



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. The State Attorney (prosecutor) has no authority over the police or other bodies, agencies of the Ministry of Finance of the Republic of Croatia. State Attorney's Office is an independent judicial authority, while the police is under the Ministry of Interior Affairs, and certain agencies (tax Administration, Customs Administration, etc.) are under the Ministry of Finance.

Pursuant to the Criminal Procedure Act (hereinafter: CPA), the State Attorney may give orders to the police or other bodies investigating criminal offences. Article 206h of the CPA prescribes that the State Attorney orders the police authorities to obtain necessary information by making inquiries and that police is bound to proceed in accordance with the order of the State Attorney. If a police officer does not act upon the order of the State Attorney, the State Attorney can only notify the Chief Police Directorate thereof.

The same is applicable to certain agencies of the Ministry of Finances. Namely, pursuant to Article 206g, paragraph 2 of the CPA, the State Attorney may request documents to be obtained, control to be conducted, etc. If officers of certain bodies (agencies) of the Ministry of Finance do not conduct requested control, the State attorney may request the Head of the body to examine why it was not acted upon his/her order.

Also, it is important to emphasize that the police is independent in its work and if police authorities believe that there are grounds of suspicion that criminal offence was committed, they can initiate inquiries into criminal offences in accordance with the Police Affairs and Powers Act, and they do not need an order or approval of the State Attorney. They only need to notify the State Attorney that they are conducting such actions.

2. State Attorney's Office signed a Protocol on Cooperation between the State Attorney's Office and the Police in preliminary (pre-investigative) and criminal proceedings. The Protocol regulates issues of mutual cooperation, manner of holding coordinative meetings, etc. In regard to the implementation of the Protocol, no less than once a year a meeting between the State Attorney's Office of the Republic of Croatia and Chief Police Directorate is held and joint work is discussed. Manners for the improvement of cooperation are agreed upon in the meeting. Protocol also prescribes that County and Municipal State Attorney's Offices are bound to hold such meetings with competent Police Administrations at least once a year.
3. State Attorney is involved in the education/training of the police or other bodies only or if the bodies request the State Attorney to be involved. There is no legal obligation of the referenced authorities to involve the State Attorney in the trainings.

It is common that after the adoption of significant amendments of the CPA and Criminal Code, the authorities organise education in which state attorneys also participate.

B. Existing legal provisions and regulations

4. As previously mentioned, Article 206h of the CPA prescribes that the State Attorney may order the police authorities to obtain necessary information by making inquiries and undertaking other measures for collecting the data necessary for a decision on the crime report.

Once the State Attorney ordered the police to conduct inquiries in accordance with Article 206h, paragraph 2 of the CPA, the State Attorney has the right and duty to constantly supervise the conducting of the inquiries ordered to the police. This provision also prescribes that police is bound to execute the order or request of the State Attorney in performing supervision of the inquiries and will respond for their action to the State Attorney. However, the law does not regulate the manner of responsibility.

Police Affairs and Powers Act and Article 212 of the CPA prescribe that the police must notify the State Attorney in case a police officer committed a criminal offence and then the State Attorney decides whether he/she will conduct investigation on his/her own or involve certain police bodies.

With regard to the agencies of the Ministry of Finance of the Republic of Croatia, there is a provision in the CPA that the State Attorney has a right to request the referenced authorities to deliver certain information, that is, to conduct certain control. According to the CPA, the State Attorney has no right to supervise the conducting of requested actions.

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

5. There are no provisions or internal instructions within the State Attorney's Office in regard to determining priorities in the initiation of criminal investigations. Cases need to be resolved according to the time of receipt.

Bearing in mind legal deadlines, it is necessary to act urgently in cases where defendant was arrested, that is, when detention or investigative detention was ordered against the defendant. These cases have priority. In regard to all other cases, priorities are not determined, but state attorneys are bound to provide an order for conducting inquiries, commence with inquires themselves or make a decision in the case within 15 days from the day they received information on the perpetration of criminal offence.

