



COUNCIL OF EUROPE CONSEIL DE L'EUROPE

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**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)*

I. INTRODUCTION

In 2006 the Committee of Ministers set up the Consultative Council of European Prosecutors (CCPE)¹, which has the task in particular to prepare opinions concerning issues relating to the prosecution service and to promote the implementation of Recommendation Rec(2000)19 on the role of public prosecution in the criminal justice system.

In conformity with the instruction of the CCPE (see document CCPE (2006) 06, Part II), its Bureau, during the meeting in Strasbourg on 18-20 December 2006, decided the order of priority for the actions of the CCPE in the scope of the implementation of the Framework Overall Action Plan for the work of the CCPE.

For 2008, the CCPE is considering the detailed study of the functions of the public prosecution service outside the field of criminal justice, taking into account the conclusions adopted by two of the previous Conferences of Prosecutors General of Europe, held in Celle (23-25 May 2004) and in Budapest (29-31 May 2005).

In order to facilitate the preparation of an opinion for the attention of the Committee of Ministers on this topic, the Bureau of the CCPE submits the questionnaire below. The first part of the questionnaire (questions 1 to 4) reproduces the one prepared to the Budapest Conference and no answer is therefore requested unless your delegation has not submitted an answer already² or, having done so, there is a need for clarification of relevant modifications introduced in answers previously given. All CCPE delegations are requested to answer the second part of the questionnaire (questions 5-8).

Replies should be sent, in English or in French, by 31 October 2007, to the following address: dg1.ccpe@coe.int. When preparing their replies to the questionnaire, delegations are invited to consult their relevant national bodies which could make a useful contribution to this request for information.

PART I

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

No the prosecution service only has competence in the field of criminal justice.

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)?

N/A

b. Please indicate the background explaining their existence.

The Courts of Malta are divided into those having a criminal competence and those having a civil competence. Under Maltese criminal law criminal offences may be tried on indictment only, or summarily only or offences may be tried either way by the Criminal Court or by the Court of Magistrates depending on the decision of the Attorney General and sometimes on the consent of the person charged.

The courts of criminal competence, therefore, are the Courts of Magistrate, the Criminal Court and the Court of Criminal Appeal. The Courts of Magistrates may function as a court of criminal judicature and has full competence to decide the merits of the charge, in respect of offences which may be tried summarily only, or in respect of offences which may be tried either way, subject to the direction of the Attorney General and the consent of the person charged.

c. Please indicate the role played by the public prosecutor in exercising these competencies:

¹ See website: www.coe.int/ccpe

² Replies were received from: Armenia, Austria, Belgium, Bulgaria, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Monaco, Montenegro (Serbia and Montenegro), Norway, The Netherlands, Poland, Portugal, Slovakia, Spain, Sweden, Switzerland, "the former Yugoslav Republic of Macedonia", Turkey, Ukraine and United Kingdom (Northern Ireland and Scotland).

advisory role - ex officio or upon request -, supervisory role or decision-making role.

In Malta the exercise of the criminal action lies with the Police *ex officio* who also acts as prosecutors before the inferior courts before the Court of Magistrates whether as a court of criminal inquiry or as a court of criminal jurisdiction. In respect of certain offences the criminal action cannot be exercised except on the complaint of the injured party.

Although the Attorney General is never the prosecutor before the courts of magistrates the police may be assisted before those courts by the Attorney General or his officers. In cases where intricate legal or constitutional issues might be raised the assistance of the office of the Attorney General is invariably sought. Indeed the assistance, opinion and guidance of the office of the Attorney General is quite regularly sought in the course of criminal investigations by the police.

