



State Comptroller of Israel | Annual Report 71C | 2021

Ministry of Justice | State Representatives in the Courts

State Attorney's Office – Legal Assistance to Police Investigations and Authorization of Investigation Tactics



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Background

A fundamental principle during a criminal proceeding is maintaining separation between police investigation units and the prosecutor's office and maintaining the prosecutor's independent legal judgment. This separation is necessary to ensure control over the investigative proceeding and protect the rights of suspects and defendants. Over the years the district attorney's offices have cooperated with the police investigation units and provided legal assistance to police investigations. As an exception to the principle of separation, a district attorney will assist the police during investigations of particular cases in order to provide guidance to the investigators and advise them about legal issues, but he/she will not perform any investigative actions. Involving a district attorney in a case improves the quality of the investigation and optimize the work on the case. District attorneys also perform another role during police investigations: they authorize investigators to employ investigation tactics involving some form of manipulation in order to collect evidence.

The Office of the State Attorney and the Israel Police do not routinely, methodically and fully document in their computer systems all cases in which legal assistance was provided to police investigations ("DA-Assisted Investigations"). The district attorney's offices classify only a portion of the cases assigned a district attorney as DA-Assisted Investigations in their computer system (the State Attorney's Planning, Management and Control System); consequently, the system does not contain complete information about all such cases. (According to data manually collected from police units, the estimated actual number of DA-Assisted Investigations is at least 2.5 times higher than the number of DA-Assisted Investigations documented in the State Attorney's computer system).



Key figures

**approximately
40,000**

The average annual number of criminal investigations resulting in the filing of an indictment in the years 2017–2019.

**approximately
10%**

Of the criminal investigations resulting in the filing of an indictment are handled by the Attorney's Office.

452

Investigations were classified in the State Attorney's system as DA-Assisted Investigations in the years 2017–2019.

In 31%

Of the DA-Assisted Investigations opened in the State Attorney's system and resulting in the filing of an indictment, erroneous data were entered – for example: the date that the indictment was filed was earlier than or the same as the date when legal assistance began.

15%

Of the DA-Assisted Investigations opened in the State Attorney's system were closed upon the conclusion of the investigation without a criminal case being opened at the State Attorney's Office.

72%

The ratio of DA-Assisted Investigations opened in the State Attorney's system that resulted in the filing of an indictment.

Audit actions



From February to July 2020¹, the Office of the State Comptroller audited the subject of the legal assistance being provided by district attorneys² to police investigations, and authorizations issued by the Attorney's Office for the use of investigation tactics³. The audit examined the following subjects: maintaining separation between the role of the district attorney assisting an investigation and the role of the police investigators. In addition, the following topics were also audited; recording and documenting of the district attorney's work assisting an investigation; the normative status of the rules for providing legal assistance to an investigation; the district attorney's authorization of the use of investigation tactics and the controls over them and the conclusions drawn from flaws and failures in the investigation. The audit was performed in the Israel Police's investigation units and in the State Attorney's Office.






