



## **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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***Informative note No. 3: COMMENTS OF THE NORLAM ADVISERS REGARDING  
CERTAIN ASPECTS OF THE JUSTICE REFORM***

### **WHEN IS A CRIMINAL CASE OPENED?**

#### **An explanation of Norwegian solutions**

##### **1) Introduction**

According to our legal system it is important that a criminal case is started at such an early stage that rule of law and human right protection are secured for all activities with impact on the given rights of the citizens. In that regard, no unofficial initial investigation phase outside the Criminal Procedure Code would be accepted. In our system, such unofficial initial investigation would not be accepted even if the evidences obtained at this stage would not be later used in court.

This does not mean that no initial part of the investigation can be kept secret for some time before it will be disclosed. However, in Norway the strict demand of legality according to the Criminal Procedure Code, chapter for "Special investigation steps in severe cases", must be followed.

It should be mentioned that in Norway we understand the ECtHR as giving very strict demands for lawfulness for the state authorities organizing and conducting the investigation. According to the autonomy interpretation principle it doesn't matter if the national system divides the police activities into two parts, one preliminary and one as an opened criminal case later on. The reality behind prevails, and ECtHR will assess all of it as criminal investigation with strict legal demands.

## **2) Different circumstances leading to opening of a criminal case**

### **2.1 Complaints by citizens and how they initially are handled**

Most cases will be opened because of complaint from persons which have the opinion that they have experienced being a victim of a crime, on own behalf or on behalf of close related. This includes everything from theft, burglary, fraud, to violence and sexual abuse.

Immediately when the complaint is submitted in writing, or statement is given to the police, the case will be opened. A main investigator and a prosecutor on duty will be appointed on the case at the same time. In Norway a case cannot be opened without a prosecutor appointed. The prosecutor is not requested, but he will see that he is registered on the case in his inbox in the internal case file management system.

The Norwegian tradition is that the policeman receiving the complaint is in no position to refuse a complaint. The complaint has to be registered and a case number given. However, a case can easily be ceased by the prosecutor by standardized reasons as “the complaint concerns circumstances that are not punishable” (e.g. it's a civil case), “there are no meaningful reasons to start investigation”, “there is no information to identify the perpetrator” or that “the suspect is dead”. After some investigation the case can be closed because of “lack of evidence” and no more can be done, or that there exist some evidences but regardless evidences are too weak to file an indictment, optional writ etc., and no more can be done (this is the most used cease reason in Norway, with the wording “case closed because of the position of the evidences”). – There are about 38 standardized reasons to cease a case, applicable according to the prosecutor's discretion. Of these 15 is on so called case level (criminal cases without known suspects) and 23 on suspect level.

All decisions to cease a case will automatically generate information letters to the complainer and the suspect, and information about the right to complain on the decision. The complaint system can be explained in a separate informative note later on, if desirable.

### **2.2 Emergency and reported crimes**

The police will, of course, act on emergency calls from citizens and enter the scene of crime as fast as possible. If it's reasonable to believe that an offence has been committed, case will be opened by the police immediately after the first rescue operation has been carried out and no more danger for life or health exists. All emergency calls with the conversation with the

police will be taped, and will be a part of the criminal case, both on a CD and a written version as a document in the case files. In a main hearing the CD will be played, e.g. as the emergency call from a scene of a murder.

### **2.3 Police's own activities**

The police can be made aware of crimes when they are on patrol and will for this reason act immediately. A case will then be opened likewise in situations with emergency calls.

The police can receive and collect information which leads to opening a case. This actualizes the border between police intelligence work and opening of criminal cases, see point 3 below.

Further on, the police must open criminal cases and investigate regardless of any suspicion of a crime according to the law in some situations. In Norway this includes unexpected deaths of babies, deaths of inmates, fires in residential houses, and severe crimes committed by children under the age of criminal liability. – The proceedings are the same all over, a criminal case opened, a number given, a main investigator and a prosecutor appointed to it.

### **2.4 By the prosecution**

Prosecutors have the power to instruct the police to open a criminal case in Norway. Even though it doesn't happen very often, it is most practical when the prosecutor is working with cases and discovers that other accomplices should have been investigated or when the prosecutor experiences in court that a witness obviously is lying and this can be proved.

### **2.5 Other state authorities**

There are many state authorities that also include supervisor units on their field and they have the power to give complaints to the police and by this initiate opening of criminal cases. Here can be mentioned the social welfare authorities given a complaint on a person for fraud because this person has given wrong information to gain social support, the fishery authorities complaint on a fishing boat using illegal type of nets, fiscal authorities, labor work authorities for lack of safeguarding on a building site, customs, agriculture authorities for pollution and maltreatment of animals, etc.

All these complaints open a criminal case with a main investigator and a prosecutor appointed, as described in point 1.2. – It should also be mentioned that very often a person from these authorities will be a witness in court if the case reaches the main hearing, explaining how the offence/contravention was discovered.

### **3 What is the border between police intelligence work and opening of criminal cases?**

Initially, it should be underlined that if the police do anything to discover offences/contraventions and this may have an impact on the given rights of any person, then legal safeguards are mandatory. This comes in force even though no person has been identified. It's enough that methods applied may have this impact on someone.

In Norway we don't have a system with preliminary investigation if there is suspicion of a crime. As mentioned, a preliminary investigation could not be a solution if it means less legal safeguard for someone. It would not be accepted as an excuse that evidences from this stage could not be used in court later on.

However, in Norway we have police intelligence work for analyzing, discovering and prevention of crimes. This work could initiate opening of a criminal case. Typical will be surplus information gathered from existing cases, tips and information from audience and own information from observing a place. In other words, these are activities that do not call for legal safeguards, e.g. as secured by an instructional judge. No wiretapping, search or seizure against someone can be done without a criminal case opened.

We can illustrate this with an example. The police receive information from one of the arrested drug addicts in the city that there is a lot of activity going on from one apartment in a building in the city. He is terrified about revenge and would never dare to give statement about this, but it's a tip. A policeman on his evening duty takes a walk in the area as a civil person, and observes some people he knows are drug addicted going in and out from the building. He discovers that an acquaintance of his is living in the building and he phones the doorbell and asks him if they could have a little chat. He is invited in. The policeman's acquaintance informs him that some "tired youths" are going in and out from an apartment at the 4<sup>th</sup> floor, all day and night, like coming for some minutes and then leaving again. The people owning the apartment are decent people living abroad and having their apartment out for rent for some students he doesn't know.

The policeman considers all information gathered as sufficient to open a criminal case. Back at the police station he writes a report about his observations. This report is document No. 1 in the list of police reports in the criminal case files. The policeman would contact the prosecutor on duty and inform him properly. The prosecutor will consider initiating legal steps to arrest persons that must be present in the apartment and to search the apartment as well.

Later on, in case of a main hearing, the prosecutor will consider summoning the policeman to court as the first police witness.

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