When a person is eventually charged with the commission of an offence triable on indictment only or triable either way, whether as the result of investigations by the investigating magistrates or investigations by the police, the person charged is arraigned before the Court of Magistrates as a court of criminal inquiry. At this stage the Attorney General has several powers which he can exercise because of his role as the Public Prosecutor before the Criminal Court. In order that he may execute this role properly the law allows him several options and it is up to his exclusive discretion to decide which of them to choose. If the person charged has been discharged by the Court of Magistrates the Attorney General may, if he is of the opinion that sufficient evidence for an indictment exists, and a judge not ordinarily sitting in the Criminal Court or in the Court of Criminal Appeal agrees with him, order the re arrest of the person discharged so that the proceedings may continue to take their course.

If the person charged has been committed to stand trial on indictment there are again a number of options open to the Attorney General. If he disagrees with the court of committal and is of the opinion that there are not sufficient grounds for trial on indictment he may discharge that person and file a declaration to that effect before the Criminal Court. If the order is found to be defective he may send it back to the Court of Magistrates and require the court to hear such further evidence as he may consider appropriate. If he considers there is not sufficient evidence of an offence within the competence of the Criminal Court but there is evidence of an offence within the competence of the Court of Magistrates as a court of criminal jurisdiction he will not file a bill of indictment but will send the record back to the Court of Magistrates for a decision in respect of the charge within its competence. If the Attorney General is satisfied that sufficient evidence exists he may file a bill of indictment before the Criminal Court.

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

The Attorney General has the power of the "Nolle Prosequi" or "I do not want to prosecute". In every case in which the Attorney General exercises the power of "Nolle Prosequi" he must, in addition to the declaration to that effect to the Criminal Court, make a report to the President of Malta giving his reasons for his actions.

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.

**STATISCAL REPORT FOR CRIMINAL PROCEEDINGS FROM 1ST NOVEMBER 2006 – 15TH OCTOBER
2007**

| | | | | <u>Nov/Dec</u> | <u>Jan/mar</u> | <u>Apr/Jun</u> | <u>Jul/Sep</u> | <u>Oct.</u> | <u>Total</u> |
|--|--|--|--|----------------|----------------|----------------|----------------|-------------|--------------|
| <i>Bills of Indictement</i> | | | | 4 | 23 | 6 | 9 | 2 | 44 |
| <i>Cases remitted to Magistrates Courts for Judgement including Counter Orders</i> | | | | 40 | 84 | 119 | 31 | 21 | 295 |
| <i>Consent for Summary Proceedings in terms of Section 370(4) Of Crim. Code</i> | | | | | | | | | 1076 |
| <i>New Preliminary Investigations referred to the Attorney General by the enquiring Magistrate</i> | | | | 66 | 66 | 91 | 76 | 5 | 304 |
| <i>New cases remitted to the Attorney General as per Article 392a1 after a "Guilty Plea" is registered</i> | | | | 16 | 24 | 40 | 37 | 6 | 123 |
| <i>Drug Cases examined under Caps. 31 and 101 for Attorney General's Order to proceed</i> | | | | | | | | | 551 |
| <i>Miscellaneous Applications</i> | | | | 280 | 375 | 363 | 363 | 54 | 1435 |
| <i>Appeal Applications fom Court of Magistrates including appeals under Articles 392 A(1)</i> | | | | 25 | 52 | 32 | 12 | 6 | 127 |
| <i>Proces Verbau (Malta)</i> | | | | | | | | | 1181 |
| <i>Proces Verbau (Gozo)</i> | | | | | | | | | 19 |
| Total | | | | | | | | | 1200 |

