

Answers to the Questionnaire for the preparation of the Opinion No. 10 of the CCPE on the relationship between prosecutors and police and/or other investigation bodies

Answers to the questions have been prepared on the basis of the Constitution of Ukraine, Criminal Procedure Code of Ukraine, Law of Ukraine “On Public Prosecutor’s Office” of 14.10.2014, Law of Ukraine “On Police” and other legislative acts of Ukraine.

It should be noted that currently the prosecution bodies of Ukraine undergo the process of reform.

The new Law of Ukraine “On Public Prosecutor’s Office” adopted on October 14, 2014 will come into force in full on 25.04.2015.

From that day the Law of Ukraine “On Public Prosecutor’s Office” of 1991 shall become invalid.

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.

According to the Article 121 of the Constitution of Ukraine the prosecution bodies of Ukraine shall constitute a unified system that is entrusted with supervision over observance of laws by the bodies that conduct detective and search activity, inquiry, pre-trial investigation.

The relationships between prosecutors and the police lie in the fact that the prosecutor within its authority supervises the observance of laws by the police units that conduct detective and search activity, inquiry, pre-trial investigation.

The supervision over observance of laws in the course of pre-trial investigation is realized in the form of providing procedural guidance in a pre-trial investigation.

The powers of prosecutors in supervising the observance of laws by the bodies conducting pre-trial investigation shall be determined by the criminal procedural law.

If necessary, a prosecutor shall have the right to entrust the heads of pre-trial investigation and internal affairs bodies to carry out inspections within departments under their control to address violations and ensure full detection of actions that contain elements of a criminal offense.

In addition, in order to increase efficiency of combating crime and corruption a prosecutor coordinates the activities of law enforcement bodies in regard to these issues.

Pursuant to the Article 25 of the Law of Ukraine “On Public Prosecutor’s Office” of 14.10.2014 the Prosecutor General of Ukraine and prosecutors subordinate to him, while exercising supervision over observance of laws by the bodies that conduct detective and search activity, inquiry, pre-trial investigation, shall coordinate actions of law enforcement bodies of the respective level in the field of combating crime.

Public prosecutors shall exercise the coordination powers by holding joint meetings, establishing multi-agency working groups, holding coordinated measures and carrying out analytical activities.

Procedure for organization of the work to coordinate activities of law enforcement bodies and cooperation of prosecution bodies and agencies combating crime shall be established by the Regulations approved by a joint order of the Prosecutor General of Ukraine and heads of other law enforcement bodies.

The main form of coordination of activities of law enforcement bodies is to conduct coordination meeting of its heads under the chairmanship of appropriate prosecutor.

Decisions of coordination meetings shall be binding for the law enforcement bodies referred to therein.

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

Dialogue between the prosecutor and the police and exchange of relevant information takes place during coordination and multi-agency meetings of law enforcement bodies, where joint actions aimed at early detection, solution, suppression and prevention of crime and corruption are developed and coordinated.

Also, the dialogue between the prosecutor and investigators of pre-trial investigation bodies is ensured during the execution by the prosecutor of his powers related to procedural guidance in pre-trial investigation.

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

The current legislation of Ukraine does not provide for the powers of the prosecution bodies related to training of law enforcement officers.

However, the Regulation “On Coordination of the Activity of Law Enforcement Bodies in Combating Crime and Corruption” of 11.02.2013, approved by the joint order of the Prosecutor General of Ukraine and heads of law enforcement bodies, provides for the mutual use of resources of law enforcement bodies for the preparation and training of staff, its professional development, holding joint seminars, conferences and other educational and practical measures.

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 relationships between prosecutors and investigation bodies are determined by the Constitution of Ukraine, the Criminal Procedure Code of Ukraine (hereinafter - CPC), Regulation “On Coordination of the Activity of Law Enforcement Bodies in Combating Crime and Corruption”, regulations on procedure for conducting specific investigative actions approved by joint orders of heads of law enforcement bodies, and other statutory instruments.

