

REFERENCE

ON THE QUESTIONNAIRE OF CONSULTATIVE COUNCIL OF EUROPEAN PROSECUTORS

A. Relationship between prosecutors and the police

- Please briefly describe the relationship between prosecutors and the police or other investigation body in your country. Is there any dialogue with the prosecutor concerning the work of the police or other investigation body? Is the prosecutor involved in training the police or other investigation body?

B. Existing legal provisions and regulations

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

According to Article 103 of the RA Constitution and the 4th Article of the RA Law “On Prosecutor’s Office of the RA”, the Prosecutor’s Office in cases and by the order envisaged by the Law

- 1) initiates criminal prosecution;
- 2) supervises over legality of inquiry and investigation;
- 3) presents the case for the prosecution in court;
- 4) brings actions in court to defend the interests of the state;
- 5) appeals the judgments, verdicts and decisions of the courts;
- 6) supervises over legality of discharge of penalties and other means of compulsion.

According to the 1st Article of the RA Law “On Prosecutor’s Office of the RA” the Prosecutor’s Office of the Republic of Armenia (hereinafter Prosecutor’s office) is a unified system, which is managed by the General Prosecutor of the Republic of Armenia (hereinafter General Prosecutor).

According to the RA Constitution (hereinafter Constitution) the Prosecutor’s office is authorized to accomplish its powers via prosecutors by the order defined by the RA Legislation.

According to part 1 of Article 52 of RA Criminal Procedural Code: “the Prosecutor by the order defined by law is entitled as state official, who initiates criminal prosecution, supervises over legality of inquiry and investigation, presents the case for the prosecution in court, participates in the discussions concerning the accomplishment of court decisions, appeals the judgments, verdicts and decisions of the court. The prosecutor who defends prosecution in the court is called Prosecutor”.

By Article 53 of the same Code the powers of the prosecutor during the pre-trial proceedings are defined which are as follows:

1. The prosecutor is authorized to conduct the following during the pre-trial proceedings:

1) to initiate and carry out criminal prosecution, to cancel the decision of the body of inquiry and the investigator on suspension of a case, to initiate a criminal case based on court motion, to cancel the decision of the body of inquiry and the investigator rejecting the institution of a criminal case and to initiate a criminal case as well as to initiate a criminal case on his own initiative.

2) This point has lost its effect.

3) Instructs the body of inquiry and the investigator to prepare the materials for the initiation of a criminal case.

4) To instruct the body of inquiry and the investigator to conduct urgent investigatory measures.

5) This point has lost its effect.

6) To carry out prosecutorial management of the inquest and the preliminary investigation.

2. During the implementation of the procedure of prosecutorial management of the inquest and the preliminary investigation, the prosecutor is exclusively entitled to the following:

1) to check the implementation by the body of inquiry the requirements of law on receiving, registration of and follow up on the reports on committed or prepared crimes, on other accidents;

2) to request from the investigator and the body of inquiry for examination of criminal cases, materials and documents and to get acquainted with the data on the course of investigation at the place of their location;

3) to withdraw from body of inquest and to transfer to the inquirer any criminal case, according to Article 190 of this Code to transfer the criminal case from one body of investigation to another in order to ensure the comprehensive, full and objective investigation;

4) in case of necessity, to instruct the head of the investigation department to undertake a criminal case, as well as to instruct heads of investigation departments of different bodies, who are conducting investigation, on the inclusion of investigators in the investigative team composed of the investigators from those bodies.

The investigators of Special Investigation Service may be involved in investigative teams which are established to investigate criminal cases subjected only to this service.

- 5) to resolve issues regarding challenges (rejections) declared to subordinate prosecutor, investigator, or the officer of the body of inquiry, and also their self-rejections;
- 6) to give written instructions to investigator, and the body of inquiry on the decisions passed and on implementation of investigatory and other procedure actions;
- 7) to resolve objections, prescribed by this Code, brought by the body of inquiry and its employee, the investigator, who disagree with the instructions of subordinate prosecutor, conducting the procedure management of the investigation;
- 8) to give written instructions to the prosecutor conducting supervision in order to ensure legality over the investigation of the case;
- 9) to resolve the appeals against the decisions and actions of the investigator and the body of inquiry, with the exception of appeals the consideration of which is in the competence of the court;
- 10) to dismiss the investigator, and the officer of the body of inquiry from further participation in the implementation of criminal proceedings on that case, if they have violated the law during the investigation of the case;
- 11) to apply to the appropriate bodies for deprivation from immunity for criminal prosecution of persons, possessing that immunity, if these persons are subject to involvement in the criminal case as accused;
- 12) to return criminal cases to the investigator with his/her obligatory instruction on implementation of additional investigation;
- 13) to cancel the decision of the body of inquest or the investigator to suspend the case, and other decisions, in cases envisaged in this Code;
- 14) to approve the indictment, and as for criminal cases with respect to persons, committed actions forbidden by criminal law in the state of insanity or who has fallen into such state after the accomplishment of the action, the final act.
- 15) To forward the case to the court to examine the case on the merits.

