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What is the purpose of the enquiries and criminal investigation?

They are used to gather evidence establishing the offence and to verify evidence which might exonerate the suspect or show that there has not been any offence.

What are the stages in the enquiries and investigation? Who conducts each of the stages?

The police investigate offences and offenders and gather evidence.

Where they suspect the existence of an offence, they notify the Crown Prosecutor who decides:

- either to close the file without further action;
- or to continue the enquiries himself (disclosure);
- or to appoint an investigating judge, asking him to investigate a specific fact and not one person in particular (investigation).

The Crown Prosecutor has less extensive powers than the investigating judge. The investigating judge or the Crown Prosecutor directs the enquiries and gives instructions to the police who carry out the stated obligations to investigate (interviews, searches, DNA samples, etc.).

Once the investigations have been completed

Either the file is for disclosure ("*information*"), in which case the Crown Prosecutor can:

- close the file without further action;
- propose a settlement: public prosecution dropped (no criminal trial) in return for a sum of money (classic procedure in the case of a breach of the Highway Code);
- propose mediation, in the case of minor offences: no trial, but the perpetrator must compensate the victim and, if necessary, undergo therapy or training;
- bring the suspect to court directly before the judge hearing the merits of the case;
- summon the accused to appear before a court hearing the case by report: the summons is sent to the accused while he is on remand (for a maximum period of 24 hours), or goes before the Crown Prosecutor in order to speed up the proceedings.

Or the file is for committal, in which case the file is sent to the public prosecutor's office, which will make the final submissions. The accused can then read the file. He is summoned to appear before the Judges' Council Chamber which, after reading the enquiry report from the investigating judge, any civil law parties (victims), the public prosecutor's application to commence proceedings and the defence pleadings, may:

- either refer the file to the investigating judge for further investigation;
- or, if the investigations are complete:
- grant the suspension of the ruling where the public hearing could prejudice the accused;
- issue a ruling internally in a social protection institution, if the person committed the offence while the balance of his mind was seriously disturbed, rendering him incapable of controlling his actions at the time of facts and is still in this condition;
- refer the file for trial by the relevant court (police court or criminal division); if it considers that the facts come under the assize court, it issues an order for the documents to be forwarded to the Principal Crown

Prosecutor, as only the indictments division can refer cases to the assize court.

The accused's right of appeal, which is confined to certain procedural matters, is exercised before the indictments division.

During the investigations, the investigating judge may issue an arrest warrant on certain conditions:

- the existence of serious indications of guilt;
- facts listed as punishable by at least one year's imprisonment;
- and absolute necessity for public safety.

If the maximum penalty applicable does not exceed fifteen years' imprisonment, the warrant can only be issued if there are serious reasons to fear that the accused will abscond, re-offend or evade justice, or that evidence will disappear or there will be collusion with third parties.

The accused will appear before the Judges' Council Chamber within five days of the warrant being issued, then every month until the investigations are closed (every three months in the case of a crime reduced to a misdemeanour by statute).

My rights during the enquiries and investigation

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Arrest and questioning by the police (1)

Under what circumstances and for how long can I be detained by the police?

You can be detained in the case of a crime or offence discovered while or immediately after being committed, or at the request of the Crown Prosecutor or investigating judge where there are serious indications of guilt. You cannot be detained by the police for more than 24 hours.

Can I be searched?

Yes, at the time of your arrest or if there is reason to believe that you are carrying a weapon or dangerous object, or if there is a risk to law and order.

Can the police enter my home?

Yes, in the case of an offence discovered while or immediately after being committed or with your consent.

Can my office or car be searched?

Yes, in the same way as your home. However, certain places are sacrosanct and others are specially protected: searching them requires a special procedure (office of a diplomat, member of parliament, premises of those holding professional secrets, etc.).

Your car may be searched if there is reason to believe that it was used for committing an offence, for carrying wanted persons, incriminating documents or evidence, or objects which are dangerous to law and order.

Can I contact a member of my family, a friend, a doctor or a member of my embassy?

If the police consider it useful or upon request, you will be examined by a doctor. At this stage, the police decide whether or not to allow you to use the telephone. If you are a minor, the police are obliged to inform your parents, your guardian or the person looking after you, in writing or verbally, as soon as possible.

