

# **THE PROSECUTION AUTHORITY IN NORWAY**

## **An overview of the organisation of the prosecution and the connection with the police authority**

### **I INTRODUCTION AND OVERVIEW**

Director General Tor-Aksel Busch is the head of the Norwegian Prosecution Authority

The Prosecution Authority is organised on three levels:

The Director of Public Prosecution

The Public Prosecutors

The Prosecution Authority in the Police

The public prosecutors and the Director of Public Prosecutors are called The Higher Prosecution Authority. In 2008 The Higher Public Prosecution possess 138 yearly permanent job positions. These are divided in 81 prosecutor positions and 57 positions in the administration. The DPP has both the responsibility for the professional standards and the administration of the Higher Public Prosecution.

The Prosecution Authority responsible is limited to the supervision of the Norwegian criminal policy and the handling of criminal cases, i.e. investigation, deciding whether to prosecute and to prosecute the cases that goes to court. - Most cases are decided by the Prosecution Authority in the Police, but the cases concerning the most serious crimes are decided by the public prosecutors or by the Director of Public Prosecutions (DPP). The DPP is directing the handling of criminal cases, which implies deciding the targets and the priorities for the public prosecutors and the police districts.

The public prosecutors in a region supervise the activity of the police districts included in the same region. Public prosecutors are as well integrated in or connected to some of the centralised and special agencies, as the National Authority for Prosecution of Organised and Other Serious Crime that oversees the handling of criminal cases at The National Criminal Investigation Service (NCIS).

### **II THE DIRECTOR GENERAL OF PUBLIC PROSECUTION**

The Director General of Public Prosecution has been assigned responsibility for the professional standards in the handling of criminal prosecutions. This takes place through the

handling of concrete criminal cases and through giving regulative and instruction of priority and management of criminal cases, securing the direction of the national criminal policy.

The Director General of Public Prosecution leads the prosecution authority by means of comprehensive instructions issued in the form of an annual priority circular and a number of other circulars. In addition, the Director General of public Prosecutions uses meetings with public prosecutors and chiefs of police to issue general enforcement and priority directives. Once every year, the DPP meet all the Public Prosecutors in the country in a three day gathering to inform about important events and cases, inform about new regulations and instructions, to give lectures on complicated issues and to socialize.

The DPP also deals with concrete criminal cases according to a certain legal structure and according to own assessment of cases raising principle questions. He decides whether an indictment should be filed in cases concerning crimes punishable by imprisonment up to 21 years, crimes threatening the security of the realm, the constitution and civil rights, incitement of criminal acts, blasphemy, and breaches of a duty of secrecy.

The DPP also deals with complaints about decisions made by the subordinate prosecution authority.

The DPP can intervene in all criminal cases, give instructions and reverse all decisions made by the Public Prosecutors or by the Police prosecutors if not legal limitations occur in between. The DPP can of course not make decisions in the name of a subordinated prosecutor, e.g. a reversed decision must openly be visible as made by the DPP. – The DPP prosecutes cases in the Supreme Court, or appoint Public Prosecutors for this task. The tradition is that the DPP personally or his deputy prosecutes at the Supreme Court plenary decisions.

### **III THE PUBLIC PROSECUTORS**

#### **3.1 Overview of the organisation**

There are 12 public prosecutors offices in Norway, of which 10 are connected to defined regions, consisting of one or two counties. In addition, there are 2 specialised offices. These are The National Authority for Prosecution of Organised and Other Serious Crime and The Norwegian National Authority for the Investigation and prosecution of Economical and Environmental Crime.

**The Norwegian National Authority for the Investigation and prosecution of Economical and Environmental Crime** (Norwegian: Økokrim) is Norway's central unit for fighting economic crimes, environmental crimes and computer related crimes. The unit, created in 1989, has its main office in Oslo and has approximately 136 employees.

