

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

ITALY – Answers

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

In Italy the relationship between prosecutors and the police is ruled by law in its highest expression. The Italian Constitution so establishes that “judicial authorities directly avail themselves of the investigative police”. When this provision mentions the words “judicial authorities”, it refers both to the Courts and to the Prosecution Service.

The expression (they) “directly avail themselves” leads to exclude that prosecutors might actually use the police by the means of or subject to other public authorities.

The indication within the Constitution is restated in the Italian Code of Criminal Procedure, as far as investigation activities are concerned. The Code rules that the functions of the investigative police are dependent upon and directed by judicial authorities.

It is to be noted that in Italy there are several bodies acting as the police. Here are the major ones: the State Police (*Polizia di Stato*), the Carabineers (*Carabinieri*), the Fiscal Police (*Guardia di Finanza*).

All of them act as “investigative police” when they investigate crimes; on the other hand, their perform functions of “security police” when they act as public security forces. The former role is played after a crime has been committed; the latter is aimed at preventing offences. Whenever, in these answers to the questionnaire, reference is made to the “police” *tout court*, it must be understood as referred to the investigative police (in Italian: “*polizia giudiziaria*”, literally “judicial police”).

In every Prosecution Office there is a unit of the investigative police composed of members of different police forces. The prosecutor can resort to other bodies of the police, beside police units.

Units members cannot be turned away from investigative police activities on orders of different authorities other than the prosecutor whom they depend on.

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

The dialogue between prosecutors and the police is necessary and it is imposed by Italian law.

See hereunder at § 4.

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

Italian law does not set forth any provision about that, although many prosecutors are actually involved in police training activities.

B. Existing legal provisions and regulations

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

Italian law determines the relationships between prosecutors and investigation bodies.

The police must perform the duties that public prosecutors entrust them with. They must take notice of criminal offences, even on their own initiative, prevent them from bringing further consequences about, look for offenders, accomplish the necessary acts to ensure evidence and gather any needed information to enforce criminal law. Furthermore, the police carry out any investigation and activity ordered or delegated by prosecutors.

The Italian Code of Criminal Procedure provides that both prosecutors and the police take notice of offences. They can do so on their own initiative or upon claim of public officials or private citizens.

After taking notice of an offence, a police officer has to refer it to the prosecutor “without delay” by reporting the essential elements of the criminal act, the sources of evidence and the performed activities. Furthermore, the police officer sends all the documents over and underlines the day and time when the criminal offence was reported.

From then on, the prosecutor takes the helm of the investigation. He can directly lead it so far or he can act through the police by delegating special activities or the whole direction to them, although the prosecutor still gives them his guidelines.

Carrying on their functions, police officers gather any useful element to reconstruct the event and to detect the guilty person and they “speedily” inform the prosecutor about it.

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

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

The main feature of the Italian criminal system is that criminal action is mandatory. This characteristic is sanctioned by the Italian Constitution.

As a consequence, whereas elements of crime come about, each case must be mandatorily investigated. If enough evidence for trial is obtained, the case must be brought before a Court.

Therefore, a prosecutor cannot dismiss a case at his own discretion, if the above mentioned assumptions exist. Within this framework, every Chief Prosecutor can outline his priority criteria to rationalise the employment of available resources: he cannot decide whether he may or may not investigate a single case, but he can evaluate which categories of cases deserve a priority. A useful criterion for guidance comes from law provisions establishing which kind of cases must be treated as a priority matter by judging Courts (for example, cases related to organized crime or terrorist crime offences, sexual abuse, etc.).

No priority assessment is made by the police. They have to stick to the prosecutors' indications.

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

Yes, they do. See § 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?

Yes, they are. See § 4.

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)?

See § 4.

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

Following what we have already explained at §§ 1 and 4, in Italy there is an actual subordination of the investigative police to the prosecution service.

When a prosecutor gives his guidelines to conduct an investigation, the police must interpret them on the basis of their expertise.

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

A prosecutor has full control over an investigation. Moreover, the principle of mandatory prosecution (mentioned here above at § 5) binds him in relation to whether he might not investigate or prosecute a specific case, or whether he might stop an ongoing investigation.