6. State Attorney has no direct or indirect authority to influence a decision of police bodies, which have information on the perpetration of criminal offence, to conduct inquiries or in what term. However, if the State Attorney has information that a criminal offence was committed or once he/she receives a criminal report, the State Attorney has a right to order inquiries to be conducted and to supervise these inquiries.

D. Responsibility of the prosecutor during the investigation

7. Investigation¹ is conducted by the State Attorney. He/she is responsible for timely, quality and complete collection of evidence, i.e. efficient conducting of investigation. He/she is especially responsible for conducting the investigation within prescribed deadlines. Investigation is conducted for criminal offences for which a punishment of more than five years imprisonment is prescribed, while investigation² is conducted for criminal offences for which a fine or up to five years imprisonment is prescribed.

If the State Attorney, due to gross negligence, is not conducting actions in the investigation and therefore investigation cannot be concluded within the legal deadline, he/she is responsible and disciplinary proceedings can be conducted against him/her.

¹ For the sake of this document one term was used to cover both investigation of criminal offences punishable by more than five years imprisonment and investigation of criminal offences punishable by a fine or less than five years imprisonment. Please note that investigation of criminal offences punishable by more than five years imprisonment is initiated by a Decision to Conduct Investigation issued by the State Attorney. Such investigation is mandatory if reasonable suspicion exists that a defendant committed criminal offence punishable by fifteen years imprisonment or long-term imprisonment.

If reasonable suspicion exists that a defendant committed criminal offences punishable by a fine or less than five years imprisonment, and there are no legal obstacles to conduct criminal prosecution of the person, the State Attorney can conduct or order investigator to conduct evidentiary actions that are purposeful for deciding on preferring the indictment. The State Attorney delivers the notice on conducting evidentiary actions to the defendant within three days from the day the first evidentiary action was performed.

² See footnote 1.

8. State Attorney receives crime reports from the police but also other state authorities. Police submits crime report if grounds of suspicion exists that a criminal offence was committed. According to the Police Affairs and Powers Act, the police conduct criminal investigation and afterwards is due to submit the crime report to the State Attorney. If police receives crime report from a citizen or a legal entity, it is bound to deliver the report to the State Attorney immediately, since Article 205, paragraph 1 of the CPA prescribes the following: If the report was filed with the court, the police authority or a State Attorney lacking jurisdiction, they will receive it and immediately forward it to the State Attorney having jurisdiction.
9. CPA differentiates between inquiries, which according to the Police Act are titled criminal investigation, from investigation.

According to the Police Affairs and Powers Act, police is bound to conduct criminal investigation if grounds of suspicion exist that criminal offence prosecuted by virtue of office is being prepared or that it was committed. Term “grounds of suspicion” indicates that certainty that a criminal offence was committed is much smaller than in a case of existence of reasonable suspicion. One might say that it is sufficient that the police obtained information on possible perpetration of a criminal offence and then it is authorised to initiate criminal investigation.

Police is autonomous in deciding whether to initiate a criminal investigation or not and they do not need an approval of the State Attorney.

Investigation is conducted by the State Attorney, and police investigator can conduct certain evidentiary actions in investigation only upon the order of the State Attorney. Therefore, police is not authorised to conduct investigation independently.

10. The State Attorney is not authorised nor can he/she influence decisions of the police or other investigative authority in regard to conducting inquiries or criminal investigation. These bodies decide independently on the referenced actions. Once the State Attorney receives crime report, he/she can decide whether reasonable suspicion exist that the reported person committed criminal offence. If he/she believes there is no reasonable suspicion, the State Attorney is authorised to dismiss the crime report, and if the reasonable suspicion exists he is bound to conduct investigation for the purpose of collecting evidence. After investigation, the State Attorney decides whether to initiate criminal proceedings by preferring the indictment or desist from criminal prosecution.
11. As pointed out above, we differentiate between criminal investigation, which is under police competence and which the State Attorney cannot influence, from investigation that, according to the Criminal procedure Act, is conducted by the State Attorney.