Økokrim is both a centralized police unit and a prosecution authority on the level of the Public Prosecution. The DPP has the responsibility for the professional standards and the handling of criminal cases, but the administrative responsibility belongs to the Norwegian Police directorate. - The current director is the chief public prosecutor Einar Høgetveit. The unit is organized in multidisciplinary teams headed by public prosecutors. Each team has a specific field of expertise and are divided in to the following team: Tax and Duties Team,

Tax, Duties and Competition Team, Fraud Team, Environment Team, Securities Team, Corruption Team, Subsidies Fraud Team, Financial Intelligence Unit, Money Laundering Team, Assets Confiscation Team, Assistance Team.

### **The National Authority for Prosecution of Organised and Other Serious Crime**

(Norwegian: Det nasjonale statsadvokatembetet) was created in 2005. The Authority has overall responsibility for the prosecution cases investigated by the National Criminal Investigation Services and for guiding and monitoring the work performed in the criminal cases. Thus, the Authority has a special responsibility for the handling of cases regarding organised crimes, high-tech crime and international crimes, including genocide, crimes against humanity, and war crimes. The Authority was created for the purpose of inter alia ensuring that Norway will be no safe haven for individuals that may be suspected of having committed such serious crimes abroad.

Headed by the Senior Public Prosecutor, Siri S. Frigaard, the Authority employs three more Public prosecutors and one office administrator.

### **3.2 Public prosecutors competences and tasks**

Public prosecutors have the competence to prosecute cases that do not fall under the superior or subordinate prosecution authority. Public prosecutors are authorised to issue comprehensive instructions to the police. This primarily takes place in connection with the handling of a number of individual cases, but also more generally through annual prosecution meetings in the public prosecutor's district. Twice every year, the Public Prosecution and the Police prosecutors meet in a three day gathering to inform about new regulations and instructions, to give lectures on complicated issues and socialize.

In addition, the Public Prosecutors office carries out supervision through inspections of the Police districts in their region, checking case files, assessing the quality and time used in a requested selection of certain types of cases and cases handled at a certain time, for instance within one randomly chosen month. The result of the inspection are reported to the DPP in an annual report, and the DPP or the Public Prosecution gives directives back to the Police Chief in the police district about the findings and if needed point at improvements needed.

When requirements regarding goals and results for the handling of criminal cases are set in the police districts, the DPP is required to take part in the decision-making process.

The authority to issue instructions covers all officials in the police, not only those individuals who belong to the prosecution authority.

Public prosecutors also deal with a number of complaints about police decisions in individual cases.

The public prosecutors prosecute criminal cases carrying a penalty framework of imprisonment of more than six years, as well as criminal cases heard in the court of appeal. Prosecution in the six-year cases and cases for the appeal court may be to some extent delegated to the police prosecutors. Public prosecutors also prosecute criminal cases pending for the Supreme Court of Justice, except for plenary cases that is reserved for the Director General of Public Prosecution or his deputy.

## **IV THE POLICE AND THE PROSECUTION AUTHORITY WITHIN THE POLICE**

### **4.1 The “two-track system” in combating crime in Norwegian criminal policy**

The Norwegian police and prosecution authority is organized in a two track system. This means that responsibility for the combating of crime is shared between the Ministry of Justice and the Director General of Public Prosecution.

The Director General of Public Prosecution has been assigned responsibility for the professional handling of criminal prosecutions. All other areas are the responsibility of the Ministry of Justice, although this responsibility has largely been delegated to the National Police Directorate.

The principle is that the prosecuting authority shall make its own independent decisions. No other professional authority, not even the Minister of Justice, has the opportunity to instruct the prosecution authority.

