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THE RELATIONSHIP BETWEEN PUBLIC PROSECUTORS AND THE POLICE IN THE MEMBER STATES OF THE COUNCIL OF EUROPE

COMPARATIVE LAW REPORT
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Introduction

In the administration of criminal justice, the police[1] and prosecution service are close partners and both play crucial roles.

As a rule, the police are in charge of investigating reported crime. This is an enormous task, as crime is still increasing in number and seriousness. The police will therefore never be able to deal with all crime. Due to limited manpower and financial resources, priorities have to be set either expressly or tacitly. The police must decide where time and resources will be invested, and which investigations should be of a more limited nature or should not be initiated at all. When the police themselves decide on such priorities, they then also determine the influx of cases which arrive at the desk of the public prosecutor.

In general, the prosecution service takes a decision to prosecute or to drop the case. It is sometimes empowered to settle a case without involving criminal courts. By deciding whether or not to prosecute, the prosecution service determines the influx of cases in criminal courts.

Sometimes, the prosecution service plays a pivotal role in the process as a whole. The service determines priorities in police investigations, but also decides which cases to forward to the criminal courts, and which cases instead will not be prosecuted. In that latter situation, the public prosecutor is a leader in the chain of the administration of criminal justice.

In this report, I will deal with the relationship between these two major players in the administration of criminal justice, i.e. the relationship between public prosecutors and the police. I will look at this relationship from the perspective of the public prosecutor, and will deal with four issues in particular.

The first relates to responsibility for the proper investigation of criminal acts. In this respect, a number of questions arise. First: whose task is it to ensure that police respect statutory rules and procedures, and in particular fundamental human rights? A second question concerns the influence of the public prosecutor on the scope and the extent of the police investigation. Are the police obliged first to consult the public prosecutor on investigative matters, and does the public prosecutor have the power to issue instructions to the police? Do the police need approval of or cooperation with the public prosecutor for the use of means of coercion or the use of special investigation methods?

The issue topic concerns questions such as the power of the prosecutor to take over the investigation of police, and the power of the prosecutor to set priorities as to the instigation of investigations by issuing general policy guidelines. It also concerns the question whether police are bound by orders to conduct an investigation, or to delay its execution.

The third topic is whether the police enjoy discretionary powers not to report cases to the public prosecutor and, if so, to what extent these powers may be applied.

Finally, I will briefly touch upon some other matters, such as complaints against the police in relation to the investigation, contacts with the mass media, and joint investigation units.

My report is based on input I received from 34 countries out of the 46 Member States of the Council of Europe. I am grateful to all those who have responded to the questionnaire sent by the Co-coordinating Bureau of the Conference of Prosecutors General of Europe (CPGE-BU). These replies are a valuable source of information, and which merit further attention as the replies give much more detailed information than I will be able to provide in this comparative report. For detailed information, I refer to the country reports which are available on the internet at www.coe.int/prosecutors/.

The replies quite often refer to legal texts or sections of the Code of Criminal Procedure. In general, one may say that European legal systems empower the prosecutor to scrutinise the lawfulness of police investigations, as well as to monitor observance of human rights by police.

[1] I take the word police as a pars pro toto for all investigators or bodies who are by law authorised to carry out criminal investigations such as customs and excise, national security authorities, fire brigades etc.

Quite often, however, there exist a major difference between the law and actual practice. As a legal scholar, one should hence always be somewhat suspicious if replies give very favourable answers to the questionnaire.

With so many different legal systems to process (some of which, despite almost thirty years of personal experience with the study of foreign European criminal law systems, were completely new for me), it is impossible to present a report presenting a proper balance between law and practice.

On the other hand, it is encouraging to observe that many countries are fully aware of the dangers of abuse of power during the pre-trial investigation, where high pressure for the police exist to resolve crime, in particular the more serious ones and transnational and organised crimes. These countries are increasingly concerned about the promotion of the rule of law during the pre-trial phase of the investigation, and make efforts to safeguard the principles enshrined in the European Convention for the Protection of Human Rights and Fundamental Freedoms in that phase.

Against this background, it is of fundamental importance that Recommendation (2000) 19 has been adopted by the Committee of Ministers because that recommendation in sections 21 to 24 provides very useful practical ways further to safeguard a proper supervisory role of the prosecution service over the police.