What are my rights while being questioned by the police?

You have the right to remain silent and not incriminate yourself, i.e. not to collaborate in producing evidence against you.

At the start of any questioning, you will be informed that :

- you may ask that all the questions put to you and your responses are documented exactly as stated;
- you may ask for a particular measure or interview to be carried out;
- your statements may be used as evidence in court.

You may use the documents in your possession, provided that this does not involve questioning being delayed. You may, at the time of questioning or thereafter, ask that these documents be attached to the minutes of the hearing or filed with the court office.

At the end of questioning, the report is given to you to read, unless you ask for it to be read out to you. You will be asked whether your statements need to be corrected or added to.

If you wish to express yourself in a language other than the language of the proceedings, a sworn interpreter will be used, your statements are noted in your language, or you are asked to write your statement yourself. If questioning takes place with the help of an interpreter, his name and capacity are stated.

You will be informed that a copy of your examination may be issued to you free of charge.

Will information be sought about my criminal record?

The police services have access to the central records office.

Can my lawyer assist me?

Your lawyer cannot assist you at any questioning and cannot meet you during the 24 hour custody period.

Disclosure file (2)

The enquiries are conducted by the Crown Prosecutor. The preliminary disclosure session is inquisitorial: secret, written and ex parte.

What can the Crown prosecutor do during the disclosure phase?

Other than in the case of legal exceptions, disclosure measures cannot include any coercion or prejudice personal rights and freedom. Property may be seized under certain conditions.

The Crown Prosecutor may, inter alia:

- go to the scene of the facts,
- interview suspects or witnesses or have them interviewed by the police,
- have someone arrested (except in the case of an offence discovered while or immediately after being committed) for 24 hours,
- have a DNA analysis carried out with the suspect's consent,
- intercept and seize post (but not open it),
- obtain bank information subject to certain conditions,
- carry out searches in the case of an offence discovered while or immediately after being committed or with the consent of the person actually using the premises,
- have particular search methods carried out which may be very intrusive.

What can I do if a disclosure measure infringes my rights?

You can apply for it to be withdrawn by means of a request with reasons, the criminal summary application, for example if your property is seized as evidentiary items. Within 15 days, the Crown Prosecutor must give his decision. In the absence of a reply or in the event of a refusal, you may appeal to the indictments division.

You may also, in this case, ask the Crown Prosecutor to authorise the central body for seizure and confiscation to

sell the property or return it in exchange for a guarantee.

Can I access the file?

Unlike the investigation system, there are no particular rules regarding the total or partial communication of the file to the parties in question at the disclosure stage. You may request access to the file from the Crown Prosecutor, who has the discretionary power to accept or refuse.

Can I influence the outcome of the file?

No. The Crown Prosecutor alone will take the decision to close the file without further action, appoint an investigating judge, summon you or invite you in writing to appear before the court hearing the facts of the case, or offer you an alternative means of settling the prosecution (settlement or mediation: in this case there will not be a trial if you pay the fine or comply with the conditions imposed at the time of mediation).

Investigation file (3)

The investigation is conducted under the direction and authority of the investigating judge, appointed by the Crown Prosecutor, or the alleged victim of an offence by means of an action for damages in a criminal case.

What can an investigating judge do?

He can use all the measures available to the Crown Prosecutor, and substantial coercive measures: issue an arrest warrant, have telephone conversations monitored, have searches carried out without consent, even wider particular search methods, etc.

Must I be interviewed by the investigating judge?

Questioning by the investigating judge is only compulsory where an arrest warrant is issued.

Does the judge have to tell me that there is a case to answer?

In principle, the judge must charge you if there is serious evidence of your guilt. You are charged after being questioned or by letter and it gives you the right to request access to the criminal file and the right to demand additional investigations.

Can the judge monitor my telephone calls?

Yes, subject to complying with very specific legal conditions.

Can I object to a search?

Your home may be searched if a search warrant has been signed by the judge, and if the search is carried out between 5 am and 9 pm, unless agreed otherwise.

Can the judge physically force me to give a DNA sample ?

Yes, under certain conditions.

What can I do against an investigation which infringes my rights?

You can submit a criminal summary application (cf. Disclosure).

