

RELATIONSHIP BETWEEN PUBLIC PROSECUTORS AND THE POLICE IN POLAND

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1. Polish criminal procedure assigns the Prosecution Office a key role (*dominus eminens*) in preliminary proceedings and this is reflected in the provisions of article 298 § 1 of the Code of Criminal Procedure. These explicitly assert that prosecutors conduct preliminary proceedings. The very clear implication is that although at this stage the investigation can be conducted either directly by a prosecutor or by the police or some other agency, in these latter cases the prosecutors remain nevertheless in charge and the proceedings are carried out under their superintendence.

As provided for by the Code of Criminal Procedure, and specifically by article 326, prosecutor's supervisory role extends to that part of preliminary proceedings that is not conducted by him. The supervisory authority also extends to review proceedings.

The ultimate responsibility for the proper conduct of investigation and inquiry lies with the prosecutor, who is the accuser before all courts and exercises supervision over preliminary proceedings conducted by the police and other state bodies.

2. It is Prosecutor's Office that is responsible for ensuring that the police respect all statutory rules and procedures during criminal investigation.

The prosecutor supervises the preliminary proceedings conducted by the police and this supervision is procedural insofar as relevant provisions of the Code of Criminal Procedure govern it. The relationship between the supervising and supervised organs, however, is not one of subordination, but a functional one. Entrusting prosecutors with the supervision of preliminary proceedings conducted by the police is tantamount to statutorily affirming the superiority of the prosecutor in that relationship, and this in turn authorizes the prosecutor to direct the work of the law enforcement agency responsible for the investigation. The subordination of the police to the prosecutor applies only to preliminary proceedings and is confined in scope to measures implemented in the progress of the investigation. It does not extend to other activities of the police when acting autonomously as a separate organ of the state.

According to article 326 of the Code of Criminal Procedure the prosecutor is obliged to ensure that the entire proceedings, which he supervises, are conducted correctly and efficiently.

In particular, the prosecutor, by virtue of his supervisory function, has the power to:

- demand information on the intentions of the body responsible for conducting the preparatory proceedings (including the police), indicate the direction of the proceedings, and issue relevant orders;

⁴⁷ See note 46.

- request that materials collected in the course of preparatory proceedings be presented to him;
- participate in actions carried out by the body/person conducting the proceedings, carry them out in person, or personally take over and proceed with the case;
- issue orders, rulings or instructions, and amend and reverse orders and rulings issued by the person conducting the preparatory proceedings.

In the event that an agency other than the prosecutor does not follow an order, ruling or instruction issued by the prosecutor supervising the proceedings, on the motion of the latter, a superior of such an official shall institute official proceedings whose results shall be communicated to the prosecutor.

3. The police do not have an obligation of prior consultation with a prosecutor in all criminal matters. The police are authorized to individually conduct investigations and inquiries specified in the provisions of the Code of Criminal Procedure. Supervision over the proceedings is exercised by a prosecutor. In case of important criminal matters a prosecutor may give guidelines to the police, take over proceedings for personal conduct or reserve for himself the execution of specific actions in a given case.

Prosecutor's instructions are binding on police officers.

There is one important exception to the rule.

By virtue of Article 308.1 of the Code of Criminal Procedure, within the limits necessary to secure evidence of the offence against loss, distortion or destruction, the police, in cases not amenable to delay, may always independently carry out the necessary inquiries. This can be done even before the issuance of the order on the institution of the investigation or inquiry and they can in particular inspect, if necessary, with the participation of experts, conduct searches and the other actions set forth in Article 74 § 2 (1) with respect to the suspect, as well as undertake all other necessary actions, including taking blood and excretory samples for tests. Upon completing such activities in cases in which investigation is mandatory, the person conducting the inquiry shall refer the case to the state prosecutor without delay.

In cases not amenable to delay, and particularly if a delay might result in the effacing of traces or evidence of an offence, a person suspected of committing the offence may be examined by the police independently as a suspect prior to the issuance of an order on the presenting of charges, if there are grounds for the issuance of such an order. The examination shall begin by informing the suspect of the contents of the charge.

In such cases the prosecutor shall, no later than 5 days from the day of the examination, issue an order on the presentation of charges, or by refusing its issuance, shall discontinue the proceedings.

A prosecutor may issue to the police detailed instructions in the scope of procedural actions performed or planned in given proceedings.

4. A prosecutor has power to issue detailed instructions to the police in all cases and in most of them (especially serious ones) he does so.

Article 15 of the Code of Criminal Procedure stipulates that the police and other organs involved in criminal proceedings carry out instructions issued by the prosecutor and conduct, under his supervision, investigation within statutorily defined scope.

Overseeing the conduct of proceedings, a prosecutor regularly examines the files of the case. In cases where the investigation, in whole or in a specified part, is entrusted to the police, a prosecutor sets out deadlines for performing particular operations contemplated in the adopted investigation plan.