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

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

The priorities of criminal proceeding are the protection of individuals, society and the state from criminal offences, the protection of rights, freedoms and legitimate interests of participants in a criminal proceeding, as well as ensuring quick, comprehensive and impartial investigation and trial in order that everyone who committed a criminal offence is prosecuted in proportion to his guilt, any innocent person is not accused or convicted, and no one is subjected to unreasonable procedural coercion, and that an appropriate legal procedure is applied to each party to a criminal proceeding.

The main objective at the initial stage of investigation into criminal offense is to collect as more information as possible in relation to all the elements of crime: offender, accomplices, victim, witnesses; purpose, motivation; circumstances of offense and its consequences etc.

At the initial stage of investigation into any type of criminal offence it is necessary to take decisions as to the appointment of investigator, prosecutor-procedural leader, the need to create investigative group, develop investigation plan with regard to general versions and received information.

The complex of investigative and search actions in the course of investigation into crime is defined by existing criminological (investigative) situation at the initial stage of the proceedings. It is necessary to take into account peculiarities of crime, the way it was committed, used instruments, information about identity of the deceased and individuals allegedly involved in the offense, motives and so on. The plan defines the timeframes, sequence of investigative (search) and covert investigative (search) actions.

The typical list of investigative actions at the initial stage of investigation include: viewing the crime scene; questioning eyewitnesses, other witnesses (among relatives, friends, neighbours, co-workers etc.); commission and execution of expert examinations; detention, personal search, examination and interrogation of a suspect; preparation and presentation of a suspect for identification; search at the place of residence and work of a suspect etc.

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

According to the Article 36 of the Criminal Procedure Code of Ukraine a public prosecutor, while supervising the compliance with law during pre-trial investigation in the form of providing procedural guidance in a pre-trial investigation, shall have the right to assign investigator, pre-trial investigation body to conduct investigative (search) actions, covert investigative (search) actions or other procedural actions within a time limit set by the public prosecutor, or give instructions in respect of conducting such actions, or participate in them, and where necessary - to conduct investigative (search) and procedural actions by himself in accordance with the procedure set forth by this Code; assign the conduct of investigative (search) actions,

covert investigative (search) actions to the relevant operational units; overturn illegitimate and ungrounded rulings of investigators etc.

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?

Investigator of pre-trial investigation body is responsible for the legality and timeliness of the conduct of procedural actions (paragraph 1 of the Article 40 of the CPC of Ukraine).

The influence of a public prosecutor on a pre-trial investigation shall consist in the exercise of his powers in the form of providing procedural guidance in a pre-trial investigation (paragraph 2 of the Article 36 of the CPC of Ukraine).

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)?

According to the Article 306 of the Criminal Procedure Code of Ukraine a complaint against decision, act or omission of investigator or public prosecutor shall be considered by investigating judge.

Besides, a suspect, accused person, victim may lodge a complaint with a superior public prosecutor against the failure to respect reasonable time.

The superior public prosecutor shall be required to consider the complaint within three days after its lodging and, if there are grounds to sustain it, issue binding instructions to the relevant public prosecutor as to the time limits for conducting specific procedural actions or making procedural decisions. A person who has lodged a complaint shall be promptly notified of the results of its consideration (paragraph 1 and 2 of the Article 308 of the CPC of Ukraine).

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

Police officer, while performing his duties, shall be governed by law, act within its limits and be subject to his immediate and direct superiors. No one else, except for authorized officers in certain cases provided for by the law, shall have the right to interfere with the legitimate activities of a police officer (paragraph 3 of the Article 20 of the Law of Ukraine "On Police").

According to the paragraph 5 of the Article 40 of the Criminal Procedure Code of Ukraine investigator in the course of performing his duties is independent in his procedural activities, and any interference therein on the part of persons who have no legitimate authority shall be forbidden.

The exception, in certain cases provided for by the Criminal Procedural Code of Ukraine, is the head of pre-trial investigation body, the prosecutor supervising the observance of laws during pre-trial investigation in the form of providing procedural guidance, and the investigating judge.

