

Questionnaire on Relationships between Prosecutors and Prison Administration

ALBANIA

1. What are the Prosecution Service's powers regarding prison matters and in terms of deprivation of liberty?

Power to make a request to the Court to issue an arrest warrant

According to Criminal Procedure Code, (CPC) the prosecutor is the only authority to request to the court an arrest warrant.

Power to order detention or release

According to CPC, the prosecutor is entitled to order the Judicial Police to detain a person suspected for a crime punishable not less than 2 years of imprisonment or release a detainee/ people arrested in flagrante, when he finds it not appropriate or not authorized by the CPC.

Power to order the execution of a final sentence

According to the Law "on execution of criminal sentences of the Court" the prosecutor is the only authority in charge to order the execution of an arrest warrant or an imprisonment authorized by a court decision.

Power to issue orders after the execution of the arrest warrants/imprisonments ordered by the Courts.

According to CPP the Law "on execution of criminal sentences of the Court" and the Law " On the rights and treatment of prisoners/ detainees", the prosecutor is in charge of all knotty problems arising during the practice of the arrest warrant/imprisonments or those related to the rights of the prisoners/detainees. In such capacity the prosecutor has power either to order the Judicial Police or make recommendations to the prison authorities asking them to stop the breach of law.

Power to make request to the Court to make orders to the prisons authorities

In case the prisons authorities do not comply with his recommendations the prosecutor have resort to the Court asking to force the prison authorities to comply.

2. In States where prosecutors do not have full authority in prison matters, what are nevertheless their means of action used as regards prisons?

3. If prosecutors have general competences as regard prisons and detention, what kind of means have been provided to the Prosecution Service to allow its effective and fast action towards protecting human rights in matters of prison administration?

4. What are the positive and decisive elements of the prosecutor's role in terms of protecting Human rights compared to other mechanisms of legal protection?

To my opinion since the prosecution office is an independent body it can serve better to check the obligations of the other state agencies toward human rights protection in their activity, by using its power to initiate ex officio an investigation of its own and to give them obligatory orders to be followed when finding human rights infringements.

5. What could be the improvements to this system of protection?

To my opinion there must be more power shifted by law to the Prosecution Office. After the prosecutor carries out inspection or investigation in the detention places or prison, I think it's better, instead of making only a request to the court to force the prisons authorities obey to the law, the prosecutor can make orders that are obligatory to be followed by the prisons authority, without the need of getting first an authorization from the Court. Namely it must be other way around; the prisons authority must first follow the orders of the prosecutors and only after this they can appeal against that order in the Court.

Even on the matters of probation services, I think the law must give the prosecution offices more controlling competences of the process, not considering it only as a passive looking down agency.

6. Do prosecutors have jurisdiction to examine whether the rights (Human rights and especially procedural rights) of persons in criminal (for example as regards enforcement of prison sentences or pre-trial detention) or administrative detention are respected at the detention centre?

With a view of examining the respect of rights of the detainees/ prisoners, according to the Law "on execution of criminal sentences of the Court", the prosecutor, based on complaints made by detainee/prisoners or their lawyers or even *ex officio*, has jurisdiction to enter and inspect the prisons or places of detention, to ask the prison authorities to handle related documents and information they possess as well as to give them full access to particular places of interest or objects of the prison.

7. Can a prisoner meet in private with a prosecutor to determine whether they had been subjected to torture or to any other inhuman or degrading treatment or punishment?

According to the Law "on execution of criminal sentences of the Court" the prosecutors are entitled to interrogate the prisoners or detainees even without the presence of the administration authority.

8. Do prosecutors examine, and if so, how frequently, whether the accommodation provided to prisoners meet the recommendations of the Council of Europe (and namely of the European Committee for the

prevention of Torture/CPT¹? Can prosecutors make proposals in that direction which have an influence on the relevant budget?

9. What kind of means exist for prosecutors to deal with authorities or officers/employees which have not completely or properly enforced the decisions of the court or the Prosecution Service related to punishments and/or measures involving deprivation of liberty? If a prosecutor detects such negligence, is he entitled to give binding instructions for the immediate termination of the breach of law? Is it in their power to initiate criminal or disciplinary proceedings, actions for damages or any other kind of impeachment? What other prosecutorial instruments are at his disposal ?

According to the Law “on execution of criminal sentences of the Court”, when the decisions of the Court are not completely or properly enforced and this has given rise to breaches of law from the perspective of the rights of the detainees or prisoners, the prosecutors can address requests to the prisons authorities to enforce the decision of the Court properly, completely and according to the Law. If that request is not taken into account, the prosecutor can have resort to the Court which orders the prisons authorities to comply with the law, of course if it finds the request of the prosecutor to be well established. Anyway the prosecutor can not initiate by himself disciplinary proceedings or any civil action for eventual damages caused. He can only ask the proper authorities either to initiate such disciplinary proceedings or apply for a civil action.

While relating to the refusal by the Police to enforce a court decision at all, or interrupting its execution fraudulently there is no specific provision in the Law “on execution of criminal sentences of the Court”, dealing with these situations. Nevertheless, according to Criminal Code, when there is substantial evidence the prosecutor can decide to initiate criminal proceedings against any person who prevents or hinders the execution of a court decision. The same possibilities remain where there is evidence of a refusal, done with malice aforethought, to properly or completely execute a court decision.