Let me now turn to the first issue.

I. The responsibility for the proper investigation and the observance of statutory rules and procedures

In the majority of the responding countries, the public prosecutor by law is either designated as head of the investigation, or as senior investigator, or in his capacity of public prosecutor[2] by law empowered with the right to supervise police investigations.

This is in particular the case in countries in which the Code of Criminal Procedure is or has been based on or related to the Napoleonic *Code d'Instruction Criminelle* such as Belgium, France, the Netherlands, Luxembourg, Liechtenstein, Monaco, Poland, Portugal and Spain. In these countries, the public prosecutor is empowered:

- to instruct the instigation of investigations
- to give instructions on the scope of investigations
- personally to investigate criminal cases
- to participate in investigations, and
- to decide on the type of investigations.

In many countries, however, the public prosecutor in practice does not exercise his function as head of the investigation or as senior investigator, except in more important criminal cases. This is mainly due to the limited strength of the prosecution service, as well as to the recognition that with regard to investigative techniques and tactics, the police possess more expertise than the prosecution service. So the police conduct the great majority of criminal investigations completely on their own (Germany, Netherlands). The prosecutor is only involved in serious matters such as homicide, or cases of serious white collar crime, where there is significant publicity to be expected, or where the police need his cooperation for legal reasons. Sometimes, police powers are too limited to conduct a proper investigation. As a rule, the police have no power to interrogate witnesses who are not cooperative, or power to arrest, search or use surveillance methods at their own initiative.

In some countries, in particular Scandinavian countries like Denmark, Iceland and Norway, at the local level, police and prosecution service are amalgamated: the chief constable or commissioners of police are both the head of the local police force and chief public prosecutor. In those countries, the regional prosecutor has a general power of supervision.

Due to this leading role, the public prosecutor in many countries also supervises the legality of individual investigations (Armenia, Bulgaria, Czech Republic, Estonia, France, Georgia, Germany,

[2] The author is aware that there are an increasing number of female public prosecutors in the responding countries. For the sake of simplicity, only the male pronoun is used in this report

Hungary, Latvia, Lithuania, Moldova, Montenegro, The Netherlands, Slovakia, Switzerland, The Former Yugoslav Republic of Macedonia, Turkey and Ukraine). This supervision is not actually performed in all investigations, because the number of public prosecutors in many countries is far from sufficient, but as a rule in the more serious cases where more serious means of investigation have been applied, rigorous supervision of the legality of the investigation takes place. This has to do with the fact that the public prosecutor does not wish to be confronted with illegally obtained evidence in trial, illegal investigation methods, or even breaches of human rights of the offender by the police. Since in many countries the public prosecutor is held to account for breaches of the law by the police, this might have serious consequences for the outcome of the trial. When the police have used illegal methods, or when evidence has been illegally obtained, the case may be dismissed by the court. In this respect, the systems of England and Wales and Ireland are an exception. There, the police are legally independent from the prosecution service, and the police are completely responsible for their own investigation, and need not consult with prosecutors on any investigative matters

In some countries, such as Austria, Finland, Sweden, Ireland and Northern Ireland, the prosecution is not vested with the task of ensuring that the police respect all statuary rules and procedures, but this is (ultimately) the task of the highest police authority, such as the police department of the Ministry of Interior, or the police service itself.

Prior consultation

Only in a restricted number of countries, when crimes are to be investigated, the police are obliged first to consult with the public prosecutor on investigation matters except for very urgent cases.

In Finland, this is a statutory obligation in order to give the prosecutor an opportunity to instruct the police on general investigative guidelines and to assess the punish ability of the offence and the sufficiency of evidence, as well as any need for additional investigation. In Germany, the police are only under an obligation of prior consultation in the investigation of important cases.

In Hungary, in such cases the prosecutor can order enhanced supervision, which requires the police more frequently to inform the prosecutor on the investigation so that the prosecutor can more easily determine further necessary steps, and can better manage the investigation. In Serbia and Montenegro, police must notify the competent prosecutor before taking any action.