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

The prosecutor has no authority to prohibit pre-trial investigation.

However, the public prosecutor is authorized to take decision to close criminal proceedings against the suspect based on grounds referred to in the CPC of Ukraine (paragraph 3 of the Article 284 of the CPC of Ukraine), namely if:

- 1) absence of occurrence of criminal offence has been established;
- 2) absence of elements of criminal offence in the act concerned has been established;
- 3) no sufficient evidence has been obtained to prove the person's guilt in court, and options to obtain such evidence have been exhausted;
- 4) a law which abolishes criminal liability for the action committed by the person concerned has entered into force;
- 5) the suspect, accused died, except when proceedings are necessary to vindicate the deceased;
- 6) there is a judgment rendered based on the same charges which has entered into legal force, or court's ruling to close criminal proceedings based on the same charges has been adopted;
- 7) victim, and in cases specified by the present Code, his representative, waived the accusation in criminal proceedings in the form of private accusation;
- 8) in case of criminal offence where no consent of the state that has surrendered a person has been obtained.

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

The issue of investigative jurisdiction (competence) is determined by the Article 216 of the Criminal Procedure Code of Ukraine.

According to the Article 38 of the Criminal Procedure Code of Ukraine the pre-trial investigation bodies (bodies that carry out inquiry and pre-trial investigation) shall be:

- 1) investigation units of:
 - a) internal affairs bodies;
 - b) security agencies;
 - c) agencies supervising compliance with the tax legislation;
 - d) bodies of the State Bureau of Investigation.
- 2) unit of detectives, unit of internal control of the National Anti-Corruption Bureau of Ukraine.

Besides, in cases prescribed by the CPC of Ukraine, prosecutor shall be entitled to define the body of pre-trial investigation responsible for the conduct of criminal proceeding (paragraph 5 of the Article 36, Article 218 of the CPC of Ukraine).

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.

Pursuant to the Article 25 of the Law of Ukraine “On Public Prosecutor’s Office” a public prosecutor shall supervise the observance of laws by the bodies that conduct detective and search activity, inquiry, pre-trial investigation, enjoying his rights and fulfilling the duties as stipulated in the Law of Ukraine “On Detective and Search Activity” and the Criminal Procedure Code of Ukraine.

Written instructions of the public prosecutor issued within his powers to the bodies that conduct detective and search activity, inquiry, pre-trial investigation shall be binding upon these agencies and immediately executed.

A public prosecutor who gives instructions beyond his powers shall be held liable under the law.

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 supervision of the observance of laws by the police units that carry out detective and search activity, inquiry, pre-trial investigation shall be performed by prosecutor (Article 27 of the Law of Ukraine “On Police”, Article 25 of the Law of Ukraine “Public Prosecutor’s Office”).

The prosecutor begins to supervise the observance of laws in the course of pre-trial investigation in the form of procedural guidance from the moment when information about committed criminal offense is entered into the Unified Register of Pre-Trial Investigations.

According to the Article 36 of the Criminal Procedure Code of Ukraine a public prosecutor, in the course of such supervision, shall have the right to:

- 1) start pre-trial investigation if there are grounds specified in the present Code;
- 2) have full access to materials, documents, and other details related to pre-trial investigation;
- 3) assign pre-trial investigation body to conduct pre-trial investigation;
- 4) assign investigator, pre-trial investigation body to conduct investigative (search) actions, covert investigative (search) actions or other procedural actions within a time limit set by a public prosecutor, or give instructions in respect of conducting such actions, or participate in them, and where necessary - personally conduct investigative (search) and procedural actions in accordance with the procedure set forth by this Code;
- 5) assign the conduct of investigative (search) actions, covert investigative (search) actions to the relevant operational units;
- 6) institute audits and examinations in accordance with the procedure established by law;
- 7) overrule illegitimate and ungrounded rulings of investigators;
- 8) initiate with the head of the pre-trial investigative body the issue of suspending the investigator from pre-trial investigation and the appointment of

another investigator if there are grounds for his disqualification specified in the present Code or in case of inefficient pre-trial investigation;