10. How often do prosecutors carry out monitoring visits of institutions of criminal and administrative detention? Are there concrete follow-ups related to these visits?

¹ Suspects held in custody/defendants, men/women, juveniles/adults, criminal prisoners/other prisoners, ill/healthy persons, accessories to criminal conspiracy, recidivists/first offenders, officials - police, military, detention facility staff - involved in criminal procedures.

Suspects en détention/accusés, hommes/femmes, mineurs/adultes, détenus ayant commis des crimes/autres détenus, personnes malades/non malades, complices d’une association de malfaiteurs, récidivistes/primodélinquants, fonctionnaires (policiers, militaires, personnel pénitentiaire impliqués dans des procédures pénales).

11. Within the framework of their monitoring duties, do prosecutors have the power to take action at any time of the day (even at night) in the institutions of criminal and administrative detention?

According to article of the Law ““on execution of criminal sentences of the Court”, based on detainee/sentenced people complaints or *ex officio* the prosecutor has jurisdiction to enter and inspect the prisons or places of detention at any time, without any expressed restriction whether by day or by night and even without a prior warning for such a visit to the prison authority.

12. May prosecutors commission experts to assist them in their tasks related to supervision and inspection?

According to the Law ““on execution of criminal sentences of the Court”, the prosecutor can have resort to be accompanied and assisted by an expert or any other kind of assistant when performing inspection or supervision duties in prisons or detaining places.

13. Are complaints and/or denunciations regarding criminal and administrative detention subject to prosecutorial inquiry independently of any relevant authority or employees/officers? Is it a prosecutor’s duty to complete investigations himself/herself or is he/she allowed to forward these complaints for investigation to the officers/employees that are the subject of those complaints?

The prosecution office has all competences to make investigation of its own, *ex officio* or on the basis of complaints filed by those interested.

14. In case of sudden death, accident or criminal offence committed against a prisoner, or if a prisoner commits a crime against another prisoner or a prison staff member, is the investigation conducted by a prosecutor acting as an independent judicial authority or is it simply supervised by a prosecutor? Do prosecutors have any role in investigations?

In such cases the prosecution office has full competences and obligation by law to make investigation of its own, or order that the investigative duties be carried out by the Judicial Police. In both cases the investigation activity is under the direct control and supervision of the prosecution office.

15. Are prosecutors entitled to take action in procedures concerning the adoption/revocation of special measures for high risk detainees or subject to special restrictions in connection with their role and position in active criminal organizations? If so, how?

16. With a view to preserving them from any type of influence, are prosecutors autonomous or subordinated to other colleagues when monitoring the detention's legality?

Yes. According to the Law for the Organization of the Prosecution Office, the Prosecution Office is organized as a centralized body. Based on this Law and an Order issued by the General Prosecutor, there exist a scheme of subordination between prosecutors from the top to the bases. Accordingly, even the prosecutors dealing with the execution of criminal sentences are organized on the same bases of subordination.

17. Is a prosecutor involved in granting a person's pardon, amnesty or release, especially in the case of negative effects resulting from the punishment? Do prosecutors supervise criminal records?

According to the legislation in power there is no provision that gives the prosecutor any kind of authority to take part in any way in pardon or amnesty processes. As far as the release of the sentenced people, according to the CPC, when the execution of an imprisonment results in negative effects to the prisoners, in the sense that the imprisonment itself put his life in a serious danger, the court can order his release. In law the initiative to require from the Court such a release can be taken evenly from the prisoner, his lawyer or the prosecutor. But in practice the initiative is rarely taken by the prosecutor.

Yes, the prosecutor can have full access to the criminal records.

18. Are special qualifications and training required of prosecutors who carry out duties in matters of criminal and administrative detention? Please specify.

No, there is no any written qualification requirement for prosecutors who deal with matters on the execution of criminal sentences. Anyway practically speaking, their appointment is based on their experience and special qualifications.

19. What acts (presentation of conclusions, attend hearings, appeal against court decisions) are prosecutors entitled to carry out during proceedings before judges with jurisdiction over the enforcement of sentences/surveillance judges ("juges de l'application des peines"), in states where such judge exists?

In states where such a judge does not exist, what acts (release on probation, subsequent alteration of the detention's enforcement scheme, further restriction of a detainee's rights, placement in solitary confinement, disciplinary punishment, and so on) are prosecutors entitled to carry out as regards court decisions?

According to CPC the defendant can ask from the Court to be released on probation. The prosecutor takes part in the hearings and can present his conclusion on the matter. After the Court accepts his release, it is the probation service to have full control during the probation time period, on the way the court requirements are followed by the people released. The Probation Service is an independent body, with no any kind of subordination to the Prosecution Office. But the prosecutor can request to the Court the alteration of the probation scheme based on the information of the probation service that the people released on probation didn't satisfy the requirements.

20. When monitoring the enforcement of punishments, do public prosecutors interact with the ombudsman or any other organisation linked to or charged with controlling the enforcement of punishments? If so, what type of interactions are they? Could you give the names of these organisations, whether they be institutional or not, and explain briefly their roles?

As far as I know there is no any kind of cooperation between prosecutor and ombudsman in monitoring the execution process of the sentences. The only "cooperation" is the free and deliberate forwarding by the Ombudsman toward the Prosecution Office of the complaints of the prisoners filed at his office.

21. Could you give other useful information to the preparation of the draft Opinion (relevant questions to add, documents, etc)?