



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.

Police authorities independently conduct the investigation, actively seek the facts proving perpetration of offences and at the same time accept criminal complaints from the public. As soon as the criminal procedure is started, the Police authority which formulates an official record of this has to inform the public prosecutor of this course of action within 48 hours. Public prosecutor conducts supervision over compliance with legality in the pre-trial procedure, which mainly consists of checking the police while investigating and collecting evidence. Public prosecutor acts as *dominus litis* of the pre-trial procedure, which determines his competencies towards the police authority – the public prosecutor is authorized to give binding instructions on investigating crimes; the public prosecutor is authorized to participate in the performance of actions of the Police authority; is authorized to require all the documentation concerning investigation from the Police authority in order to review its activities; cancels unlawful and unjustified decisions of the Police authority. The public prosecutor makes all the decisions concerning the merits of the case in the pre-trial procedure. The exhaustive enumeration of the competencies of the public prosecutor towards the police authority is listed in the Criminal Procedure Code.

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

The Police authority is bound by the instructions given by the public prosecutor; nonetheless the Police authority acts relatively independently. Both subjects cooperate closely, the public prosecutor gives advice to the Police how to proceed, eventually gives the Police authority binding instructions. The Czech Police face a problem concerning an absenting legal education of the members of the Police, which requires a thorough control of the activities of the Police by the public prosecutor who guarantees the lawfulness of the whole pre-trial procedure.

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

Vocational education on the field of law is not required for entering the Police service except when a special education is necessary for the performance of the function. The newly hired members of the Police service are trained in the form of the so called basic training which lasts 3 months. The conception of the Ministry of Interior assumes a lifelong systematic education of the members of the Police. The education is provided within the structure of the Police (The Police Presidium) and by the Ministry of Interior (e.g. The Police Academy). Public prosecution also takes part in the educational

process of the members of the Police but the main role plays the Police Presidium as well as the Ministry of Interior.

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 relationship between these bodies is regulated in the Criminal Procedure Code (Act no. 141/1961 Coll.). This regulation provides the competencies of the Police authority and public prosecution in the pre-trial procedure. The main task of the public prosecution in this stage is to guarantee the lawfulness of the pre-trial procedure.

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

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

Initiation of the criminal procedure is governed by the principle of legality, which means that the public prosecutor is obliged to prosecute all the offences he gets to know about. The public prosecutor does not dispose of discretion to initiate the prosecution or not. The so called formal concept of a criminal offence is applied while assessing if an act is a crime or not. At the same time the criterion of the social harmfulness has to be assessed because an illegal act cannot be considered as a crime if its social harmfulness does not achieve a certain threshold. On principle, if an illegal act fulfills the conditions regulated in the Criminal Code it usually is to be qualified as a criminal act on condition that the social harmfulness of this act cannot be considered lower than in similar cases.

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

Public prosecution service takes part in forming the criminal policy of the state. Public prosecution service determines problems the public prosecution deals with and suggests possible legislative solutions. In relation to the efficiency of the criminal justice possible regulation of elements of the principle of opportunity is being discussed. Some of these elements are regulated in the Criminal Procedure Code in the form of diversions, which enables the public prosecution to solve the criminal case of lower gravity within a pre-trial procedure without an unnecessary stigmatization of the defendants and without spending unnecessary costs on the criminal procedure.

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?

Public prosecutor acts as *dominus litis* of the pre-trial procedure who supervises the activities of the Police authority which factually collects evidence and conducts investigation. The public prosecutor conducts investigation on his own only in exhaustively listed cases (e.g. investigation of crimes committed by the members of the General Inspection of Security Forces, by members of the Office for Foreign Relations and Information etc.). The public prosecutor is authorized to give binding instructions to the Police authority and guarantees the lawfulness of the pre-trial procedure. As a result, the public prosecutor is responsible for the conduct of the pre-trial procedure.

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)?

The public prosecution as well as the Police authority is obliged to accept criminal complaints which refer to committing a crime. The investigation itself is conducted by the Police authority which is

obliged to formulate an official record of initiating the criminal procedure and has to inform the public prosecutor of this course of action within 48 hours.

