of the Public Prosecutor shall also be entitled to have the National Police or the investigating judge carry out provisional enquiries in order to obtain the necessary reference points for initiating criminal proceedings against a specific person (§ 22 paragraph 1).
- 2) The investigating judge shall have the same rights and duties in these provisional enquiries that he has in the investigation; the National Police shall proceed in accordance with the provisions of Title Ia.
- 3) The Office of the Public Prosecutor shall be entitled to have the National Police question persons who are likely to be able to provide clarification concerning punishable acts that have been committed. The Office of the Public Prosecutor may also itself question such persons, but not under oath, and have the National Police gather evidence by inspection and search premises, and it may accompany such official acts, if they cannot be carried out or ordered by the competent investigating judge because of an imminent danger.
- 4) The records of such acts, for which all formalities required for judicial official acts of this kind must be complied with, may however be used as evidence only if they are immediately communicated to the investigating judge, who shall verify their form and completeness and if necessary shall ensure that the acts are repeated or completed; otherwise, the records shall be deemed null and void.

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

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

There are no priorities in starting criminal investigations in Liechtenstein. The National Police shall pursuant to § 9, paragraph 1 CPC investigate ex officio or on the basis of a criminal complaint. Pursuant to § 21, paragraph 1 CPC the Office of the Public Prosecutor shall, ex officio and with the assistance of the National Police, be responsible for solving all punishable acts of which it gains knowledge and which are not subject to investigation and punishment merely at the request of an involved party, and it shall prosecute those suspected of

committing the punishable acts, in order to enable the court to do what is necessary for purposes of investigation and punishment.

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

No, see answer to 5.

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 National Police shall investigate *ex officio*, but it shall comply with instructions from the Office of the Public Prosecutor. The National Police shall report to the Office of the Public Prosecutor in writing.

Pursuant to § 21, paragraph 1 CPC the Office of the Public Prosecutor shall, *ex officio* and with the assistance of the National Police, be responsible for solving all punishable acts of which it gains knowledge.

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)?

The National Police shall keep records on its investigations, so that the cause, the implementation, and the result of such investigations may be verified. It shall state grounds for the exercise of coercion and of powers that are connected with an infringement of rights, as far as such grounds are not already evident from the order of the Office of the Public Prosecutor or of the Court. The National Police shall report to the Office of the Public Prosecutor in writing (see § 11 CPC).

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

The National Police shall investigate *ex officio*, but it shall comply with instructions from the Office of the Public Prosecutor (see § 9 CPC). The National Police shall report to the Office of the Public Prosecutor in writing (see § 11 CPC).

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

Yes, the National Police shall comply with instructions from the Office of the Public Prosecutor (see § 9 CPC).

11. How is it decided which service of the police or other investigation body, if any, is competent to investigate?

This is stipulated in the Police Act (Polizeigesetz) and in ordinances and instructions of the National Police.

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.

One way of control or monitoring of the National Police concerning instructions of the prosecutor are the written reports of the National Police to the Office of the Public Prosecutor; the Office of the Public Prosecutor can also demand a report from the National Police, especially concerning instructions of the prosecutor (required report).

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?

There is no responsibility of the prosecutor to control respect for the law by the police. Pursuant to § 9, paragraph 1 CPC the National Police shall take part in the investigation and prosecution of offences in terms of the provisions of the CPC.

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, see § 9 to § 11 CPC.

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

Yes, see § 9 to § 11 CPC.

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 National Police is subordinated to the government; the minister of the interior can give instructions and exercises the supervision, e.g. for the respect of the law by the police (Art. 8 and 9 Police Act).

17. Is the prosecutor competent to take sanctions?

No, only the government and/or the minister of the interior (see answer to 16).

H. *Conclusions*

18. What are the major challenges in relations between prosecutors and investigation bodies in your country?

The National Police should file the written reports to the Office of the Public Prosecutor as soon as possible after the date on which the offence was committed; the reports of the National Police should contain all the relevant facts of the reported offence.