1 The audit was performed intermittently due to the restrictions imposed as a result of the covid-19.

2 The audit was performed only in the Attorney's Office and not in the Israel Police prosecuting units.

3 This report refers to criminal investigations in which the Israel Police is the investigative agency.





Key findings

-  **The normative framework regulating the work of district attorneys assisting in police investigations** – The authority of district attorneys assisting in police investigations has not been enacted under primary legislation. There are several hundreds of these investigations each year. The audit found that, after such authority was regulated via the State Attorney's directives in 2017, the State Attorney in 2019 decided to convert the directives into an internal procedure. This despite the fact that the issue is a work method that is relevant to enforcement agencies in the State Attorney's Office and in the Israel Police, as well as to suspects and to the general public.
-  **Limitation of district attorneys' involvement in police investigations** – The internal procedure relates to the issue of an assigned district attorney's involvement during investigations and to the general course of such involvement, that allows district attorneys' considerable leeway in deciding their degree of involvement and how they forward their insights, recommendations and guidance to the team of police investigators.
-  **Work interfaces between the State Attorney's Office and the Israel Police** – No guidelines were defined in the internal procedure for assigning a district attorney to a police investigation. The various district attorney's offices make individual decisions about assigning district attorneys to police investigations, largely after they receive a request from police investigation units.
-  **Lack of complete and reliable data on the volume of DA-Assisted Investigations** – The State Attorney's Office and the Israel Police do not maintain methodical and complete records in their computer systems about requests to assign district attorneys to investigations or about investigations that actually received such legal assistance. The data contained in the Planning, Management and Control System in the State Attorney's Office are incomplete and insufficiently reliable to learn about the characteristics of DA-Assisted Investigations, such as their average duration and the average timeframe that elapses from the conclusion of investigations until indictments are filed. Without complete and reliable information, it is impossible to examine the effectiveness of the legal assistance. It is also impossible to properly examine the extent that this work method is applied or to analyze the proper allocation of resources to it.
-  **Jurist Investigation police Officers** – Apart from district attorneys' method of work assisting police investigations, another control method over investigations is performed through jurist Investigation police Officers who work in the Israel Police. They are stationed in districts and in police stations. The audit found that the Israel Police has not standardized the position of jurist Investigation police Officers in 32 out of the 80



police stations and operative districts, while in 8 additional police stations, the position was approved but vacant. The audit also found that the Israel Police has not supervised the work of the jurist Investigation police Officers.

 **Authorization of police investigation tactics** – During police investigations, the investigators are allowed to employ investigation tactics, which is a catch phrase for manipulating suspects or witnesses in order to obtain evidence. For example: an undercover officer who gains a suspect's trust and engages in a conversation with him; an undercover officer who buys drugs or weapons in order to incriminate the seller; and giving a suspect false information in order to trick the suspect into believing that the police have sufficient evidence to file an indictment. The audit found that there is no directive from the State Attorney that defines the considerations that district attorneys must take into account when authorizing investigation tactics. Those district attorneys who authorize investigation tactics define the conditions for using the tactic but do not justify their reasons for such approval.

 **Drawing conclusions by the State Attorney's Office** – One of the routine organizational tools enabling efficiency, learning from failures and mistakes, rectifications, clarifications and the drafting of clear and uniform organizational rules is the process of drawing conclusions. In instances when the courts found failures in investigations, the court rulings instructed the investigation and prosecution units to analyze the failures and draw conclusions. The State Attorney's Office did not implement a standard practice for drawing conclusions due to opposition from the state attorneys' workers union and, in general district attorneys do not draw conclusions from deficiencies.



The State Comptroller commends the Jerusalem District Police and the Jerusalem District Attorney's Office for signing a joint work procedure. This procedure defines the conditions that justify police requests for legal assistance from a district attorney, the job descriptions of the assisting district attorneys and the investigation unit's obligations while receiving legal assistance.

Key recommendations



It is recommended that the Ministry of Justice and the Attorney General determine the normative framework needed to regulate the authority of district attorneys providing assistance to police investigations.



It is recommended that the State Attorney consider consolidating procedures and directives applying to all prosecutors, which will define the separation between investigation units and prosecutors' offices and the criteria for deviating from them when



district attorneys assist the police during investigations. Prosecutors in the State Attorney's Office and in the Israel Police should embed the rules to all district attorneys and jurist Investigation police Officers for providing legal assistance to police investigations. It is also recommended that the Israel Police issue professional directives to its investigators that define the limits of appealing for district attorneys' assistance during investigations, and that the prosecutor's office consider ways to design controls over police investigations that are not DA-Assisted Investigations.



The State Attorney's Office should make sure that its employees are meticulous about entering accurate data into its computer system so that it will be possible to properly examine the extent that district attorneys assist police investigations and to analyze the proper allocation of resources in this regard. It is also recommended that the State Attorney's Office and the Israel Police institute an orderly periodic control process in order to verify the reliability of the data. It is recommended that the Ministry of Justice and the Attorney-General consider the opinion of the Public Defender's Office, whereby the right of perusal prescribed in the Criminal Procedure Law also applies to the documentation of district attorneys' actions and guidance while assisting police investigations.