3. The prosecutor, during administration of the procedural management, is also entitled to:

- 1) This point has lost its effect.
- 2) to receive from the body of inquiry data on the conduct of operative-investigatory activity and the undertaken measures on the disclosure of crimes, on revealing of disappeared persons and lost property;
- 3) to demand documents and materials, which might contain data on accidents and the persons involved in it;

- 4) to give to the body of inquiry written instructions, obligatory for them, on the implementation of operative-investigatory measures in connection with the criminal case proceedings;
 - 5) to apply to the court in order to select arrest as a measure securing the appearance and to extend arrest, to impose arrest upon the arrest of communications, telephone conversations, postal, telegraph and other messages, and for warrants for wire-tapping the telephone conversations, searching apartments;
 - 6) to refuse from the criminal prosecution of the accused, to suspend the criminal proceedings or to detain the criminal prosecution
 - 7) to assign the body of inquiry the execution of the decisions on arresting, bringing to court, imprisonment, implementation of other procedure actions
 - 8) to undertake measures for the protection of the injured, the witness, and other people participating in the criminal proceedings;
 - 9) to address the court with motions envisaged by this Code;
 - 10) to release the people arrested or imprisoned without legitimate bases or without necessity;
 - 11) to eliminate restrictions on the right of secrecy of correspondence, telephone conversations, postal, telegraph and other messages when the necessity terminates.
4. The prosecutor, during the pre-trial proceeding of the criminal case, exercises also other powers, envisaged by this Code.

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

- What priorities have to be taken into account for initiation of criminal cases?
- Do prosecutors or the prosecution service in a direct way have an influence on this?

According to Article 175 of RA Criminal Procedure Code the prosecutor, the investigator, the inquest body are obliged to initiate a criminal case within their jurisdiction if there are appropriate reasons and grounds to initiate a criminal case. The reasons for initiation of a criminal case are defined by the Articles 176-179 of RA Criminal Procedure Code and the examination procedure of reports about crimes, decisions made as a result of examination are defined by the Articles 180-181 of the Code.

It is worth to mention that Article 183 of RA Criminal Procedure Code defines crimes envisaged by those articles of RA Criminal Code which can be initiated only on the grounds of the appeal of the injured party.

D. Responsibility of the prosecutor during the investigation

- Are prosecutors responsible for the conduct of investigations in your country? If no, who is responsible for that?
- When does the prosecutor receive a complaint (as soon as the complaint is filed, or after the investigation has been conducted by the police)?

- What is the degree of autonomy of the police or other investigation body, if there is any, during the investigation?
- Does the prosecutor have the power (*Is liable*) to prevent or stop an investigation?
- How is it decided which service of the police or other investigation body, is competent to investigate?
- If the prosecutor leads the police or other criminal investigation in your country, does he have the power to monitor compliance with his/her instructions? If so, please briefly describe.

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

- 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?

F. Common principles concerning the police

- Are there written regulations concerning the conduct of criminal investigations by the police or other investigation body?
- What are these regulations about? (for instance, the way to carry out interrogations, deprivation of liberty etc.)

Concerning points D and E, as it is mentioned above, the Article 52 of RA Criminal Procedure Code clearly defines the concept of the prosecutor, and the powers of the prosecutor during the pre-trial proceeding, which are defined by Article 53.

Concerning point F, it should be noted, that the Article 55 of RA Criminal Procedure Code clearly defines the scope of investigator's powers.

1. Investigator is a state official, who conducts preliminary investigation of the criminal case within the limits of his/her competence.
2. The investigator is authorized to prepare materials on the event of the crime and in accordance with the rules of subordination established by this Code, the investigator accepts the case for his/her proceedings or forwards it to other investigator or the body of inquiry; the investigator can initiate a criminal case during his proceedings, if an event of a new crime by another person has been discovered. The investigator is also entitled, in accordance with the provisions of this Code, to reject the initiation of the proceedings of the criminal case. The investigator sends the copy of his/her decision on initiation of a criminal case or on rejecting to initiate a criminal case to the prosecutor within 24 hours in order to check legality of the decision.
3. After accepting the criminal case for his/her proceeding, the investigator, for the purpose of comprehensive, full and objective investigation is authorized to lead the course of investigation independently, make necessary decisions, conduct investigatory and other procedural actions in accordance with the provisions of this Code, except the cases, when by

criminal procedure law is envisaged to receive permission from the court. The investigator is responsible for the lawful and timely implementation of investigatory and other procedural actions.