In the majority of the responding countries, the police can initiate investigation activities at their own initiative or independently, as soon as the police acquire knowledge about crimes committed. In some of countries, however, the police have a statutory obligation to notify the public prosecutor. In a number of countries, such as Croatia, Denmark, Ireland, Liechtenstein, Netherlands, Slovakia, Spain, it is established practice for the police to consult the prosecution service for (legal) advice in important cases. Whether or not the police will consult the public prosecutor on investigation matters the police have initiated themselves, is as a rule entirely within the discretion of the police officer.

In cases where the public prosecutor has requested an investigation, he is authorised to be kept informed by the police, and the police as a rule will comply.

After the investigation has been terminated, in all countries, the police are obliged without any delay to send the files to the public prosecutor for the assessment of the evidence, and for further instructions to carry out additional investigation activities.

Issue instructions

In the majority of the responding countries, the public prosecutor may issue instructions with regard to the investigation, which he thinks necessary for a successful investigation of the case. So there is a line of command between the public prosecutor and the police.

These instructions may deal with the investigation in general, or with the line of investigation and methods and techniques to be used. Very often, the instructions concern specific steps to be taken, such as further interviews with witnesses or suspects. The instruction may be of a detailed nature, and are usually furnished in written form, but may also be given verbally. Since in quite a number of

countries the prosecutor is not experienced in investigating crime, he is not used to giving detailed instructions.

The police are obliged to follow the instructions without any reservation.

The instructions may be given during the investigation, but also after the police has sent the files. If the public prosecutor needs additional evidence or additional information, he can instruct the police to carry out further investigative activities.

In Croatia, England and Wales, Northern Ireland and Ireland, the prosecution service is not entitled to give the police direct orders or instructions on investigation matters, since the police is fully independent. In practice, however, the police occasionally or rather more often seek advice from prosecutors in the more complicated cases. The advice may be about the legality of particular procedures, or about what further investigation would be useful to construct a strong case.

In these countries, there therefore is no line of command between the public prosecutor and the police, and the former has no power to give direct orders to the police, and the police are not obliged to act upon a direct request by the prosecutor.

Approval or co-operation with the public prosecutor for the use of certain means of coercion by the police

In many countries, the power of the police to use means of coercion in relation to investigative activities is restricted. The more serious the infringements of human rights or fundamental constitutional rights or freedoms are the more restricted the use of these measures is. For the use of a number of coercive measures, the police need prior approval of the public prosecutor or need his co-operation.

Normally, approval by the prosecutor or a court warrant is compulsory when means of coercion infringe human rights like liberty and privacy.

As far as compulsory and restrictive measures (like personal search, search of premises, seizure of correspondence and collecting cell material for DNA tests) infringe human rights, the police either needs approval by the public prosecutor, or even a warrant by a judicial authority (investigative judge or court). In urgent cases, or cases of immanent danger, when the approval cannot be waited for, the police may use these measures, but are obliged to submit the report or the protocol of the act for approval either by the public prosecutor or a judicial authority.

For arrest and police custody, the police need approval by the public prosecutor who must submit a request to decide on (the continuation of) the pre-trial detention to a judge (investigative judge or a court).

Measures of a coercive nature which do not infringe human rights, such as the taking of pictures or finger prints, as a rule may be taken by the police without prior approval by the prosecutor or a court warrant.

Special investigation methods

In the course of the criminal investigation, the police sometimes may need the use of special investigation methods, in particular in relation to serious crime, organised crime and transnational crime. Most of these methods have been developed in recent decades.

There are series of undercover activities which are used by the police during criminal investigation, such as the use of informants, infiltration, pseudo or controlled purchase, the use of front stores, controlled delivery, tracing, and technical surveillance. A distinction is to be made between intrusive and non-intrusive methods.

In almost all Council of Europe countries relatively recently legislation (such as the UK Regulation of Investigatory Powers Act 2002) has been adopted or general instructions have been issued which give

statutory rules in what cases, under what conditions, and with whose authorisation these undercover policing methods may be used.