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

The Police authority is an independent body which however closely cooperates with the public prosecution service. The public prosecutor acts as *dominus litis* of the pre-trial procedure and the Police authority is bound by the instructions of the public prosecutor. The public prosecutor makes all the decisions concerning the merits of the case in the pre-trial procedure. The Police authority also makes some decisions but all of them can be contested by entitled persons and replaced or reviewed by the public prosecutor. The Police authority does for example initiate the criminal procedure by formulating an official record, resp. by performing urgent and unrepeatable acts, initiates the criminal prosecution against a particular person, and adjourns a case. Besides the cases when the public prosecutor's consent is required, the Police authority makes all the decisions concerning the investigation independently and is fully responsible for the lawfulness and timeliness of performance of all the actions taken by the Police authority.

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

The public prosecutor is a *dominus litis* of the pre-trial procedure and due to this fact he is authorized to preclude the criminal prosecution for example by giving the Police authority a binding instruction to adjourn a case. At a later stage of the criminal procedure when a criminal prosecution against a particular person has been initiated, the prosecution may be discontinued only by the public prosecutor and for legal reasons exhaustively listed in the Criminal Procedure Code. On the base of the exhaustively listed reasons the criminal prosecution may be discontinued due to inadmissibility (e.g. limitation of a crime; final decision in the same case has already been issued; defendant passed away etc.) or due to the fact that after a conducted investigation is clear that there is an obligatory reason for discontinuing the criminal prosecution (the criminal act did not happen; the committed act is not a criminal offence; the defendant is not a perpetrator of the crime; the criminal prosecution is inadmissible; the defendant was mentally insane at the moment of committing the crime; criminal nature of the act vanished). In particular cases when the prosecution is not effective the criminal prosecution may be discontinued by using the so called procedural opportunity. In such cases the public prosecutor disposes of discretion to do so. This is considered an element of the principle opportunity in the Czech criminal procedure.

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

Material and local jurisdiction of the Police to investigate crimes is determined by an internal binding regulation called Instruction of the Police President no. 103/2013. The local jurisdiction depends on the place where the offence was committed. If the scene of crime cannot be determined or if the offence was committed abroad, the local jurisdiction is determined on the base of the residence of the perpetrator, his workplace or the place where he stays. If these places cannot be determined or are abroad, the local jurisdiction is determined according to the place where the offence emerged. The material jurisdiction is determined by the gravity of the offence. Offences which are supervised in the pre-trial procedure by the district prosecutor's office and judged in the first instance by the district courts are investigated by the district Police authority. Offences which are supervised in the pre-trial procedure by the regional prosecutor's office and judged in the first instance by the regional court are investigated by the regional Police authority.

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.

Public prosecutor is a *dominus litis* of the pre-trial procedure and is responsible for the lawfulness of the pre-trial procedure. The public prosecutor is authorized to give binding instructions to the Police authority concerning the investigation. The public prosecutor is authorized to request files and documents from the Police authority including cases where the prosecution has not been initiated yet. Due to this fact the public prosecutor disposes of all the procedural possibilities to check if the Police authority complies with his instructions. In case that the Police authority does not comply with his instructions, the public prosecutor is authorized to replace all the decisions made by Police by his own decision.

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 essential role of the public prosecutor in the pre-trial procedure is to guarantee the lawfulness of all the actions taken. In the trial stage of the criminal procedure the position of the public prosecutor changes because he becomes a party and the procedural guarantor is a court in this stage. In the pre-trial stage the public prosecutor performs supervision over the police, gives it binding instructions and may replace all the decision taken by the Police if he supposes that the Police decided unlawfully. In the pre-trial stage only the public prosecutor is authorized to make all the decisions concerning the merits of the case.