### **4.2 Overview of the organisation of the police service in Norway:**

#### **4.2.1 The National Police Directorate**

The police service in Norway is structured under the leadership of a police directorate. – The National Police Directorate was created in 2001 and it is organized under the Norwegian Ministry of Justice. The Police acts under the Minister of Justice’s constitutional responsibility. The main objective of the National Police Directorate is professional leadership, management and development of the Norwegian police service, with a basis in the strategic and budgetary limitations laid down by the government. The National Police Directorate is responsible for managing and following up the police districts and the special police agencies, which employ a total of approximately 12,000 people. In addition, the National Police Directorate plays a key role in combating international and organized crime. – The National Police Directorate has a staff of approximately 120 employees.

#### **4.2.2 The local police**

In Norway there is only one police service. The organization of the Norwegian Police is largely based on the principle of an integrated police, meaning that all the functions of the police are collected in one organization. There are 27 local police districts, each under the command of a Chief of Police, of which 25 have education as jurists and 2 from The Police Academy. They have prosecutorial powers as leaders of the prosecution on the police level. The chief of police has full responsibility for all kinds of policing in the district. Each police district has its own headquarters, as well as several police stations. The districts are further divided in to rural police districts, under the command of a Police Chief Superintendent. All police officers are trained as generalists, able to fulfil every aspect of ordinary police work, including criminal investigation as well as public order and community policing.

#### **4.2.3 The special agencies, shortly about the National Criminal Investigation Services (NCIS)**

In addition to the local police, Norway has seven special agencies organized directly under the National Police Directorate. The special agencies are central agencies rendering expert assistance to the police districts, and in some cases act as a prosecution authority, e.g.

mentioned above is The National Authority for Prosecution of Organised and Other Serious Crime integrated in the special agency (NCIS).

The core element of the NCIS is to prevent and combat organized and other forms of serious crime. In addition to providing specialist support to the Norwegian police districts, e.g. tactical and forensic supports in the investigation of cases concerning homicide and arson. NCIS investigate and prosecute major and complex cases related to serious organized crime.

Some main activities: **Criminal investigation**; Managing and supervising investigation, general criminal investigation (including conducting of interviews and project management) and operational criminal analyses. **Forensic investigation**; Norway's national forensics laboratory is situated at NCIS and carries out examinations of most types of forensic material from all types of criminal cases. NCIS also renders support at crime scenes in serious cases. Criminal intelligence; expertise within gathering and analysis networks and persons for the purpose of initiating criminal investigations, supplying updated information to the police districts and preparing threat assessments reports. **International police cooperation**; NCIS is a national contact point for operational international police cooperation, and by this responsible for contact with Interpol, Europol, the Schengen cooperation. In addition it can be mentioned that NCIS is responsible for contact with the Police and custom Coordinating office and as well handle cases through liaison officers posted in countries around the world.

#### **4.3 The prosecution authority within the police**

In all of the mentioned 27 police districts in Norway, there exist a prosecution authority unit, nowadays their personnel are mostly ranked as police advocates. They are educated as jurists from the universities. The head of the unit has the position as Deputy Chief of Police in the district. There are approximately 650 police prosecutors in Norway. – The solution to have the first level of prosecution integrated in the police districts is a very old tradition in Norway. It should be stressed that even if this unit is integrated in the police, they don't share their decisive competence in criminal cases with other officers in the police. In handling concrete criminal cases they are solely subordinated public prosecutors and the DPP.

All criminal cases in Norway, from theft of mobile phones to homicides, will be appointed with a police prosecutor as head of the investigation and responsible for the proceedings. This takes place from the very beginning, from the time of the registration of the case, allocated due to the prosecutor's duty scheme, normally one week at a time. The prosecutor will at the same time be notified about the case on his computer and also often at the gathered morning meetings with the policemen. At the same time the case will be appointed with a policeman as a main investigator, responsible for having the investigation carried out and made ready for a formal decision by the prosecution. Sequentially all investigation steps taken will be produced in the data files of the case, making it easy for the prosecutor to supervise the progress and quality of the investigation - When the prosecutor receives the case on his desk as finalized, he has of course always the possibility to send the case back to the main investigator, requesting certain further investigation steps to be taken.