In many countries, certain undercover policing methods like pseudo purchase, controlled delivery and the use of informants and infiltration may take place with the authorisation of a high ranking or superior police authority, such as the chief of police, or a commanding police officer (Austria, Iceland, Portugal, Slovakia, and Ukraine) Some covert policing methods like technical surveillance during a restricted period of time (usually less than 72 hours) in many countries may be applied on the basis of a decision taken by the chief of police, or the public prosecutor (Finland, The Netherlands, Slovakia)

In other countries, number of less or non intrusive methods may only be used with the approval of the public prosecutor or after his decision upon the use (Germany, Poland, Italy, Portugal, Slovakia, Sweden, The Former Yugoslav Republic of Macedonia, The Netherlands and Ukraine), except in cases of urgency, or after prior authorisation of the investigative judge (Hungary, Serbia and Montenegro).

More intrusive undercover policing methods – seizure of letters, interception of communication, or use of undercover agents (Switzerland) in a number of countries need prior authorisation by a judicial authority. For example, the (investigative) judge (Hungary, Italy, Liechtenstein, The Netherlands, Spain and Ukraine.) or a (supreme) court (Latvia). In Ireland, for the interception of telecommunication, the police must obtain such prior approval from the Minister of Justice.

England and Wales again seem to form exceptions. The police need not, or rather cannot seek permission from the prosecution service for the use of intrusive surveillance methods, but must secure judicial authorisation. Even in intrusive undercover policing methods, for the use of which in almost all countries a judicial authorisation is requested, the English police do not need permission. For searches, use of informers, and sting operations no permission needs to be sought by the police from anyone.

I will now turn to the second issue.

II. The power of the prosecutor to take over the investigation and to set priorities.

In most of the countries, the prosecutor may take over the investigation from the police, but very often then will carry out the investigation with further help of the police (Belgium, Armenia, Bulgaria, Croatia, Czech Republic, Georgia, Germany, Hungary, Italy, Liechtenstein, Poland, Slovak Republic, Spain, and Turkey).

This is due to the fact that in those countries the public prosecutor is leader of the investigation, and may give instructions to the police as regards the investigation.

The main reasons for the public prosecutor to take over the investigation are that the crime investigated calls for a high qualification level of the investigator, has a particular public significance, or is committed by politicians or high officials.

In other countries, the prosecutor may take over the investigation from the police, but this rarely happens (Italy, Netherlands and Slovakia). There is no such possibility in Bulgaria, Croatia, Ireland, Latvia, Lithuania, Northern Ireland and England and Wales. In Norway there is no need to take over investigation because the prosecutor is always in charge of the investigation.

In some countries, prosecutors only directly investigate offences in which the suspect is a police officer (Finland, Denmark, and Switzerland).

In many countries the prosecutor may set priorities as to the instigation of investigation (Denmark, Georgia, Hungary, Iceland, Monaco and The Former Yugoslav Republic of Macedonia), sometimes even in cooperation with other parties such as the mayor (Belgium) or mayor and police (Netherlands). Despite the legality principle, even in Germany and Switzerland the prosecution service and police co-operate to postpone investigation of less important cases in favour of a focus on prosecution of major delinquency (due to lack of resources).

In relation to the existence of general crime policy guidelines, the basic principle for the prosecutorial power adopted is of major importance. This principle may be the legality principle or the expediency (opportunity) principle.
The majority of the Council of Europe member states have chosen the legality principle as the general basis for prosecutorial practice. Adherence to the legality principle means that the prosecution service cannot exercise any discretion over the prosecutorial decision. Strict adherence to the legality principle exists in only a few countries such as Italy and Portugal. In these countries, the existence of general crime policy guidelines is unthinkable.

Adherence to the expediency principle allows the prosecution service discretion over the prosecution. This principle has been adopted by Belgium, Cyprus, Denmark, Estonia, France, Iceland, Luxembourg, Monaco, the Netherlands, Norway, the United Kingdom and Switzerland. In those countries there is room for crime policy guidelines for both the police and the prosecution service.
Most of the countries adhering to the legality principle have made a number of legal exceptions to this principle, and apply a mixed system.

Despite the legality principle, in a number of countries general crime policy guidelines for the police exist (Austria, Czech Republic, Georgia, Germany, Hungary, Iceland, Poland, Montenegro, Slovakia, Sweden and Ukraine).

