

BUREAU OF THE
CONSULTATIVE COUNCIL OF EUROPEAN PROSECUTORS
(CCPE-Bu)

**ROLE OF THE PUBLIC PROSECUTION SERVICE
OUTSIDE THE FIELD OF CRIMINAL JUSTICE**

QUESTIONNAIRE

*adopted by the Bureau of the CCPE
at its 3rd meeting
(Popowo, Poland, 6-8 June 2007)*

ANSWERS FROM GERMANY

I. INTRODUCTION

In Germany, like in other civil societies, the spirit of liberty and democracy is grounded on the conviction, that every person, in principle, is responsible for his or her own life, benefit and prosperity. Basic rules of social life and the protection of human rights are secured by the Criminal Law and the Criminal Procedure Law. These rules are reinforced and protected by the Prosecution Service, wherever they are breached. Moreover, state authorities and/or private institutions within the civil society (like lawyers, trade unions and custodian associations) take care of people, which are not able to protect themselves, for example juveniles, handicapped or aged and ill persons. Under conditions, based on special laws, the state pays for this special protection of rights (free legal advice, free of charges) or for the social welfare. Prosecutors play only a minor role in this field.

II: ANSWERS TO THE QUESTIONS

PART I

1. Does the prosecution service of your country have any competencies outside the field of criminal justice?

At the local level, prosecutors do not have competencies outside the criminal field. The General Prosecutor's Offices have some administrative and judicial competencies.

2. a. If so, what are these competencies (with regard to, for example, administrative, civil, social and commercial law and / or the functioning and management of the courts)?

The Prosecutor General represents the state authorities in the field of compensation of damages, caused by the judiciary. The public prosecution office at the Higher Regional Court performs the public prosecution service functions in professional disciplinary proceedings where decisions are given on the imposition of Lawyers' Disciplinary Court measures in response to culpable breaches of professional duty committed by (practising) lawyers.

- b. Please indicate the background explaining their existence.

In Germany these professionals have to be members of chambers. The membership is compulsory. Actions against severe and relevant rules need investigation and prosecution, but within the law. The professional chambers do not have means of coercion, only the state, represented by the Prosecution Service has these means.

- c. Please indicate the role played by the public prosecutor in exercising these competencies: advisory role - ex officio or upon request -, supervisory role or decision-making role.

Where there is suspected commission of culpable breach of professional duty, the public prosecution office will commence investigation proceedings. The final decisions are made by a special court, which consists of members, chosen by the chambers and professional judges. Prosecutors only have an investigative and prosecuting role. Through this, they supervise the application of the professional law.

- d. Where public prosecutors have decision-making powers, can their decisions be challenged by any legal remedy? Please indicate the legal remedies provided for.

In the mentioned cases of compensation, Prosecutors General have a decision-making power. If people are not satisfied with this decision, they can seek for the decision of a court.

3. Please give an indication (statistics, if available) of the effective use of these competencies and the workload they entail for the prosecution service as a whole.
The workload of these competencies is very poor. There are no statistics available, but it probably is less than 5%
4. Does your country envisage any reform in the above-mentioned competencies of the public prosecutor? **No.**

PART II

5. Does the public prosecution service have a separate internal organisation when it acts outside the field of criminal justice? Please specify. **No.**
6. Which powers does the public prosecution service enjoy when acting outside the field of criminal justice?
 - a. Is it vested with a specific authority or does it enjoy the same powers as the other party(ies) to the trial? **In cases of compensation, the Public Prosecutor represents the state before the court as a party. In cases concerning the breach of professional rules, Prosecutors General have the same rights and duties as in criminal investigation files, except the deprivation of liberty or the confiscation of property of the defendant.**
 - b. Are there specific rules governing the exercise of these functions? What is the basis of such rules (the law, custom or practice)? **There are special laws.**
 - c. Does it enjoy other rights and duties? Please specify. **No.**
7. Regarding the role of the public prosecution service outside the field of criminal justice:
 - a. has the European Court of Human Rights taken decisions or handed down judgements on that matter in respect of your country? If so, please indicate the number of the application and the date of the decision or judgement. **Not available.**
 - b. in your country, has the constitutional court or another court with the authority to rule on the constitutionality of laws, taken decisions or handed down judgements on the compatibility of such a role with the constitution or the basic law? If so, please indicate the references of such decisions and their main thrust. **In several judgements, the German Constitutional Court has decided, that all the power of Prosecutors General outside and within the Criminal field have to be based on law (principle of the Rule of Law).**
8. Amongst the competences of the public prosecution service acting outside the system of criminal justice which are, in your view, the most important for the reinforcement of rule of law and protection of human rights? **The disciplinary power of Prosecutors General against infringements of professional rules of lawyers and tax consultants are of utmost importance for ensuring compliance with the particular professional duties of lawyers.**