The majority of criminal cases will be handled by the police prosecution, from the case arise until it is finished. This means that the police prosecutors have the competence to apply the full register in settling minor cases, both positive and negative decisions. Positive decisions are filing an indictment and prosecute the case in court, filing an optional writ, waiver of prosecution, and to transfer it to The National Mediation Centre. Negative decisions are such

as dropping the case due to lack of evidence, not sufficient evidence, unknown perpetrator, the described act in the complaint are not punishable, not reasonable ground to start investigation, the perpetrator is under 15 years, and the deed is not punishable due to qualified provocation. The practice in the police districts must of course be in accordance to general instructions in circulars and directives given from the DPP and the local public prosecutors office. It is the public prosecutor's task to supervise the activities through control and inspections.

In this way the police prosecutors decide whether to prosecute (file indictments and prosecute in court) felonies that pursuant to statute are punishable by imprisonment for a term not exceeding one year (with a few exceptions) and in addition many "ordinary" offences mentioned in the law as both simple and aggravated theft, simple and gross fraud, simple embezzlement, violence with not serious bodily harm, unlawful use of motor vehicle, simple and gross violation of the provisions of recording and documentation of accounting information, or of simple and gross vandalism,

It is the police prosecutors that file applications to the court for pre-trial detention or other coercive measures during the investigation, and bring interlocutory appeals against such decisions.

The competences of the police prosecutors are limited according to the competence of the Public prosecutors. This comes in force for crimes of more serious character, as regulated in law. In this case, if the police prosecutor's conclusion is that an indictment should be filed, he must formally charge the person; send the case files to the public prosecutor, suggesting an indictment to be filed by the public prosecutor. If the public prosecutor follows the suggestion, he files an indictment in the case, return it and the police prosecutor takes the indictment to court for a main hearing. If the indictment consists of an offence with framework of more than six years, the public prosecutor will prosecute the case in court.

The internal prosecution competence to appeal follows a similar system due to the seriousness of the offence in question.

Further, if a person has been charged, formally or by act (apprehended, pre trial detention) and the offence has a framework more than six years, the police prosecutors can not drop the case. The public prosecutors have this competence and will base their decision on the case files and the reasoned proposal on the matter received from the police prosecutors. If the charges concern offences with framework up to 21 years, the DPP has the competence to drop the case.

The police prosecutors handle complaints as the first level concerning decisions made in criminal cases at this stage. They can alter own decisions due to the complaint, and if not, send it to the public prosecutor with an explanation and suggestion of rejecting the complaint. The complainant has in this case no right to have the complaint assessed on the third level, at the DPP's office. The Public Prosecutor will in this case decide to reject the complaint, and this decision to reject can be appealed to the DPP, which almost regularly will reject the complaint due to the fact that the initial complaint has been threatened on a two level complaint system. Still, the DPP as the superior in the prosecution always has the competence to alter the prosecution decision in question in the complaint. – When the complaint concerns a decision made at the Public prosecution level, the complaint first goes to the public prosecutor and the DPP's office works as the final second level.

## V SOME SECTIONS IN THE CRIMINAL PROCEDURE ACT CONCERNING THE PROSECUTION AUTHORITY IN NORWAY

*(with some comments given in brackets)*

### Chapter 6. The prosecuting authority

**Section 55.** The officials of the prosecution authority are:

- 1) The Director General of Public Prosecution and the Assistant Director General of Public Prosecutions,
- 2) The public prosecutors [...]
- 3) The chiefs of police, the deputy chiefs of police, the head and the assistant head of the Police Security Service, the head and the assistant head of the National Criminal Investigation Service (NCIS), the assistant chiefs of police, the police prosecutors [...]

**Section 56.** The Director General of Public Prosecution is a senior state official. He must have a law degree of the highest academic class. In relation to the provision in Article 22 of the constitution, he is regarded as an official of the highest rank. [...*(he is appointed by the King in Council)*....]

