



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 prosecutors are the masters of criminal investigations, according to Article 46 (2)(1)(i) of the Criminal Procedure Code [CPC]. In view of this, investigation bodies are in **procedural subordination to the competent prosecutor** – Article 52 (3) of the CPC. Specifically, Article 197 CPC postulates that “Written instructions of the prosecutor to the investigative body shall be binding and shall not be subject to any objections”.*

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

*Out of necessity, **such a dialogue exists**: as between a superior and subordinates.*

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

*To **some extent YES**, in accordance with training plans of the given prosecution office and in accordance with the cooperation agreement between the Prosecutor’s Office of Bulgaria and the Ministry of Interior.*

B. *Existing legal provisions and regulations*

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

Yes, as explained in point 1. The relations are governed briefly by Article 52 (3) of the CPC. This provision reads as follows: “The investigative bodies shall operate under the guidance and supervision of a prosecutor”. Besides, according to Article 196 of the CPC, „(1) When exercising guidance and supervision, the prosecutor may:

- 1. constantly control the progress of investigation, studying and inspecting all case materials;*
- 2. give instructions in relation to the investigation;*
- 3. take part or perform investigative actions;*
- 4. remove the investigative body, where he has committed a violation of the law or is not capable of ensuring the correct conduct of the investigation;*
- 5. withdraw a case from an investigative body and transfer it to another;*

6. assign to the respective bodies of the Ministry of Interior the implementation of individual actions related to the discovery of the crime;

7. revoke on his own motion or on the basis of a complaint by the interested individuals decrees of investigative bodies.

(2) Apart from § 1 powers, the supervising prosecutor shall directly monitor the lawfulness of the investigation and its completion within the set period“.

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

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

They are determined by the competent prosecutor.

5. Do prosecutors or the prosecution service in a direct way have an influence on this? - As explained, “YES”. It is their duty, pursuant to Article 46 (2)(1)(i) of the CPC.

D. Responsibility of the prosecutor during the investigation

6. Are prosecutors responsible for the conduct of investigations in your country? If no, who is responsible for that? - As explained, the answer is “YES”.

7. When does the prosecutor receive a complaint (as soon as the complaint is filed, or after the investigation has been conducted by the police)? - As soon as the complaint is filed.

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

They have autonomy in investigative actions but within the directives of the competent prosecutor, esp. when it comes to judicial investigators – Article 52 (2) of the CPC.

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

YES, because s/he is the master of investigation. The prosecutor is authorized to prevent an investigation by the virtue of Article 212 of the CPC. S/he is authorized to suspend an investigation by the virtue of Article 244 of the CPC and authorized to terminate it by the virtue of Article 243 of the CPC.

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

This is decided in accordance with Articles 194, 194a and 195 of the CPC; they govern the distribution of cases during pre-trial proceedings among investigative bodies. The territorial competence of the investigation bodies depends on the place, where the crime has been committed and in the seat of the competent court.

11. 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.

YES, being the master and in accordance with the above-quoted Article 196 of the CPC, in particular.

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

12. 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?
Yes, all the time, according to Articles 46 (2)(1)(ii) and 196 (1)(4)(i) of the CPC.

F. Common principles concerning the police

13. Are there written regulations concerning the conduct of criminal investigations by the police or other investigation body?
Yes, apart from CPC, which regulates the pre-trial investigation, there is a comprehensive Instruction on pre-trial criminal proceedings.

14. What are these regulations about? (for instance, the way to carry out interrogations, deprivation of liberty etc.)
Their idea is to regulate all decision and activities relating to prejudicial checks /preliminary verifications/ and pre-trial criminal proceedings.

G. General control over police

15. What is the general control system of the police or other investigation body, if any (internal/external?) - *There is both internal and external control. Does the prosecutor play a role in this system? - His/her role is of a DOMINUS LITIS (Latin: Master of the Suit). This has been already explained.*

16. Is the prosecutor competent to take sanctions?

YES, s/he is. Article 196 (1)(4)(i) of the CPC authorized him/her to remove the investigative body, where s/he has committed a violation of the law. The prosecutor is entitled to impose administrative fine when his/her order, given according the law is not fulfilled – Art. 405 of the Judicial Power Act.

H. Conclusions

17. What are the major challenges in relations between prosecutors and investigation bodies in your country?
I would say it is to overcome the lack of sufficient communication and control on behalf of prosecutors.