If he wishes to do so, a prosecutor must make a request to the judge for filing the case. It is up to the Judge of the Preliminary Investigation to decide on this request: he may file the case or he may order the prosecutor to conduct further investigations or to bring charges.

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

A prosecutor has an autonomous power to decide which police service he wishes to delegate for each investigation. When he makes a choice, a prosecutor tries to enhance specific competences (for instance, he chooses the Fiscal Police (*Guardia di Finanza*) for economic and financial crimes). In the most delicate and complex cases, he sometimes delegates several police forces altogether, while he keeps the power of coordination.

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.

The prosecutor can always monitor that his instructions have been complied with.

This monitoring is actually carried out in all cases, when the police report to the prosecutor the results of investigation activity they are required to conduct.

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 Prosecutor is certainly responsible for this matter.

The general rule establishes that prosecutors (as well as judges) and the police must all comply with the rules of the Code of Criminal Procedure. This applies in any case, both in case of infringements where the voidness of accomplished acts or another procedural sanction is required and in case of a provision implying no sanctions.

Chief Prosecutors control that rules shall be complied with and they can adopt disciplinary measures against police officers in case of infringement.

The ordinary way through which the prosecutor controls whether police officers have been law abiding officials consists in the examination of documents –he receives from the police service– pertaining the investigation activities they have conducted so far. In fact, police officers must forward all the results of their investigations. They cannot choose instead what they wish and what they do not wish to send.

During the processing of a criminal case, one of the involved persons can submit a complaint about the actions of the police. In this case, the prosecutor can adopt any initiative he believes to be convenient to monitor the lawfulness of their actions.

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 Italian Code of Criminal Procedure contains detailed regulations about all aspects related to how both the prosecutor or the police shall conduct investigations.

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

As already mentioned at § 4, the Italian Code of Criminal Procedure sets forth the main regulations for conducting investigations, with respect to jurisdiction, duties, ways wherein individual acts are carried out (for instance in case of witnesses' questioning, searches, seizures, arrest of a suspect).

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?*

Yes, he does. The prosecutor plays a major role in this regard.

Disciplinary action against police officers is initiated by the Prosecutor General at the Court of Appeal.

If police officers have omitted to report the offence to a prosecutor within the prescribed time limit or they have omitted or delayed the enforcement of the prosecutor's order or, however enforced, the order was partly or carelessly enforced, they can be prosecuted for a disciplinary offence (unless this is considered as a criminal offence).

Within each police service there are also internal controls concerning the fairness of its members' actions.

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

As mentioned at § 16, the Prosecutor General at the Court of Appeal shall be responsible for starting a disciplinary action against police officers. The law sets forth the rules to conduct disciplinary proceedings. At the end of the proceedings, some sanctions might be decided by a Commission composed of the President of a Chamber of the Court of Appeal, a Judge of the First Instance Court and a police officer belonging to the same police corp of the accused person.

As provided for by law, the accused person is fully entitled to the rights of defense. The possibility also exists (for the defense counsel and for the prosecutor) to eventually appeal to an Appeal Commission and then to the Supreme Court.

H. Conclusions

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

In Italy, there are sometimes debates at a political level on whether it is convenient to extend the autonomy of the police, mostly with reference to the initial stages of the investigations.

However, as underlined here above, today the Italian legal system clearly states that the prosecutor is responsible for directly conducting the investigations himself and the police are subject to it.

If we wish the system to work properly, we need a high standard for the prosecutors' professional qualifications, even in relation to investigation techniques. Police officers are themselves specialized in some sectors. Therefore, the prosecutor has the duty (and should have the ability) to exploit this specialization at its best and to avoid that police subordination might lead to lack of motivation in conducting investigations.

From another point of view, the prosecutor must carefully avoid in individual cases that rivalries or competitions between different police services might hinder investigations. Instead, he has to promote coordination as much as possible.

On his side, the prosecutor must be able to play a really autonomous role in his investigation assessments, when he carefully examines police' indications and proposals on possible investigative developments or concerning investigative results tending to committal the suspect for trial.