Investigation is conducted by the State Attorney and he/she can order the investigator to conduct certain evidence collecting actions in the course of investigation.

The investigator is a police officer or an officer of other competent authority appointed investigator, pursuant to a special law. The investigator acts in accordance with order of the State Attorney and cannot conduct actions outside the scope of the

order. As a rule, the State Attorney orders the investigator to conduct specific evidence collecting actions. The State Attorney entrusts the performance of particular evidence collecting actions to the investigator mostly in cases where a large number of persons needs to be questioned.

On the other hand, if there is danger in delay the police has a right to independently perform particular urgent evidence collecting actions (crime scene investigation, etc.). If criminal offences in questions are serious ones, prior to the execution of the action the investigator must inform the State Attorney who may take over the performance of the referenced actions.

12. If the State Attorney ordered the investigator to conduct particular evidence collecting actions in the course of investigation, the State Attorney has a right and duty to supervise lawful performance of the action. The investigator is bound to act in accordance with the orders of the State Attorney and is responsible for not acting in accordance with the orders of the State Attorney.

As previously stated, the investigator cannot be sanctioned by the State Attorney. The State Attorney may request competent police officer to establish responsibility of the police officer and initiate appropriate procedure.

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

13. As previously mentioned, the police conduct criminal investigations which are conducted even before a crime report was submitted to the State Attorney. In conducting criminal investigations, the police act pursuant to the Police Affairs and Powers Act.

F. *Common principles concerning the police*

14. If the police conduct urgent evidentiary actions (Article 212 of the CPA) it is bound to conduct these actions pursuant to the Criminal Procedure Act. When the police conduct actions in the course of criminal investigation (without the order of the State Attorney), it is bound to act in accordance with the Police Affairs and Powers Act which prescribes the manner of conducting a particular actions, that is, subordinate legislation adopted on the basis of the Act.
15. If the police conduct urgent evidentiary actions (Article 212 of the CPA) it is bound to conduct these actions pursuant to the Criminal Procedure Act. When the police conduct actions in the course of criminal investigation (without the order of the State Attorney), it is bound to act in accordance with the Police Affairs and Powers Act which prescribes the manner of conducting a particular actions, that is, subordinate legislation adopted on the basis of the Act.

G. *General control over police*

16. Police Affairs and Powers Act lists police activities. Among others, these activities include suppression of criminal and misdemeanour offences, detection thereof, collection of data, search for perpetrators of criminal offences prosecuted by the virtue of office and proceeds of crime, etc.

If a person was arrested and there are grounds of suspicion that a criminal offence was committed, police is bound to act in accordance with the provisions of the Criminal Procedure Act which refer to the arrest and bringing the arrested person to a detention police station and surrendered to a detention supervisor and notifying the State Attorney. These are formal actions and police is bound respect the prescribed deadlines. Criminal Procedure Act regulates the right of arrested persons, procedure of introducing the rights and deadlines in which the State Attorney needs to be informed.

The State Attorney does not participate in the control system of the police. Police work is controlled by the Ministry of Interior Affairs of the Republic of Croatia, i.e. certain Committees of the Croatian Parliament. The State Attorney controls if actions conducted in a case were done in respect for the law, and if the actions were conducted in violation of the law, he/she cannot use the results of such actions in criminal proceedings.

17. As previously stated, the State Attorney/prosecutor can propose to the superior officer, i.e. superior police officer or officer of some other authority, to initiate appropriate procedure if the State Attorney considers that a police officer or officer of other authority did not perform particular actions in a timely manner or in respect for the law.

H. Conclusions

18. According to the Criminal Procedure Act, the State Attorney is responsible for conducting inquiries, their legality, legality in conducting investigation, comprehensiveness of investigation and legality in collection of evidence. Finally, the State Attorney is responsible for the successfulness of a case. Degree of successfulness influences the assessment of the work that the State Attorney receives.

According to the Criminal Procedure Act, the police are bound to conduct actions ordered by the State Attorney; however, the act does not prescribe how the State Attorney can request liability of a police officer if such situation occurs.