4. The investigator is particularly authorized:
- 1) to appoint expert examination and to conduct the examination of the crime scene prior to the initiation of the criminal case, based on prepared materials
 - 2) To question the suspect, the accused, the injured, the witness, appoint expert examination, conduct inspections, searches, seizures, and other investigatory actions;
 - 3) To undertake measures for the compensation of the damage caused to the injured
 - 4) To request documents and materials which may contain data on accidents and people involved in it
 - 5) To request the conduct of inspections, inventory, other control actions;
 - 6) To receive from the body of inquiry, in connection with the prepared materials and the case under investigation, data on the implementation of operative-investigatory actions and the measures undertaken for disclosure of the crime, finding disappeared persons and lost property;
 - 7) To give to the body of inquiry mandatory written assignments on implementation of operative-investigatory measures based on the prepared materials and proceedings of the criminal case;
 - 8) To assign to the body of inquiry the fulfillment of decisions on arresting, bringing to court, imprisonment, conducting of other procedural actions, and also immediately receive from the body of inquiry facilitation at the execution of investigatory and other procedure actions;
 - 9) While receiving a report from the body of inquest about a committed crime, to go to the crime scene and to get involved in the investigation of the case by means of initiation of a criminal case or undertaking the initiated case in one's proceedings;
 - 10) To assign to the body of inquiry the execution of separate investigatory actions;
 - 11) To call people as witnesses;
 - 12) To draw in for the participation the witnesses, translators, specialists and experts;
 - 13) To arrest the person suspected in crime commitment; and to send the copy of decision to the prosecutor within 24 hours
 - 14) To pass on impleading the person to the case as the accused, put forward charges and to inform the prosecutor within 24 hours;
 - 15) To recognize as the injured, civil plaintiff, civil defendant;

- 16) To ensure the appointment of lawyers in the capacity of defense attorneys and to permit the people to participate in the proceedings of the criminal case as representatives;
- 17) To dismiss defense attorneys and representatives from the participation in proceedings of the criminal case, if circumstances are revealed which exclude their participation in the criminal proceedings, as mentioned in article 93 of this Code;
- 18) To exempt corresponding people from the payment for the legal aid;
- 19) To resolve challenges declared to the witness, the translator, the specialist, the expert;
- 20) To resolve motions of persons participating in criminal proceedings, and also applications and requests submitted by other persons;
- 21) To resolve the complaints of the people participating in criminal proceedings, within the limits of his/her competence;
- 22) To pass resolutions on the selection, alteration, cancellation of the precautionary measures and on implementation of other measures of procedural compulsion, with the exception of arrest; release upon his/her decision the suspect and the accused kept in detention after expiration of the prescribed period;
- 23) To pass resolution on the suspension of criminal proceedings and send the copy of the resolution to the prosecutor within 24 hours.
- 24) To appeal to the court with motions: on selection of arrest with respect to the accused as a precaution measure and on prolongation of the period of his/her detention; on imposing arrest on telephone conversations, postal, telegraph and other communications wire-tapping, with motion on the permission for search of the apartment;
- 25) To cancel the arrest on telephone conversations, postal, telegraph and other communications and wire-tapping, in case the necessity for such action ceases to exist;
- 26) To appeal any instruction of the prosecutor, without suspending its execution;
- 27) To appeal instructions of the prosecutor to a superior prosecutor without executing them in case of disagreement with the instructions on calling the person as accused, on qualifying the action and on the volume of indictment, on terminating the preliminary investigation or on suspending the proceeding or on terminating the criminal prosecution;
- 28) To pass decision on suspension of the criminal proceedings and on termination of criminal prosecution and send the copy of the decision to the prosecutor within 24 hours to verify the legitimacy of the decision;
- 29) To prepare and present for the approval of the prosecutor the indictment, and as for criminal cases with respect to persons, committed actions forbidden by criminal law in the state of insanity or who has fallen into such state after the accomplishment of the action, the final act.

5. The investigator is obligated to carry out legitimate instructions of the prosecutor.

5.¹ During the pre-trial proceedings the decision made about the criminal case by the investigator within the limits of his/her competence is subject to execution by all the companies, public officials and citizens.

6. The investigator also carries out other authorities envisaged in this Code”.

As for the written instructions, due to Article 1 of the Criminal Procedure Code of the RA, the order of the proceedings of the criminal case is defined by the Constitution of the Republic of Armenia, international agreements of the Republic of Armenia, the Criminal Procedure Code of the Republic of Armenia, the Judicial Code of the Republic of Armenia and other laws adopted in accordance with them. The legal norms of criminal trials contained in other laws must comply with this Code.

The order of the proceedings defined by the Criminal Procedure Code is mandatory for Courts, investigation, preliminary investigation, prosecution bodies as well as for the participants of the trial.

G. General control over police

- 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?
- Is the prosecutor competent to take sanctions?

The RA Investigation Committee has its own management and internal subdivision of control in regards to administration, as for the role of the prosecutor and his/her competency to take sanctions, it has already been mentioned above (the competencies of the prosecutor during the pre-trial proceedings are defined by the article 53 of the Criminal Procedure Code of the RA)

H. Conclusions

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

To effectively resolve the problems arising during the practice, daily analytical work is carried out both by the RA Prosecutor’s Office and the corresponding subdivisions of the RA Investigation Committee of, based on the results of which drafts are being made about amendments and supplements to laws, which are discussed and presented to the Government of the Republic of Armenia, then to the National Assembly of the Republic of Armenia.

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