COUNCIL OF EUROPE CONSEIL DE L'EUROPE

Website of the Conference
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PROSECUTORS' COMPETENCIES OUTSIDE THE CRIMINAL FIELD

REPLIES TO THE QUESTIONNAIRE

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Conference of Prosecutors General of Europe

Co-ordinating Bureau

PROSECUTORS' COMPETENCIES OUTSIDE THE CRIMINAL FIELD

QUESTIONNAIRE

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

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)?

b. Please indicate the background explaining their existence.

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.

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

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.

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

ANDORRA[1]

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

Yes.

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)?

Article 93.1 of the Constitution of Andorra of 28 April 1993 stipulates: "The Prosecution Service has the task of protecting and upholding the legal system, and the independence of the courts, and promoting before them the enforcement of the law, in order to safeguard the rights of the citizens and protect the general interest."

Under Article I of the Public Prosecution Act of 12 December 1996, the Prosecution Service "1. Shall ensure that the judicial function is carried out efficiently, in keeping with the law and in the terms and time frames stipulated therein, by means of the appropriate action, remedies and procedures where applicable; 2. Shall enforce respect for the constitutional institutions and for fundamental rights and public freedoms, through the procedures necessary to uphold them; 3. Shall use the powers vested in it by law to defend the independence of the judges and the courts."

Similarly, Article 3 of the Public Prosecution Act states that "Within the mission assigned to it, the Prosecution Service:
(…)

- 10. Shall intervene in all civil proceedings in which absent persons, minors or persons who are legally incapable or defenceless have an interest and, as a party, shall exercise the right to appeal. Where appropriate, in their interest, it shall make guardianship arrangements.

- 11. Shall intervene, in keeping with the relevant laws, in the *habeas corpus* procedure and in urgent proceedings to protect the rights and freedoms granted in Titles III and IV of the Constitution, as well as in appeals or proceedings concerning constitutional guarantees and proceedings relating to any matters concerning the constitutionality of laws and legislative decrees and, where applicable, in interlocutory proceedings concerning unconstitutionality.

- 12. Shall intervene, in defence of the general interest, in keeping with the civil registration Act, in all proceedings concerning people's civil status.

[1] Original reply received in French, see Appendix

- 13. Shall intervene in disciplinary proceedings taken against judges and public officials.

- 14. Shall submit reports concerning candidatures to the Andorran Bar, under the terms laid down in the Code of Criminal Procedure. And also keep the list of persons authorised to practise law.

- 15.- Shall carry out all the other duties assigned to it by law.

Article 60 of the *Llei Qualificada*[2] on Marriage of 30 June 1995 stipulates: "1.- Action to obtain a divorce or the annulment of a civil marriage shall be taken by: …/…b) the Prosecution Service; under Article 53 of the same law, "all measures concerning the education and custody of children shall be taken in their interest and for their benefit. The civil court shall decide, if possible after consulting the under-age children concerned and hearing the Prosecution Service.

Similarly, the *Llei Qualificada* of 21 March 1996, on adoption and other forms of protection of minors at risk, and the *Llei Qualificada* of 3 November 2004, on legal incapacity and guardianship, assign a role to the Prosecution Service in the organisation of guardianship and adoptions.

b) Please indicate the background explaining the existence of these competencies.

Intervention by the Prosecution Service is necessary in view of the vulnerability of the people concerned, the need to protect them, and the need to guarantee constitutionally recognised fundamental rights and public freedoms.

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.

Under the provisions of Article 5 of the Public Prosecution Act, "1. The action of the Prosecution Service shall remain subject to the Constitution and the law. 2. The Prosecution Service shall pronounce itself, inform and take the relevant action or, where appropriate, oppose improper action, in conformity with the system in force."

The Prosecution Service's action in the above cases takes the form of reports which are mandatory but not binding. It has the power to lodge appeals against decisions it considers are not in conformity with the legal system in force.

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

[2] *Llei qualificada*: a law the enactment of which requires a larger majority than usual.

The Prosecution Service has decision-making powers only in applications made directly to it and in its own investigations.

The decisions it takes concerning these applications or investigations are not open to appeal. However, where the Prosecution Service dismisses their applications, the interested parties may take the case before the competent court.

2. 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.

JUDICIAL YEAR	**00-01**	**01-02**	**02-03**	**03-04**
CRIMINAL	4363	4372	5209	6335
CIVIL	419	489	501	613
CONSTITUTIONAL	28	20	21	20
FUNDAMENTAL RIGHTS	27	8	23	15
COMPLAINTS	25	18	27	21
INVESTIGATIVE MEASURES	11	15	19	19

ARMENIA

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

Yes, there are some competencies outside the criminal field.