Besides the competences ensuing from the supervisory powers that allow the prosecutor to frame and directly influence the course of the preliminary proceedings, the Prosecution Offices also have the right to instigate proceedings. Issuing instructions to instigate proceedings, the prosecutor, in written guidelines for the police or other competent body, specifies the offence and the charges as well as the actions to be performed together with a timeframe for carrying out the investigation.

5. Police officers request the consent of a prosecutor in case of application of operating techniques such as eavesdropping or controlled purchase.

As to the means of coercion a prosecutor's commanding role in the investigation is most crucial.

- *Arrest and detention awaiting trial*

The police is authorized to arrest/apprehend a suspected person for a period of 48 hours if there is a reason to suppose that he has committed an offence, and reasonable fears exist that such a person may go into hiding or destroy the evidence of his offence or if his identity could not be established. The arrested person should be informed immediately about the reasons for his arrest and his rights. His or her explanations should be heard.

The prosecutor must be notified immediately.

Immediately after collecting the necessary evidence, in case that the legal prerequisites for pre-trial detention referred to in Article 258 of the Code of Criminal Procedure occur, a motion to the prosecutor should be made, requesting him to obtain a preliminary detention order from the court.

The arrested person, upon his demand, shall be given the opportunity to contact a lawyer by any means available and to talk directly with the latter. The person who made the arrest may reserve the right to be present when such a conversation takes place.

By virtue of Article 250 § 1 of the Code of Criminal Procedure, detention awaiting trial may only occur on the basis of an order from the court, upon a motion from the prosecutor. The court, and in the preparatory proceedings also the prosecutor, shall supervise the carrying out of the arrest as the preventive measure (Article 256 of the Code of Criminal Procedure).

- *Seizure of objects and searches*

Objects which may serve as evidence, or be subject to seizure in order to secure penalties regarding property, criminal measures involving property or claims to redress damage, may be surrendered when so required by the court (during the trial phase) or the prosecutor (during the preparatory proceedings), and in cases not amenable to delay, by the police or an other authorized agency (Article 217 § 1 of the Code of Criminal Procedure).

If the surrender is demanded by the police or another agency, the holder of the objects liable to surrender has the right to make, without delay, motion to a court or a prosecutor to present justification of the authorization decision and the person must be informed about his/her right.

The holder shall be served, within 14 days of the seizure of the objects, an order of the prosecutor authorizing the action (Article 217 § 4 of the Code of Criminal Procedure).

A search may be made of premises and other places in order to detect or detain a person or to ensure his compulsory appearance, as well as to locate objects which might serve as evidence in criminal proceedings, if there is good reason to suppose that the suspected person or the objects sought are to be located there (Article 219 § 1 of the Code of Criminal Procedure).

By virtue of Article 220 § 1 of the Code of Criminal Procedure a search may be conducted by the prosecutor, or, with warrant issued by the prosecutor, by the police, and, also in cases specified in law, by another agency. The person on whose premises the search is to be conducted should be presented with a warrant issued by the prosecutor.

In cases not amenable to delay, if it has not been possible to obtain the order prior to seizure, the police must present a warrant from the chief of unit or an official identity card. The agency should then apply, without delay, to the court or the state prosecutor for approval of the search. The person on whose premises the search was conducted should be served, within 7 days of the search, an order of the court or the state prosecutor authorizing the action if he demands one. This person must be informed about his/her right to demand authorization of the search.

6. The police may individually apply special methods of investigation consisting in carrying out operating actions taken for the purpose of prevention, detection, establishment of culprits, and also obtaining and preserving evidence of publicly prosecuted deliberate offenses according to the principles specified in the Law on the Police with the exception of cases described in item 5.

According to the Article 19 of the Law on the Police dated April 6, 1990 with later amendments (in force from March 19, 2002) in the course of preliminary investigation carried out by the police in order to prevent, detect, identify perpetrators and obtain and secure evidence of intended crimes prosecuted by a public prosecutor (e.g. against life as specified in Articles 148-150, corruption and other serious crimes specified in the Criminal Code like illegal production, possession and trade in firearms, ammunition, explosives, drugs or psychotropic

agents or their precursors as well as nuclear and radioactive materials) when other measures have proved ineffective or there is every likelihood that they will be ineffective or useless, a district court, at the written request of the Chief Police Commander made after having received a prior written permit of the Prosecutor General or at the written request of the voivodeship police commander, made after having received a prior written permit of the appropriate district prosecutor, may order the so called operations audit. This may include use of special techniques as correspondence checks, deliveries checks, use of technical means to obtain information and evidence secretly and to record it, in particular telephone calls and other information conveyed by means of telecommunication networks.

In cases of urgency, where any delay could result in the loss of information or the obliteration or destruction of the evidence of a crime, the Chief Police Commander or voivodeship police commander having received a written permission from the competent prosecutor may institute an operations audit while at the same time applying to the appropriate district court for an order on that matter. In the event that the court fails to grant such permission 5 days after the initiation of the operations audit, the instituting body shall stop the operations audit and destroy the evidence collected thus far in the presence of a committee to be evidenced by a report.

