



## **NORLAM**

THE NORWEGIAN MISSION OF RULE OF LAW ADVISERS TO MOLDOVA

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**Ministry of Justice of the Republic of Moldova**

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**Ministry of Foreign Affairs of the Republic of Moldova**

***Informative note No. 2: COMMENTS OF THE NORLAM ADVISERS REGARDING  
CERTAIN ASPECTS OF THE JUSTICE REFORM***

### **INVESTIGATION MANAGEMENT**

The best interaction between the prosecution and the investigative body

#### **1) Introduction**

Norlam will hereby share Norwegian experience in the field of interaction between the prosecution and the police investigation body. Our suggestions are based upon our own (our two Norlam prosecutors) experiences from years of prosecutorial work and investigation management in the Norwegian tradition and legislation. Investigation management in concrete cases may be considered demanding, but it is crucial to establish an own Moldovan tradition securing efficiency in the proceedings, invoking rule of law, and with mutual respect for the professional tasks for the investigator and prosecutor on the case.

## **2) Norlams' suggestions for objectives (strategy):**

The strategy should be to substantially increase the efficiency and legal safeguards of the criminal investigation. The role of the prosecution and the investigative body must be clearly defined and the best interaction must be introduced for conducting the criminal investigation. Any eventual internal hampering bureaucracy must be replaced with simpler proceedings.

It must be clearly defined when a criminal case it started to secure the rule of law and human rights protection for all activities with impact on the given rights of the citizens. Any and all investigative steps, including the operative investigative activities, should be carried out within the framework of the Criminal Procedure Code.

The investigation should be carried out as quickly as possible and in such a way that no one is unnecessarily exposed to suspicion or inconvenience.

## **3) Norlam's suggestions for obtaining the objectives – short overview**

Immediately when a criminal case is initiated both a main investigator and a prosecutor must be appointed to the case. Notoriety of this should be secured by adding the investigator's name on the case files, folder of the case, and in the data system. This investigator has the responsibility for the quality and progress of the investigation of the case, within the frames of the legislation and the orders given by the appointed prosecutor.

No initial operative phase can be carried out without the legal safeguard of the Criminal Procedure Code. The choice of wording in the name of such an initial phase, for example, if the word "investigation" is left out, doesn't matter. If it is activities with impact for the citizen's given rights, the reality prevails according to the autonomous interpretation principle in ECHR and full legality is a demand.

We would consider inopportune a system with a central investigative unit and a separate operative investigation unit, as it may lead to an unnecessarily complicated internal interaction. In our system no one within the internal hierarchy is in the position to nullify investigations steps that have been included in the case. Neither should a superior be in position to accept or refuse a document referring to investigation steps carried out. All steps must be documented in the case files. In other words, our goal is to exclude any suspicion that there may exist any selection of documents that actually get in the case. Thus, all produced documents should end up in the case file. Shortcomings may result in additional collection of information invoked in new additional documents, but the previous ones cannot be taken out because of this.

## **4) The appointment of a main investigator**

A main investigator should be appointed on the case by the head of the investigation unit. This must be done immediately after the case has been initiated. In practice, for example, in

the joint morning meeting of the unit, if the crime was carried out during the night and the police was informed about this.

#### **5) The role of the main investigator**

The main investigator appointed must be the public servant that actually will work most on the case, carry out the interrogation and administrate the progress. The prosecutor will have the information of who the main investigator is, and will know by this that this investigator knows the circumstances in the case completely and can be addressed as such.

The main investigator's task is to carry out the investigation within legal frames in the criminal procedural law. He must understand the demand of legality for all use of power challenging the citizen's integrity, rights and freedom. If there is a suspect in the case, the investigator shall seek to clarify the truth both in favor and disfavor of the suspect and no one should be kept unnecessarily under suspicion. The investigator should use his educated professional skills to carry out interrogations and other investigation steps in the best order and under the best tactical consideration. He has the responsibility for the quality of his contribution and that it is carried out as quickly as possible.

#### **6) The interaction between the main investigator and the head of the investigation body**

If it's a case with some complexity the main investigator needs support in carrying out the investigation, especially in the initial phase. For this purpose he must confer with the head of the investigation unit which will have the duty to facilitate according to the request within the given resources and available personnel at the time. This is also a typical topic for the unit's morning meeting, to plan and facilitate the events of the day.