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

The prosecutor outside the criminal sector has the right, especially, according to the Article 103(4) of the Constitution of the Republic of Armenia, the Procuracy shall bring actions in court to defend the interests of the state. At the same time, by the Article 31 of the Law on Procuracy, in case available information about prepared violation of law by official and (or) citizens, the prosecutor warns them in the written form about the impermissibility of violation of law. According to the Article 32 of the same law, in order to eliminate reasons and promoting conditions causing committed violation of Law, the prosecutor presents a motion to state or local self-government bodies, organizations or their officials possessing authority to eliminate these conditions and causes. The mentioned bodies and persons must within month report to the prosecutor about results of discussion of the motion and measures taken in the written form.

B. Please indicate the background explaining their existence.

These functions are provided by the Constitution and the Law on Procuracy.

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

In cases envisioned of the Law on Procuracy and established procedure, the prosecutor lodes a complaint in support of state interests in the court.

The prosecutor makes decisions to initiate administrative prosecution.

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

Appellation to the higher prosecutor, as well as to the 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.

During 2002 the Department for protection of State interests, has presented 245 motions, made 1148 warnings about impermissibility of violation of law, 223 persons were subjected to disciplinary liability.

During 2003 the Department for protection of State interests, has presented 70 motions, made 114 warnings about impermissibility of violation of law, 249 persons were subjected to disciplinary liability. During this period 362 persons were subjected to administrative liability.

During the 1st half of 2004, the Department for protection of State interests, has presented 166 motions, made 939 warning about impermissibility of violation of law, 120 persons were subjected to disciplinary liability. During this period, 13 administrative prosecutions were initiated and 45 persons were subjected to administrative liability.

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

The Draft amendment of the Law on Procuracy is process of discussion by the Government of the Republic of Armenia.

AUSTRIA

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

Yes.

2a. 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 public prosecutor has little competencies in the field of civil law: He can take legal action for nullity of marriage and file an application for official declaration of death at a civil court.

b. Please indicate the background explaining their existence.

The reason for these competencies is public interest in those matters.

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.

The public prosecutor acts also in these fields ex officio. He is petitioner at the civil court which decides.

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 public prosecutor has no decision-making power; he is petitioner at a civil 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 at a whole.

These competencies are of little importance; they make few work for the prosecution service as a whole. Only actions for nullity of marriage in cases marriage hade been made only for obtaining Austrian citizenship are significant. Statistics are not available.

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

No.

BELGIUM[3]

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

2a. If so, what are these competencies? 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.

The prosecution service's intervention in so-called civil matters is governed by Section 138, paragraph 2, of the *Code judiciaire* (Courts Act), which states: *In civil matters, the prosecution service shall intervene by instituting legal proceedings, making submissions or issuing an opinion. The prosecution service shall act of its own motion in the cases provided for by law and whenever public policy ("*ordre public*") so requires.*

The term "*ordre public*" occurs in many areas of civil law, and the prosecution service's scope for intervention is therefore very broad. In addition to intervening in the criminal field, it can intervene by issuing an opinion, instituting legal proceedings or making submissions. It has several roles: that of State Counsel, in cases where it is required *ex officio* to deliver an opinion or where "*ordre public*" is under threat; that of investigator in a case (see Sections 138, 931 and 1280 of the Courts Act); and that of executing court decisions.

The prosecution service arranges, *ex officio* or on request, for the execution of court decisions in all matters concerning "*ordre public*" (Section 139 of the Courts Act). It also has an important function in business law, investigating and prosecuting business crimes and financial offences (Section 764, paragraph 8, of the Courts Act), and in social law.

1. Prosecution service opinions

When the prosecution service issues an opinion, it is not at the request of the parties to the case. It intervenes *ex officio,* for example in descent proceedings.

It intervenes for the purposes of reviewing the exact scope of the law in matters affecting "*ordre public*" to ensure that public policy is not undermined. In its opinion the prosecution service puts forward what it considers to be a "fair and sound" interpretation of the law. The opinion may be written or oral and is not binding on the judge: it is simply consultative. It is, however, undeniably useful for "a prosecutor to come and explain, objectively and impartially, to the court the point of view of the law, as it emerges from the case file and the proceedings; this will determine the outcome of the trial. (…) The prosecutor's intervention will make it easier (…), on occasion, to analyse delicate or difficult cases more closely and improve the administration of justice".[4]

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[3] Original reply received in French, see Appendix

[4] H. Solus and R. Perrot, *Droit judiciaire privé*, Paris, Sirey, volume I, No.87.