The question who may lay down general crime policy guidelines is a complicated one. There is no a general rule in the responding countries that this is a power of the prosecution service.

Only in a restricted number of countries the prosecution service or the top of the prosecution service may lay down general crime policy guidelines for the police (Belgium, Denmark, Georgia, Iceland, Monaco, and Norway as here annually aims and priorities for the police are set by DPP), sometimes in consultation with Minister of Justice (Netherlands). In other countries, however, the formulation of general crime policy guidelines is the task of the legislator (Armenia), the supervisors of the police (Croatia, Czech, Serbia, Montenegro), Parliament (Hungary, Lithuania), Government (Liechtenstein, Slovakia, Spain, Sweden and Ukraine), or this power is held jointly by the prosecutors general and the superior authorities of the police (Germany).

III. Discretionary powers of the police

The third issue which this report must deal with is whether the police have discretionary powers not to report cases investigated to the public prosecutor in order to let him decide on the prosecution of those cases, and on the extent to which this discretionary power may be applied.

In all but a few countries, the police have no discretionary power to report crimes investigated. In many countries, the police may caution offenders, or even impose fines on the spot, where it concerns minor offences or trivial cases like traffic offences, but in general the police have no discretionary power. Even in countries where the expediency principle is applied when a decision on the prosecution of crimes has to be taken, this expediency principle may only be applied by the prosecution service and not by the police. In some countries, such as Bulgaria, Italy and Poland, a police officer who does not report a crime to the prosecution service commits a crime himself.

The Netherlands seems to be an exception to this rule. In this country, a clear legal framework to indicate how the police should respond to individual offences that come to their attention is in place. Most recently, on March 1, 2003 the Board of Prosecution General issued an instruction to police on how to prioritise investigation of crime.

There are two basic rules in this instruction: the first being that investigation by police always shall take place when the offender is known, except in trivial cases where there are no instances of causing danger, injury or damage. Furthermore, investigation may be given lower priority when this complies with specific policies such as the decision not to investigate in cases of domestic violence in order to make voluntary aid possible.

The second basic rule is: the more serious the crime, the more intensive the investigation shall be. In the instruction, both basic rules are further elaborated so that police officers can assess more easily what crimes shall be investigated.

The instruction to the police therefore allows the police to use discretion in taking decisions on which cases to investigate and in which cases to refrain from investigation, but that discretion remains limited.

However, one should always keep in mind that in all countries police capacity for conducting investigations is restricted, and that it might happen that due to limited resources not all crimes are investigated or that there is a delay in the investigation.

In all countries, the public prosecutor is in charge of the decision to refrain from further investigation or to postpone investigation activities. When there is a shortage in police capacity to carry out the investigations requested, the prosecution service shall made arrangements with superior police or prosecution authorities to sort out this capacity problem. Planning consultations or ad hoc consultations with police, which take account of relevant problems on the part of the police, are useful instruments to tackle this problem. In a number of countries, such as Belgium, Germany, the Netherlands, Liechtenstein, Switzerland and Turkey, these instruments are used.

Orders by the public prosecutor to investigate a case have to be complied with. There are countries, such as the UK and Ireland, where the police are independent and where the prosecutor cannot give orders to the police. There, the prosecutor may request or suggest to consider an investigation. In practice, the police will not decline carrying out an investigation where a request to do so was made.

IV. Complaints about the police, contacts with the mass media and joint investigation units.

In the last part of this report, three issues will be dealt with which are less interrelated than the previous topics, but are linked to supervision by the prosecutor over the police and cooperation with the police.

Complaints about the police

During the pre-trial investigation by the police, events may give rise to complaints about police activities in general or activities by an individual police officer in particular. There may be misconduct by the investigation team or by individual police officers towards the offender or his defence lawyer, towards a witness or towards the victim of a crime. Sometimes, this misconduct may consist of a breach of the rules of conduct, sometimes of a violation of the law, and sometimes the misconduct may even constitute a criminal offence.

According to section 21 of Recommendation (2000)19 the public prosecutor should scrutinise the lawfulness of police investigations. This section seems not to cover misconducts by the police other than illegal investigations or criminal offences.