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 Charter of Fundamental Rights and Freedoms determines a basic frame for the activities of the investigating, prosecuting and adjudicating bodies within the criminal procedure. This regulation is a part of the constitutional order and disposes of higher legal force than the procedural norm regulating the activities of the investigating, prosecuting and adjudicating bodies (Criminal Procedure Code). The Charter mainly regulates legal limits of the possible interference with fundamental rights and basic freedoms which must not be exceeded by the state bodies while performing their duties. The Criminal Procedure Code is the essential procedural norm which regulates the course of action of the investigating, prosecuting and adjudicating bodies. The competencies of the Police are further regulated in the Act on Police. Activities and position of the public prosecution service are regulated in the Act on Public Prosecution Service and in the Act on Rules of Procedure of the Public Prosecution Service.

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

The Charter of Fundamental Rights and Freedoms determines the constitutional frame of the possible interference with the fundamental rights and freedoms conducted by the investigating, prosecuting and adjudicating bodies (e.g. imposition of custody, performing the house search etc.). The Charter determines the basic rights of the defendant in the criminal procedure and further principles of the procedural and substantive criminal law (e.g. presumption of innocence, principle of a due process of law etc.). The Criminal Procedure Code determines specific rules for the conduct of the mentioned bodies.

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?

Body of an internal control of the Police is called the General Inspection of Security Forces which was established on 1 January 2012 as a body unifying the system of internal control of the Police. Creating such a body seemed to be a must because the whole system of the control was previously quite fragmented and control competencies were conferred to various bodies within the Police. The General Inspection of Security Forces is an independent body which actively investigates the facts suggesting committing a crime by a member of the Police (and by members of other enumerated bodies). Everybody is entitled to notify the General Inspection of Security Forces about the shortcomings in the activities of the Police and at the same time everybody can notify that a member of the Police committed a crime, disciplinary offence or an administrative offence. Chamber of Deputies of the Czech Parliament is a body which controls the activities of the General Inspection of Security Forces. However, the General Inspection of Security Forces closely cooperates with the public prosecution service because the public prosecution service supervises the activities of the General Inspection of Security Forces while investigating the offences of the members of the Police. According to the Act on Police the institute of the so called public control was established. According to this regulation everybody can notify the shortcomings in the activities of the Police authority, member of a Police and an employee of the Police and at the same time everybody can notify that such a person committed a crime, disciplinary offence or an administrative offence. In the year 2011 the so called Police Ombudsman was established (Office of the Ombudsman of the Ministry of Interior) by a regulation of the Ministry of Interior. The ombudsman accepts and deals with complaints filed by the members of the Police which concern violation of rights of the members of the Police; inaction of the superordinate Police members while enforcing these rights; activities which contradict the principles of a democratic rule of law state; avoiding and solving cases of discrimination by the superordinate, subordinate Police members, eventually by the colleagues. After investigating the complaint the ombudsman suggests a measure to be taken or if the complaint does not fall within his competence, he refers the matter to a competent body.

17. Is the prosecutor competent to take sanctions?

The public prosecutor supervises the investigation which is conducted by the General Inspection of Security Forces. Due to this fact the public prosecutor disposes of the same competencies like during the pre-trial procedure which is conducted against perpetrators outside the Police (the public prosecutor makes all the decisions concerning the merits of the case – e.g. diversions (the defendant may be imposed some obligations or the public prosecutor files indictment in court). The public prosecutor does however not impose sanctions for committing a disciplinary offence or an administrative offence because these sanctions must not be imposed within a criminal procedure.

H. Conclusions

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

The Police has been undergoing a process of reform while various aspects of its activities are emphasized. For example lack of legal education of the members of the Police is considered a big problem although the legal education is not required for entering the Police. The pre-trial procedure has to meet requirements of lawfulness, which can be problematic when there is a lack of legal education. The Police is overloaded with quantity of various activities which prevent the Police from conducting its main task – the investigation of crimes. These activities are called non-police activities and they should partly be conferred to other bodies. Another problem is bureaucracy and slow computerization of justice which has the potential to accelerate the criminal procedure. Creation of the above mentioned General Inspection of Security Forces can be considered a partial success of the ongoing reform.

Attachment:

Section 12 Interpretation of Some Terms

(1) Authorities involved in criminal proceedings are understood as the court, the public prosecutor and the Police authority.