Can I access the file during the enquiries?

If you are charged but not held, you may request access to the file by means of a request sent to the investigating judge, who may refuse access but must give reasons for his refusal. In the absence of any response from the judge or a refusal, you have the right to appeal to the indictments division.

Can I ask for certain investigations to be carried out?

Yes, whether or not you are held in custody. You may ask for this by submitting a request. The investigating judge may refuse if he does not consider the measure to be indispensable to uncovering the truth or considers it to be harmful to the investigation. A possibility of appeal exists.

Special case: remand in custody (4)

How must questioning before the judge be conducted?

Questioning prior to the issue of an arrest warrant must take place within 24 hours of being detained, otherwise the arrest warrant is void. Questioning must include in particular the possibility of issuing a warrant and the facts in question.

Your lawyer cannot be present.

Can I be interviewed by the judge subsequently?

You can ask for summary questioning. It is the only questioning at which your lawyer is allowed to be present.

When can I see my lawyer?

After your first examination by the investigating judge.

Can I contest the legality of or reasons for the arrest warrant?

You cannot appeal against the decision to be placed under an arrest warrant.

Within five days of the warrant being issued, you will appear before the Judges' Council Chamber. On the day before, you will have had access to your file. Your lawyer or you yourself may request your release.

Your lawyer may only raise an irregularity in the warrant at the time of this first appearance before the Judges' Council Chamber (and on appeal). If the arrest warrant is confirmed, you have a right to appeal. You will appear before the indictments division within 15 days. If these deadlines are not complied with, you will be released immediately.

The custody confirmation is valid for one (or three) months. You may, at each hearing, contest the relevance of the arrest warrant and/or the serious indications of guilt. The file will be available to you two days prior to each appearance.

Can I communicate with third parties while in prison?

You can always communicate with your lawyer.

However, the investigating judge may ban you from communicating with any other person for a maximum of three days.

When can I be released?

At any time by the investigating judge, or by a decision of the investigating courts when you appear. Your release may be subject to conditions or bail.

I am a national of another country. Do I have to be present during the investigation?

An arrest warrant may be issued if there is a risk of evading justice. The investigating judge or investigating courts may release you on bail. You will recover the sum of money paid if you appear at all stages of the proceedings.

If you are allowed to remain free, you will be asked to appear at hearings and, in principle before the court hearing the merits of the case. The investigating judge may make it a condition of your release on bail that you do not leave the country. These conditions may be extended for periods of three months. You may contest them before the Judges' Council Chamber.

Closure of the investigation (5)

What can I do if the enquiries drag on?

After one year, you may submit a reasoned request for the case to be referred to the indictments division, which will review the conduct of the enquiries.

Can the accusations/charges be changed prior to the trial?

The Crown Prosecutor reads the file sent by the judge and specifies the charges on which the accused is to be tried before the court. He may also make submissions that there is no case to answer or ask the judge to undertake certain additional enquiries. The criminal classification may also be changed by the Crown Prosecutor at this time, or by the Judges' Council Chamber which decides on the outcome of the case.

Can I plead guilty prior to the hearing in respect of all or some of the accusations/charges?

No, you are presumed innocent until you are finally convicted by a court hearing the merits of the case.

How is the case closed?

The Judges' Council Chamber decides, after hearing the report from the investigating judge, any party claiming damages in the criminal case, the prosecutor and the defence:

- to commit the accused for trial by the appropriate court;
- to rule that there is no case to answer;
- to grant a suspension of the ruling: the facts are deemed to have been established, but no sentence is given. The judge sets a probation period, which may be subject to conditions which have to be met;
- to apply the law of social defence (confinement).

What are my rights during this phase?

You can read your file and copy documents prior to the hearing before the Judges' Council Chamber. You may also request that further enquiries are carried out. If the investigating judge refuses to carry them out, you have the right to appeal to the indictments division.

Can I appeal?

You cannot appeal against committal for trial, except in the event of an irregularity, omission or ground for nullity affecting part of the investigation, the obtaining of evidence or the committal order, or if you cite a reason for inadmissibility or termination of the criminal prosecution.

Can I be charged with an offence for which I have already been prosecuted in another Member State of the European Union?

In principle no.

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