In proceedings for the granting of Belgian nationality, the prosecution service gives its opinion to the administrative authorities.

The prosecution service's right to institute legal proceedings

The prosecution service intervenes in *ex officio* in cases where the law expressly authorises it to do so and in cases where "*ordre public*" or the public interest are severely endangered by a situation which needs to be remedied. Proceedings to annul a marriage of convenience [contracted to circumvent entry and residence rules] are an example. In such cases the prosecution service is allowed to institute civil proceedings, intervene in proceedings and even appeal. The prosecution service may also appeal against a decision in a case to which it is not party or in which it has expressed an opinion. The purpose of such an appeal is not just to ensure compliance of the decision with the law and consistency of the case-law, but also to protect parties who have conducted their case poorly. The prosecution service has considerable powers outside the criminal field, in connection with business matters, family affairs, youth protection, labour law and disciplinary proceedings. The State Prosecutor's Office is competent to institute disciplinary proceedings against judges, bailiffs, solicitors and barristers.

For a more detailed explanation and further responsibilities, see Appendix 2.

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

Action by the prosecution service is judged by the courts, whose judgments may be appealed against on the merits or on points of law.

An ordinary appeal is lodged when a party that feels wronged by a judgment submits it to a higher court to have it changed. As soon as a judgment is handed down, it may be appealed against, even if it is a decision ordering further measures before the final judgment is delivered, or a default judgment.

The Court of Cassation ensures that the law is properly applied by the courts and therefore rules only on the lawfulness of the contested decision, and not on the merits. In other words, it hears, at last instance, decisions referred to it because of a violation of essential formal requirements or procedural rules that must be observed if the judgment is to be valid.

3. Please give an indication of the effective use of these competencies and the workload they entail for the prosecution service as a whole.

A judicial district with a population of 250,000 inhabitants has one public prosecutor and 18 deputy public prosecutors. Two deputies are responsible for non-criminal cases, each dealing with some 400 cases a year in which they intervene by bringing legal proceedings and 250 cases a year in which they intervene by issuing an opinion.

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

Not at present.

BOSNIA AND HERZEGOVINA

1. Prosecutor's offices in the Federation of Bosnia and Herzegovina have competencies outside the criminal field.

2. A). Prosecutor's competencies outside the criminal field are following:

2.1. In non-litigation procedure – according to the Law on Non-Litigation Procedure ("Official Gazette of the Federation of Bosnia and Herzegovina" No. 2/98, 39/04), prosecutor is entitled to file a request for the protection of legality as an extraordinary legal remedy against final court decisions;

2.2. In civil procedure – according to the Law on Civil Procedure ("Official Gazette of the Federation of Bosnia and Herzegovina" No. 53/03), prosecutor is entitled to file a request for the protection of legality as an extraordinary legal remedy under conditions prescribed by Article 456 paragraph 1 of the same Law, against final court decisions;

2.3. In cases involving the register of companies – according to the Law on Registration of Legal Entities into a Court Registry ("Official Gazette of the Federation of Bosnia and Herzegovina" No. 54/00, 49/00, 32/01, 13/03, 50/03), prosecutor is entitled to file a request for the protection of legality against final court decisions in cases of registration of legal entities;

2.4. In administrative proceedings – according to the Law on Administrative Procedure ("Official Gazette of the Federation of Bosnia and Herzegovina" No. 2/98),

prosecutor is entitled to file a request for the protection of legality against final decisions of bodies of administration;

2.5. In the field of administrative procedure - according to the Law on Administrative Procedure ("Official Gazette of the Federation of Bosnia and Herzegovina" No. 2/98), prosecutor is entitled to file a request for the protection of legality as an extraordinary legal remedy against final court decisions in administrative disputes;

2.6. In minor offences proceedings – according to the Law on Offences Breaching Federation Regulations ("Official Gazette of the Federation of Bosnia and Herzegovina" No. 9/96), prosecutor is entitled to file a request for the protection of legality against final court decisions in minor offence proceeding;

Note: Request for the protection of legality is an extraordinary legal remedy and is being filed upon request of the competent prosecutor against final court decisions.

2.7. Besides being entitled to file requests for the protection of legality under the mentioned laws, the prosecutor is also entitled to:

- in accordance with the Law on Associations and Charities ("Official Gazette of the Federation of Bosnia and Herzegovina" No. 45/02) instigates proceeding to prohibit the work of association under conditions prescribed by law;

- in accordance with the Law on Execution of Criminal Sanctions in the Federation of Bosnia and Herzegovina ("Official Gazette of the Federation of Bosnia and Herzegovina" No. 44/98 and 42/99), files a motion for postponement of the execution of sentence of final court decision;

B). Main motifs of the legislator to vest to the prosecutor powers in terms of the above mentioned laws outside the criminal field, are comprised in their determination and strivings to ensure efficient control of the legality by a state body which is not, as a rule, a party in these proceedings.