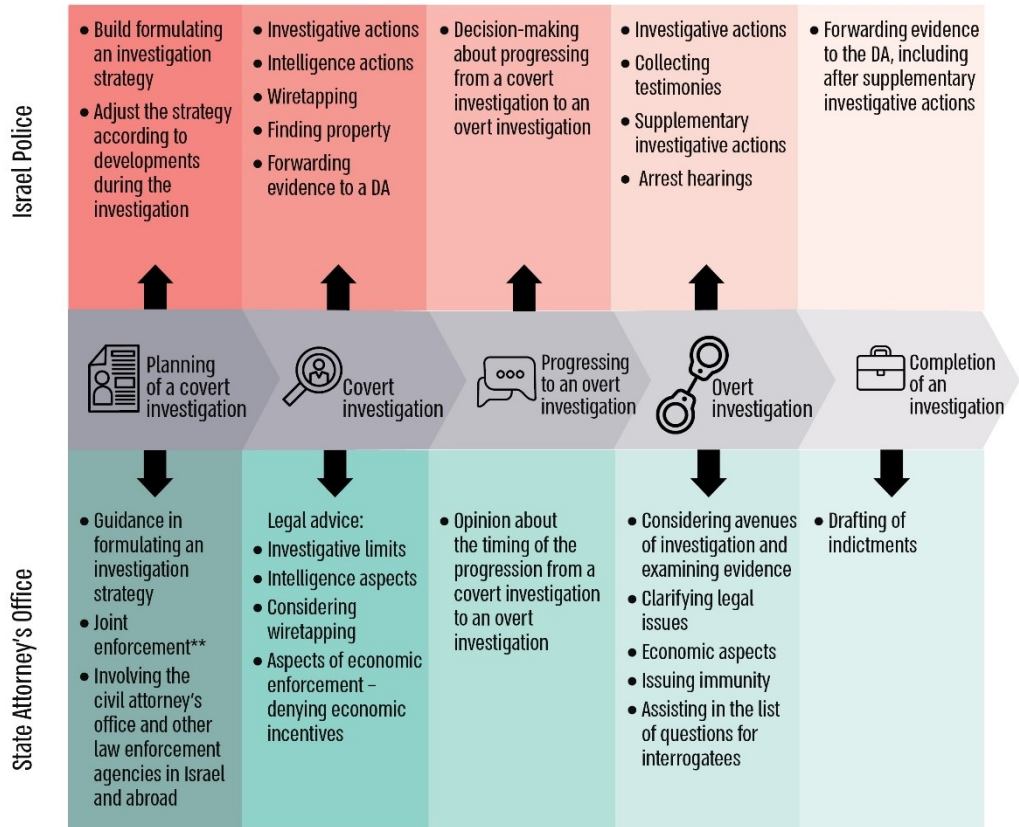
It is recommended that, within the framework of the "Due Process Reform," the Ministry of Justice also address the duty of district attorneys' offices to protect the rights of suspects and defendants, including in instances when indictments cannot be filed because of improper police investigation tactics. It is recommended that the Israel Police and the State Attorney's Office consider drafting a joint procedure regarding authorizations of police investigation tactics. The procedure will define the instances when the police must obtain authorization to use investigation tactics from the district attorney's office, and the considerations that the district attorney must take into account when authorizing the use of such tactics. The district attorneys authorizing investigation tactics should document their reasons for the authorization so that the courts will have a complete picture of the investigation.



The State Attorney's Office should ensure that conclusions are drawn at the unit level whenever flaws or failures are discovered in police investigations, particularly in instances when the courts have instructed them to do so.



Key procedures during DA-Assisted Investigations*



* The diagram lists actions being carried out simultaneously and actions being carried out sequentially by the police and the DA's office.

** Joint enforcement is the use of civil, administrative and economic judicial tools as effective law enforcement tools in the battle against crime and other phenomena, in conjunction with criminal law tools.



Summary

The protection of suspects' and witnesses' right to due process and human rights mandates that meticulous attention must be paid to instances of deviation from the principle of separation of authorities. It is recommended that the Ministry of Justice and the Attorney General analyze what normative framework is needed in order to regulate district attorneys' authority to work in cooperation with police investigators during investigations and to delineate the discretion of district attorneys who have work interfaces with police investigation units. It is also recommended that the State Attorney's Office be diligent about proper documentation, and advance a process of drawing conclusions as an integral part of the routine work during police investigations.