The Director General of Public Prosecutions is the chief administrator of the prosecution authority. Only the King in Council may prescribe general rules and give binding orders as to how he shall discharge his duties. *(This does not mean that orders can be given about the prosecutorial assessment and decision-making in concrete cases. That would represent a violation of the independency of the prosecution and it is unthinkable in Norway).*

The King *(in the meaning of the government)* may appoint an Assistant Director General of Public Prosecution who, when so authorised by the Director General or in his absence, may exercise the Director General's authority on his behalf. Section 57, first paragraph apply correspondingly [...]

**Section 57.** The public prosecutors are senior state officials. They must have a law degree. [...*(and are appointed by the King in Council, ) ...* ]

The King *(government)* determines the number of public prosecutors, their official districts, and the location of their departmental office. Public prosecutors may also be attached to the office of the Director General of Public Prosecutions.

The Ministry may appoint deputy public prosecutors. They must have a law degree. The deputy public prosecutors shall deal with cases assigned to them by the public prosecutors.

When the volume of cases makes it necessary, the King may appoint temporary assistant public prosecutors. They shall deal with cases assigned to them by the Director General of the Public Prosecutions or the public prosecutor concerned.

A public prosecutor who is attached to the office of the Director General exercises the Director General's authority on his behalf.

**Section 58.** As prosecution authority, the chiefs of police rank below the Director General of Public Prosecution and the local public prosecutor.

The Director General of Public Prosecution and the public prosecutors may give direct orders to the police officers.

**Section 59.** A superior prosecution authority may wholly or partly take over the conduct of a case that comes under a subordinate prosecution authority, or by a decision in the individual case transfer its conduct to another subordinate prosecution authority.

The Director General of Public Prosecutions may prescribe rules to the effect that the investigation in some categories of cases shall be conducted by an official other than the one the case would otherwise have come under.

**Section 59 a.** The following administrative decisions of the prosecution authority may, subject to the reservations contained in the second paragraph, be appealed by way of complaint to the immediately superior prosecution authority;

- 1) a decision not to prosecute,
- 2) a decision to waive prosecution,
- 3) the issue of an optional penalty writ,
- 4) the issue of a bill of indictment,
- 5) a decision pursuant to section 459 (deferment of execution of sentence). (*the convicted has become serious mentally ill or his state of health otherwise makes execution inadvisable*).

No complaint can be brought against the administrative decisions of the Director General of Public Prosecutions. An administrative decision referred to in section 67, sixth paragraph, (*proceedings in criminal cases against official servants in the police and prosecution*) may be appealed to the Director General of Public Prosecutions.

The right to appeal pursuant to the first paragraph can be exercised by:

- 1) the person whom the decision is directed,
- 2) other persons with a legal interest in the complaint,
- 3) and administrative body provided the decision concerns its area of administrative responsibility.

The right to appeal by the way of complaint cannot be exercised by any person who is entitled to bring the decision before the courts. Nor can a person charged appeal by the way of complaint against a decision that institutes prosecution before a court.

The time limit for lodging a complaint is three weeks from the date upon which notice of the decision was received by the complainant. The time-limit for a person who has not received such notice begins to run from the date upon which he has or ought to have become aware of the decision. As regards a decision to waive prosecution or to abandon proceedings that have been instituted, the time-limit for persons other than those to whom the decision is directed shall expire no later than three months after the date upon which the decision was made.

The person to whom the decision is directed shall be notified of complaints that before the expiry of the time-limit for such complaints have been received from any person specified in No. 2 or 3 of the second paragraph. If the complaint concerns a decision to waive a prosecution or to abandon a prosecution that has been commenced against a person charged, notification of any reversal must be sent to the person charged not later than three months after the prosecuting authority received the complaint.

The decision of the prosecuting authority that hears the complaint cannot be appealed by way of complaint.



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