C). In the above mentioned proceedings prosecutor acts upon the request of the parties in those proceedings and is entitled to accept the initiative and to file a request for the protection of legality, as an extraordinary legal remedy, against final decisions that are presumed to have violated the law, or to discard the initiative as unfounded, while the competent court has the role of making decision (as a rule it is the Supreme Court of the Federation of Bosnia and Herzegovina), in terms whether the prosecutor's request is founded or not.

D). Parties who had filed initiative are not entitled to commence any legal remedy against decisions of the prosecutor regarding the said initiative for the protection of legality.

3. Due to the extensiveness of information we are not able to present statistical data, but general opinion is that competencies outside the criminal field are burdening to

a large extent prosecutor's offices and activities are commenced to transfer these competencies to a different body.

4. Reform of judiciary system in Bosnia and Herzegovina is underway, and during this reform a need and justifiableness of taking the competencies outside the criminal field from the prosecutors will be reviewed.

BULGARIA

1. The public prosecutor's office in the Republic of Bulgaria has powers in spheres other than penal law. 2.a. The public prosecutor's office has powers under the civil law (e.g. under the Family Code), and the administrative law. Besides, the Chief Public Prosecutor in his capacity of the head of public prosecutor's office has the power under the Constitution to make inquiries to the Constitutional Court for interpretation of constitutional rules and declaring acts of Parliament non-compatible to the Constitution.

2.b. The powers of the public prosecutor's office in the field of civil and administrative law are based on the rule in Article 127, points 3 and 4 of the Constitution of the Republic of Bulgaria. According to the current doctrine the view is that the public prosecutor is not only state prosecutor but also the representative of the state and keeper of the law (*conservator legis*). This presupposes participation of public prosecutors in civil and administrative proceedings with the aim of guarding the public interest and enhancing the rule of law.

The power of the Chief Public Prosecutor to address the Constitutional Court stems from the separation of powers. Judiciary, part of which is the public prosecutor's office and the Chief Public Prosecutor himself, ensures the balance between the three branches of power in the state, including by supervising the compliance of the acts of Parliament to the Constitution of this country the latter being the supreme legislative act.

2.c. Public prosecutor is a party to civil and penal cases which ensures the protection of the public interest and the precise observance of the law. In this sense public prosecutor is not a deciding body. Such a deciding body is only and solely the court which administers jurisdiction in the proceedings.

4. In the Republic of Bulgaria, the Up-to-date government strategy for court reform provides for the drafting of Code of Administrative Procedure by the end of 2005 as a long-term priority. The draft Code made so far does not provide for the participation of public prosecutor's office in the administrative proceedings since this will not comply with the current Constitution, it is sharply criticized including by highly qualified university professors. This issue will be obviously resolved after thorough discussion on the nature of the administrative procedure and the defense of the public interest.

The Chief Prosecutor of the Republic of Bulgaria has a number powers outside the criminal domain, as regulated by the Constitution of the RB and individual laws. This situation is substantiated by the status and functions of the Chief Prosecutor and the Prosecutor's Office in the RB, as determined by the country's basic law.

The prosecutor's office monitors the observance of legality by:

Bringing to justice under the procedure established by the law any persons who have committed crimes, and maintaining the accusation in penal cases of general character;

Exercising supervision over the enforcement of penal and other compulsory measures /Under the Public health Act it initiates the drafting of motions to the court for the accommodation of natural persons under compulsory treatment in the event of mental illness/.

Undertaking steps for the revocation of irregular deeds and for the reinstatement of rights infringed unlawfully, in pressing urgent cases;

Participating or initiating the taking of civil and administrative action in the cases provided for in the law, when public interest has been violated.

POWERS OF THE CHIEF PROSECUTOR UNDER THE CONSTITUTION AND LAWS OUTSIDE THE CRIMINAL DOMAIN

POWERS UNDER THE CONSTITUTION OF THE REPUBLIC OF BULGARIA

The Chief Prosecutor is empowered at his own initiative to refer to the Constitutional Court /art. 150, par. 1 of the Constitution of the Republic of Bulgaria/.

POWERS UNDER THE BAR ACT

The Chief Prosecutor participates in open sessions of the Supreme Court of Cassation in a panel presided by the presiding judge of the court, when complaint is considered in which the legality is contested of the election of a member of the Supreme barrister's Council /art. 98 BA/.