9) take procedural decisions in cases specified by the present Code, including with regard to termination of criminal proceedings and extending the time limits for pre-trial investigation if grounds as prescribed in the present Code are present;

10) support or refuse to support the motions of investigator addressed to investigating judge on the conduct of investigative (search) actions, covert investigative (search) actions, other procedural actions in cases specified by the present Code or individually submit such motions to the investigating judge;

11) notify the individual of suspicion;

12) enter civil action in the interests of the State and those individuals who are unable to defend their rights pursuant to this Code and the law due to their physical or economic circumstances, being underage or elderly age, incompetence or limited legal capacity;

13) approve or refuse to approve indictments, requests for application of coercive measures of medical or educational nature, modify an indictment drawn up by the investigator or the abovementioned requests, draw up indictments or the requests concerned by himself;

14) refer to court with indictment, request for application of coercive measures of medical or educational nature, or request for discharge of an individual from criminal liability;

15) prosecute on behalf of the State in court, resign to support public prosecution, alter the charges or bring additional charges according to the procedure specified by the present Code;

16) approve requests of pre-trial investigation body for international legal assistance or transfer of criminal proceedings, or independently file such requests in accordance with the procedure specified by the present Code;

17) assign pre-trial investigation body to execute a request (commission) for international legal assistance or transfer of criminal proceedings made by a competent authority of a foreign state, verify the completeness and legitimacy of executed procedural actions as well as completeness, comprehensiveness and objectiveness of investigation under the transferred criminal proceeding;

18) verify the documents provided by a pre-trial investigation body concerning surrendering a person (extradition) prior to referring them to a higher-level prosecutor, and return these documents to the relevant body with written comments, if these documents are unjustified or fail to meet the requirements of international treaties, to which the Verkhovna Rada of Ukraine consented to be bound, or laws of Ukraine;

19) assign pre-trial investigation bodies to conduct searches and apprehension of those individuals who committed a criminal offense outside Ukraine, and carry out specific procedural actions to surrender (extradite) a person at the request made by a competent authority of a foreign state;

20) appeal court decisions in accordance with the procedure established by the present Code;

21) exercise other powers provided for by the present Code.

F. Common principles concerning the police

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

The rules of criminal proceedings in the territory of Ukraine are defined only by the criminal procedural law of Ukraine, which consists of relevant provisions of the Constitution of Ukraine, international treaties, which the Verkhovna Rada of Ukraine has given its consent to be bound by, the Criminal Procedure Code and other laws of Ukraine.

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

The provisions of the Criminal Procedure Code of Ukraine set general principles of criminal proceedings, the concept of evidence, procedural terms, as well as measures to ensure criminal proceedings and related procedural costs.

Besides, its provisions provide for the procedure of pre-trial investigation and court proceedings in the courts of first instance, appeal and cassation courts, as well as basic provisions of international cooperation in criminal proceedings.

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?

According to the Article 26 of the Law of Ukraine “On Police”, the control over police activities is carried out by the Cabinet of Ministers of Ukraine, Minister of Internal Affairs of Ukraine and councils within their competence.

Local councils, while exercising control over the police activity, do not interfere in its detective and search activity, criminal procedure and administrative activity.

The prosecutor supervises the observance of laws by police units carrying out detective and search activity, inquiry, pre-trial investigation, as well as in the enforcement of judgments delivered in criminal cases and application of other coercive measures related to restriction of personal liberty (Article 27 of the Law of Ukraine “On Police”).

17. Is the prosecutor competent to take sanctions?

After submission of a report or information about committed criminal offense (including committed by a law enforcement officer) or after independent identification of circumstances which are likely to indicate about commission of a criminal offence, a public prosecutor shall be required to enter the information concerned into the Unified Register of Pre-Trial Investigations, and to initiate investigation.

A prosecutor has no other powers to directly apply sanctions.

H. Conclusions

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

There are no significant challenges in relations between prosecutors and investigation bodies in the country.