(2) Police authorities are understood as

a) units of the Police of the Czech Republic,

b) General Inspection of Security Forces in proceedings on criminal offences committed by members of the Police of the Czech Republic, members of the Prison Service of the Czech Republic, customs officers or employees of the Czech Republic placed to work in the Police of the Czech Republic, or on criminal offences committed by employees of the Czech Republic placed to work in the Prison Service of the Czech Republic or in the Customs Administration of the Czech Republic, which were committed in connection with fulfilment of their work tasks,

c) authorized bodies of the Prison Service of the Czech Republic in proceedings on criminal offences of persons in custody, prison sentence or security detention, which were committed in a custodial prison, prison or a facility for the execution of security detention,

d) authorized customs authorities in proceedings on criminal offences committed by breaching customs regulations or regulations on the import, export or transit of goods, even in cases of criminal offences committed by members of the armed forces or security forces, and committed by breaching laws in the placement and purchase of goods in Member States of the European Communities, if such goods are transported across the state borders of the Czech Republic, and in cases of tax infringements, where the customs authorities administer the tax according to special legal regulations,

e) authorized bodies of the Military Police in proceedings on criminal offences of members of the armed forces and persons who commit a criminal activity against members of the armed forces in military facilities, against military facilities, military material or other property of the State, administration of which appertains to the Ministry of Defence,

f) authorized bodies of the Security Information Service in proceedings on criminal offences committed by members of the Security Information Service,

g) authorized bodies of the Office for Foreign Relations and Information in proceedings on criminal offences committed by members of the Office for Foreign Relations and Information,

h) authorized bodies of Military Intelligence in proceedings on criminal offences committed by members of Military Intelligence,

i) authorized bodies of the General Inspection of Security Forces in proceedings on criminal offences committed by members of the General Inspection of Security Forces or on the criminal offences of employees of the Czech Republic placed to work in the General Inspection of Security Forces.

This does not affect the right of the public prosecutor according to Section 157 (2) b). Unless stipulated otherwise, the listed authorities are entitled to all acts of criminal proceedings belonging to the competence of police authorities.

Section 157 General Provisions

(1) The public prosecutor and the Police authority are obliged to manage their activities so as to effectively contribute to the timeliness and reasonability of the criminal prosecution.

(2) The public prosecutor may order the Police authority to perform such actions that this authority is authorised to perform and that are necessary to clarify the matter or to identify the offender. In order to examine the facts indicating that a criminal offence has been committed, the public prosecutor is also entitled to:

a) request files from the Police authority, including files, in the matter of which no criminal proceedings were initiated, documents, materials and reports on the procedure on examination of criminal complaints,

b) remove any case from the Police authority and take measures to ensure that the case is assigned to another Police authority,

c) temporarily adjourn initiation of criminal prosecution.

Supervision of the Public Prosecutor

Section 174

(1) Supervision over compliance with the legality in pre-trial proceedings shall be conducted by the public prosecutor.

(2) Besides the entitlements referred to in Section 157 (2), the public prosecutor is also entitled in the course of performing the supervision

a) to give binding instructions for the investigation of the criminal offences,

b) to request files, documents, materials and reports on committed criminal offences from the Police authority in order to review, whether the Police authority timely initiates criminal prosecution and proceeds accordingly,

c) to participate in the performance of the actions taken by the Police authority, to personally make individual actions or even an entire investigation and issue a decision in any matter; therein he proceeds in accordance with the provisions of this Code applicable for the Police authority, and a complaint against his decision is admissible to the same extent as against a decision of the Police authority,

d) to return the matter to the Police authority with his instructions for supplementation,

e) to repeal unlawful or unjustified decisions and actions of the Police authority, which he may replace with his own; in the case of a resolution to adjourn the matter, he may do so within 30 days of receipt; if the public prosecutor replaced a decision of the Police authority by his own decision otherwise than upon a complaint of an entitled person against the resolution of the Police authority, then a complaint is admissible against his decision in the same extent as against the decision of the Police authority,

f) to order that the actions in the matter are carried out by another person in active service of the Police authority.