STATISCAL REPORT FOR CRIMINAL PROCEEDINGS FOR THE FOUR QUARTERS OF 2006

| | | | | <u>Jan/Mar</u> | <u>Apr/Jun</u> | <u>Jul/Sep.</u> | <u>Oct/Dec</u> | <u>Total</u> |
|--|--|--|--|----------------|----------------|-----------------|----------------|--------------|
| <i>Bills of Indictement</i> | | | | 4 | 10 | 5 | 4 | 23 |
| <i>Cases remitted to Magistrates Courts for Judgement including Counter Orders</i> | | | | 70 | 59 | 34 | 50 | 213 |
| <i>Consent for Summary Proceedings in terms of Section 370(4) Of Crim. Code</i> | | | | | | | | 789 |
| <i>New Preliminary Investigations referred to the Attorney General by the enquiring Magistrate</i> | | | | 98 | 96 | 88 | 93 | 375 |
| <i>New cases remitted to the Attorney General as per Article 392a1 after a "Guilty Plea" is registered</i> | | | | 19 | 28 | 29 | 37 | 113 |
| <i>Drug Cases examined under Caps. 31 and 101 for Attorney General's Order to proceed</i> | | | | | | | | 505 |
| <i>Miscellaneous Applications</i> | | | | 257 | 322 | 295 | 283 | 1157 |
| <i>Appeal Applications fom Court of Magistrates including appeals under Articles 392 A(1)</i> | | | | 23 | 23 | 14 | 32 | 92 |
| <i>Proces Verbaux (Malta)</i> | | | | | | | | 1071 |
| <i>Proces Verbaux (Gozo)</i> | | | | | | | | 133 |
| Total | | | | | | | | 1204 |
| | | | | | | | | |

STATISCAL REPORT FOR CRIMINAL PROCEEDINGS FOR THE FOUR QUARTERS OF 2005

| | | | | <u>Jan/Mar</u> | <u>Apr/Jun</u> | <u>Jul/Sep.</u> | <u>Oct/Dec</u> | <u>Total</u> |
|--|--|--|--|----------------|----------------|-----------------|----------------|--------------|
| <i>Bills of Indictement</i> | | | | 8 | 2 | 2 | 6 | 18 |
| <i>Cases remitted to Magistrates Courts for Judgement including Counter Orders</i> | | | | 91 | 92 | 79 | 46 | 308 |
| <i>Consent for Summary Proceedings in terms of Section 370(4) Of Crim. Code</i> | | | | 213 | 273 | 164 | 94 | 744 |
| <i>New Preliminary Investigations referred to the Attorney General by the enquiring Magistrate</i> | | | | 73 | 78 | 67 | 85 | 303 |
| <i>New cases remitted to the Attorney General as per Article 392a1 after a "Guilty Plea" is registered</i> | | | | 34 | 25 | 19 | 20 | 98 |
| <i>Drug Cases examined under Caps. 31 and 101 for Attorney General's Order to proceed</i> | | | | 139 | 98 | 166 | 50 | 453 |
| <i>Miscellaneous Applications</i> | | | | 205 | 266 | 262 | 280 | 1013 |
| <i>Appeal Applications fom Court of Magistrates including appeals under Articles 392 A(1)</i> | | | | 8 | 11 | 19 | 17 | 55 |
| <i>Proces Verbaux (Malta)</i> | | | | 461 | 420 | 289 | 388 | 1558 |
| <i>Proces Verbaux (Gozo)</i> | | | | 16 | 32 | 12 | 11 | 71 |
| Total | | | | 477 | 452 | 301 | 399 | 1629 |
| | | | | | | | | |
| | | | | | | | | |

4. Does your country envisage any reform in the above-mentioned competencies of the public prosecutor?

No further reforms are envisaged at present.

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?

The public prosecutor acts within 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?
- b. Are there specific rules governing the exercise of these functions? What is the basis of such rules (the law, custom or practice)?
- c. Does it enjoy other rights and duties ? Please specify.

N/A

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.

There have been no adverse decisions by the European Court of Human Rights relating to the Attorney General as a public prosecutor.

- 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.

(No) The role of the Attorney General in his capacity as public prosecutor is also regulated and sanctioned by article 91(3) of the Constitution of Malta.

“In the exercise of his powers to institute, undertake and discontinue criminal proceedings and of any other powers conferred on him by any law in terms which authorise him to exercise that power in his individual judgment the Attorney General shall not be subject to the direction or control of any other person or authority.”

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?

N/A