#### **7) The role of the prosecutor:**

In the same manner as a main investigator is assigned to the case, also a prosecutor should be appointed as soon as possible, and preferably the same day as the case starts. In Norway the police cannot start a case without assigning a prosecutor to the case, which the prosecutor will see immediately in his inbox of the system of case administration. The prosecutor is not requested to be appointed, but will simply be assigned as the prosecutor on special case duty (jour duty) for the week, which the police always will be informed about.

The prosecutor must supervise that the investigation is carried out to obtain the necessary information for deciding whether an indictment should be preferred or not, and to serve as preparation for the trial of the case. If a specific person is under suspicion, the investigation shall seek to clarify both the evidences against him and the evidences in his favor.

The prosecutor's task follows from the purpose of the investigation. He must be in the position to rule the investigation. He must assess the collected evidences, if more has to be done, if an indictment should be preferred, if charges should be dropped, if other solutions than trial hearing should be the result, if apprehension, search of premises, pre-trial detention should be requested, if he should prepare and carry out the trial hearing, and eventually if he should appeal a court decision.

The prosecutor has an even greater role than to decide upon whether more evidences should be collected or not and to take positive and negative decisions within his discretion. He is a guarantor of the rule of law and the protection of human rights. If violations are detected it's the prosecutor's obligation to intervene.

### **8) The interaction between the main investigator and the prosecutor**

The main investigator is the leader of the case securing the progress and has the responsibility for the case files as the final product, the progress and the tactical approaches for the best result. But, at the same time, the prosecutor must be in the position to rule the investigation. He can demand that more has to be done, and what exactly, and set the timeframes.

As a principle, the prosecution supervises the investigation from the very beginning of the case and can intervene at all stages. However, it is impossible for the prosecution to follow and be updated in all cases continuously. Most of the cases are more or less standardized and the main investigator must be trusted the professional skills and conscientious conduct to finalize the case for the prosecutorial assessments. In more serious and complex cases the system of notification can be applied, and the prosecutor can request weekly or daily updating from the main investigator. In other situations the investigator's understanding of what the prosecution finds important should lead to notification due to best loyalty principles, e.g. when a case has the potential to have special attention from media.

In Norway the main investigator and the prosecutor work together in the same building, because the first level prosecutors constitute a unit integrated in the police. This creates flexibility to cooperate closely, and for the main investigator to ask the prosecution if additional steps are needed in the case, or if the case could be ceased because of lack of evidence, or because the perpetrator cannot be identified. It would be preferable with a closer contact between the prosecution and investigators for this purpose. In this context, more fundamental organizational changes to secure better interaction can be assessed.

### **9) How are the orders from the prosecution given to the investigation?**

In Norway we have a combined system of written and oral orders.

If the appointed prosecutor has the possibility to meet with the main investigator, he simply gives oral orders concerning the fact that the case is finished or the fact that it needs more

investigation. If the case is finished investigated, the prosecutor can decide in writing and this document goes in the case file, e.g. case ceased because it has not been possible to identify the perpetrator, or because it is a civil case concerning a contract (not a criminal case), or due to insufficient evidences to press charges. In more complex cases the prosecutor can request the case to be sent to him and the investigator to state in writing that the investigation is assumed finished and have a suggestion for solution. If the case is considered by the prosecutor as not enough investigated in their meeting, the investigator will simply take the case back without any written order. Regardless, the prosecutor is always in the position to give written orders, to maintain notoriety about his decisions and to secure that orders are followed. Written orders will always be attached as a document in the case.

If the appointed prosecutor and the main investigator don't join in a meeting, written "cover letters" will follow the case and will be used in the communication both ways. These cover letters will always be attached as documents in the case.

**10) Should the prosecutor be able to apply disciplinary measures in case the police officer does not comply with the prosecutor's investigation orders?**

In Norlam's view this does not belong together with the power to order investigation steps and to lead the investigation as a prosecutor on the case. Disciplinary measures should be the responsibility of the employer in the first instance. If the prosecutor is dissatisfied with the performance of the investigator he/she should discuss this issue with the investigators' leader. If a more serious offence has been committed this should be handled by an independent unit for investigation of cases against police and prosecutors. Norlam will prepare a separate working note on this issue.

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