An operations audit may not last longer than 3 months. The district court may, at the written request of the Chief Police Commander or voivodeship police commander made after having received a written permission of the appropriate attorney, allow a onetime extension of the audit for not longer than 3 months, if the causes of the audit still persist. The participation of the prosecutor in the court sitting is also guaranteed.

Where, in the course of an operations audit, reasonably justified by the appearance of new circumstances that are critical for the prevention or detection of a crime or identification of perpetrators and securing evidence, the district court at the request of the Chief Police Commander made after having received a written permission of the Prosecutor General, may allow an extension of the operations audit, even when the periods mentioned above have elapsed.

The police body informs the appropriate prosecutor of the results of the operations audit upon its completion, and when so requested, about its course.

Where evidence is obtained that justifies the institution of criminal proceedings, the Chief Police Commander or voivodeship police commander passes on to the appropriate prosecutor all the materials collected in the course of the operations audit, and, if applicable, with a request to initiate criminal proceedings.

The prosecutor appropriate for the seat of the police body in charge of the activities specified in the Law on the Police shall be promptly notified of the institution of the operations audit. The prosecutor may order the cessation of the activities at any time.

According to Article 22 of the Law on the Police, the police can use informers.

7. A prosecutor may always take over – as he deems fit – in whole or in part specific criminal proceedings from the police or another body authorized to conduct criminal proceedings.

There are some strictly specified situations when the prosecutor is obliged to run the investigation by himself. According to Article 311 § 2, the prosecutor conducts investigation when it is against suspect who is: judge, prosecutor, police officer, Internal Security Agency officer and Intelligence Agency officer as well as in murder cases.

8. The prosecution service may not set priorities in regard to institution of investigation and inquiries. In the Polish system of criminal law there prevails the principle of legalism, causing a necessity of prompt institution and conduct of criminal proceedings in all matters specified by the legislator as subject to prosecution by virtue of office
9. The Prosecutor General, by virtue of the Law on the Prosecution Service, has a right to issue guidelines in the scope of preliminary proceedings that are binding on all bodies authorized to conduct preliminary proceedings, including the police.

General guidelines of criminal policy for the police are formulated by the Commander General of the Police and the Minister of Internal Affairs and Administration.

10. The police are generally obliged to report to a public prosecutor all offenses identified by them, in line with the principle of legalism. Therefore, they are obliged to observe principles connected with the necessity of institution and conduct of criminal proceedings prosecuted by virtue of office immediately after having obtained information about the same. Failure to observe these principles may lead to disciplinary or criminal responsibility of a police officer.

While at the stage of preliminary proceedings there is a very close cooperation with the police – cooperation that undoubtedly affects the final scope and nature of the proceedings – once the proceedings are concluded, the substantive decision on how to bring to a close the given inquiry or investigation (by way of issuing a final decision on whether the case should go for trial) rests solely with the Prosecution Office.

That concerns also the decision whether to instigate investigation. If the police decides not to instigate an investigation, materials of such case must be sent to the prosecutor who makes the final decision.

In practice this means that sooner or later all cases must come to the prosecutor's office to enable him to make a final decision or – in serious cases – to examine the files, decide in matters of coercion or make other crucial decisions.

11. The police may not decline execution of a prosecutor's instruction in the matter of institution of criminal proceedings. The Law on the Police specifies that in case of unjustified failure to execute an order within the set time frame or scope, on demand of a court or a prosecutor the superior of the police officer institutes against him disciplinary proceedings.
12. Complaints about the police conducting criminal proceedings (investigation/ inquiry) are dealt with – depending on the kind of complaint and official negligence – by the Commander General of the Police, a prosecutor and

a court. The police possess its own structures, situated by the Commander General of the Police, responsible for conducting proceedings connected with complaints against the actions of policemen. Complaints against policemen conducting investigations or inquiries may also be dealt with by a prosecutor in a situation, where an act of the policeman may require criminal responsibility, or by a court, when they concern actions of the police in preliminary proceedings supervised by a court (e.g. detention).

13. The police and the prosecution service have press services conducting appropriate activity to inform society through the media. At the same time there occur cases of disclosure to media representatives of information from conducted criminal proceedings, which in the system of criminal law in Poland constitutes an offense and every time requires clarification by means of criminal proceedings.
14. In some important criminal cases joint teams are appointed made up of prosecutors and police officers or possibly officers of financial, customs, fiscal and other bodies. A doubtless benefit of such cooperation is the rapid and comprehensive coordination of actions in proceedings and the full utilization of the means of the bodies participating in a team. However, note should be taken that officers of the police and other services are not subordinate to a prosecutor, they are only obliged to follow his instructions related to the conducted proceedings.