As far as misconducts constitute a criminal offence, in all responding countries complaints may be lodged with an authority in the prosecution service, either with a public prosecutor, his superior, the Director of Public Prosecutions or the Chancellor of Justice, who will decide on prosecution.

For misconducts not constituting a criminal offence, it is a matter of great concern that those who have complaints about the conduct of the police have access to bodies or authorities who deal with these complaints.

In a number of countries special bodies – separate and independent from the police – have been established which deal with complaints about the conduct of police officers during an investigation. I give three examples. In Belgium, a permanent committee on the control of the police service – the so-called committee P – exists which decides on these types of complaints. In Norway, on January 1, 2005 a national authority for this type of complaints was set up, and in Ireland, such an independent statutory body does exist as well.

The establishment of a separate committee or authority, however, seems to be an exception.

In quite a number of countries, complaints about misconduct by the police may be lodged with the superior police authority. This is an internal control mechanism which ultimately may lead to a decision on the complaints by the highest police authority such as the Commander, or the Inspector General of the Police, or even the Minister of Interior.

Furthermore, in a number of countries such as Finland, Sweden, The Netherlands, The Former Yugoslav Republic of Macedonia and Northern Ireland, a national Ombudsman, or a specific police ombudsman who is independent, deals with complaints about alleged misconduct by police officers.

In general, misconduct will lead to disciplinary measures against the police officer(s).

In some other countries, complaints against the police may be lodged with the prosecutor. If the prosecutor turns down the complaint, an appeal may be lodged with a judge, either with a pre-trial judge as for example in Lithuania, or with a court, as is the case in Hungary. In Austria, complaints about the police may be dealt with by the independent administrative tribunal (Verwaltungssenat).

Contacts with the mass media

Passing information to the mass media on crimes investigated is a topic of great interest.

Provision of information can have positive effects. The public in general has the right to know that justice is done and that crimes committed are duly investigated and prosecuted. Information on criminal cases may show the public that combating crime is taken seriously and that efforts are made to clear up cases and to bring offenders to court. Information on criminal cases may appease the in quietude in society caused by a crime.

There are however, also a number of risks involved in informing the public in too early a stage of the investigation or to inform the public prior to a court sentence. These risks are, for example, that an informal adjudication of guilt may take place before a court sentence has been issued which may come in conflict with the rule of presumption of innocence as expressed in sect. 6 of the European Convention of Human Rights or with the rights of defendants. Information on criminal cases may also unduly influence jurors in systems where lay judges or jurors play an important role in the administration of criminal justice.

Also, the rousing of public sentiment or public feeling can be a negative effect of mass media coverage. Another risk of informing the mass media on pre-trial investigation activities is that knowledge about the crime, about the mode of operation of the offender, or sensitive information is made public which may be an impediment to the court to use the so-called ‘mere offender knowledge’ as evidence against the offender.

Against this background, it is obvious that the provision of information to the mass media should always be carefully considered and carried out. In fact, this is a continuous search for the right balance between societal needs for information and the risks as mentioned above.

In some countries, the law lays down in which cases information to the mass media shall be provided. A good example of such legislation can be found in section 23 of the Information Act of Liechtenstein. Although section 12 of that Act states that inquiries, questions and research by media shall be supported as a rule, information on pending cases is only provided if there is particular public interest in terms of section 23 Information Act.

This particular public interest exists if

- co-operation of the public is required in solving offences,
- immediate information is appropriate in particularly serious or sensational cases,
- information is appropriate in order to avoid or correct incorrect reports by the media or in order to calm down the public or,
- information is required for the sake of protecting the public.

These four reasons for informing the media can be identified in a number of other countries as well, for example, in the media information policy in Portugal.

In many countries, laws deal with the confidentiality of information concerning pre-trial investigations. Therefore, information related to juvenile offenders, victims, the identity of offenders or information which is in conflict with the interest of the proper investigation, shall not be made public.

Contacts with the mass media always bear certain risks, in particular when police officers or public prosecutors do not have regular contacts with the mass media and may be seduced to disclose more information than appropriate due their inexperience with the mass media. Therefore, in quite a number of countries like Bulgaria, the Czech Republic, Hungary and the Netherlands, press centres or offices of spokesman have been established, from where the most experienced police officers and public prosecutors inform the mass media on a regular basis. In some countries, the police, or the prosecution service, provide information on cases on their homepage.

In general, information to mass media on cases under investigation is provided by the police through press conferences or briefings. The information is always restricted as not to inhibit the further course of the investigation. It goes without saying, that tactical information will not be provided to the media, nor information that might infringe someone's right on privacy or state, commercial or business secrecy. Therefore, in a restricted number of countries like Belgium, Iceland and Austria contacts with the mass media on criminal cases, regardless whether under investigation or already under prosecution, are handled by the prosecution service only or take place after prior consultation with the prosecution service only.

In the majority of countries covered by this report, both the police and the prosecution service may inform the mass media. The prosecution service will inform the mass media of decisions to prosecute, or to waive a case, or on the charge on which the offender has to stand trial. In the Netherlands, in the event of a high prosecutorial settlement (over 50.000 Euro) or settlement in special cases, the issue of a press release is required.

Sometimes, the replies make reference to the fact that information on cases has been leaked to the press. This is, of course, a violation of the rules of professional secrecy although it is sometimes hard to prove (who did it?).

Joint investigation units

The last issue to deal with in this report is related to experiences with Joint Investigation Units, and their advantages and disadvantages. This joint investigation may take place at national and international level.

As part of its antiterrorism programme, the European Union adopted the European Framework Decision of 13 June 2002 on joint investigation teams[3], which is based on the European Mutual Assistance Convention. The Framework Decision allows member states to set up joint police teams that will operate in two or more participating countries with representatives of Europol (the European Police Office) and Eurojust (the EU prosecutions Unit). Members of a joint investigation team working in a member state other than their own, are regarded as seconded to the national authorities, and may be entrusted to undertake certain investigative measures and be present when investigative measures take place with the consent of their hosts.

Only a restricted number of countries have experience with these international joint investigation teams.

On 16 September 2004, the justice ministers of Spain and France announced the creation of the first joint investigation team (JIT) between EU member states. The goal of the Franco – Spanish initiative will be to investigate attacks by ETA against tourist interests in 2003. The two countries are also examining the possibility of establishing another JIT to investigate the financing of an organisation linked to al-Queda. A JIT is composed of magistrates and officers from two or more countries, to act as judicial police with powers to carry out searches, interrogations and telephone interceptions within the participating countries' territories. These teams work on criminal cases which are complex, demand international investigations, and for which coordinated and concerted action between member states is necessary.

In addition to France and Spain, a JIT has been set up between the Netherlands and the United Kingdom in the area of drugs crime.

[3] Official Journal of the European Communities
162/1 (20.6.2002)

In a number of other countries like Ireland, the Czech Republic and Sweden, which do not have practical experience with a JIT yet, legislation has been adopted or circulars have been issued recently which give effect to the EU Framework Decision and which will facilitate the establishment of Joint Investigation teams.

At national level, in many countries joint investigation units have been set up for the investigation of grave or complex crimes as is the case in Armenia, Belgium, Bulgaria, Croatia, Finland, Hungary, Slovakia, The Former Yugoslav Republic of Macedonia and Ukraine.

Only a few countries such as Italy, Austria, Monaco, Montenegro and Portugal, have reported that joint investigation units do not exist. In some countries like Denmark and Norway, the reason for the non-existence of joint units is that local prosecutors form part of the police already.

As a rule, the countries which work with joint investigation units report only positive aspects of the cooperation between the police and prosecution services.

Advantages, such as a proper interaction, coordination of the pre-trial investigation, more rapid, efficient and higher quality of the investigations and the avoidance of duplication of investigative efforts, are widely mentioned.

Disadvantages have not been reported at all. Some countries, however, are not convinced on the added value of joint investigation units. They are reported to be regarded rather cumbersome (Switzerland), to cause problems during the exchange of information or to lead to duplication of activities (Armenia) or to be less intensive or efficient because police officers in the joint investigation unit are also given certain assignments for other investigations by their direct superior police chiefs (Lithuania).

Despite these remarks, most countries have very positive experiences with joint investigation units (Belgium, Finland, Hungary, Iceland, Liechtenstein, and Slovak Republic).