POWERS UNDER THE BULGARIAN CITIZENSHIP ACT

Proposals for the revocation of naturalisation or for stripping of Bulgarian citizenship are put forward by the Chief Prosecutor /art. 31 BCA/.

POWERS UNDER THE SUPREME ADMINISTRATIVE COURT ACT

The Chief Prosecutor of the Republic of Bulgaria, or the Deputy Chief Prosecutor of SAC are entitled to submit cassation objections for the inception of a procedure before the Supreme Administrative Court on administrative cases /art. 33 in connection with art. 8 SACA/.

The Chief Prosecutor of the Republic of Bulgaria, or the Deputy Chief Prosecutor of SAC are entitled to demand the revocation of a decision in force within one year from the arising of the grounds for such revocation /art. 41, par. 2 SACA/.

POWERS UNDER THE REGULATORY NORMS ACT

Within the limits of competence vested into the Chief prosecutor under the Constitution, he can raise an objection demanding the revocation of a regulatory norm or of individual

provisions thereof, if they contradict a regulatory norm of a higher degree /art. 16, par. 2 RNA/.

The Chief Prosecutor is entitled to demand the interpretation of a regulatory norm /art. 48, par. 1 RNA/.

The Chief Prosecutor plays the role of counsel in the cases instituted by the Constitutional Court when interpreting or declaring the anti-constitutional character of laws, when stating his view as an interested party, provided that himself has not initiated the process.

The Chief prosecutor participates in the work of colleagues in Supreme Courts when interpretative decisions are adopted; he can also initiate the adoption of such.

The Chief prosecutor possesses the initiative of approaching the National Assembly on stripping deputies of their immunity and before the Constitutional Court – for stripping the immunity of judges from the same court.

Prosecutors in the Republic of Bulgaria decide on the arraigning of persons with bills of indictment, as well as in the issuing of a refusal to initiate a penal procedure, in the termination of a procedure already instituted and in the restitution of unlawfully violated rights in urgent and pressing cases.

d. Prosecutors are not entitled to decide whether their acts are subject to control. All acts of prosecutors are subject either to a judicial or a hierarchical instance control.

3. Statistical data are set out in Attachment 1.

4. The reform concerns rather the criminal domain. Forthcoming is the elaboration of an entirely new Criminal Procedure Code aimed at higher efficiency of penal prosecution against persons who have committed crimes. The measures are provided for in a National Concept adopted by the Council of Ministers of the R of Bulgaria late in 2004 on a reform of criminal jurisdiction. Part of these reforms for the increase of efficiency in prosecutors' work are as follows:

introduction of quick procedures such as non-obligatory pre-trial proceedings at the discretion of the prosecutor, termination of court procedures in the event of indisputable confession by the defendant, etc.;

consolidation of the person of the 'supervising' prosecutor – irremovable from the institution of the pre-trial procedure up to the preparation of the bill of indictment and as an accuser in the court phase;

powers of the prosecutor to order the immediate filing of a bill of indictment in the court (i.e. the non-performance of investigation) in the availability of indisputable evidence for the prosecution;

putting limits to procedural formalism when it is an obstacle to operational, effective and timely investigation;

remittal of cases to investigative bodies on the part of the prosecutor should be limited only to cases when evidence to be used in court is corrupted.

CROATIA

1. Does the prosecution service have any competencies outside the criminal field?

The Constitution of the Republic of Croatia defines the prosecution service (called Public Attorney's Office) as an independent judicial authority empowered and responsible to proceed against the perpetrators of criminal and other punishable acts as well as to take legal actions for the protection of the property of the Republic of Croatia and to use legal means for the protection of law and order.

Until the Public Attorney's Office Act took effect in 2001, the State was represented by the State Attorney's Office as an independent authority, which was thereby superseded, with its responsibilities transferred to the Public Attorney's Office (PAO), specifically its civil administration departments.

2. What are the competencies of the prosecution service?

The PAO's competencies to represent the Republic of Croatia before all courts and administrative bodies for the protection of its property rights arises from the constitutional definition, elaborated in the said Public Attorney's Office Act, which means that by law the PAO is also the Republic of Croatia's legal representative.

These matters concerning the representation of the Republic of Croatia are dealt with by the Civil Administration Department of the PAO. In judicial and administrative proceedings the PAO or the Republic of Croatia as its client has the same position as any other party, to the effect that all legal means provided by law can be used.

There are two ways in which the PAO protects the constitutional order and law:

a) The PAO is authorised to file a request against a decision of the Administrative Court for the protection of legality, if convinced that the decision has violated the law. Such a request for the protection of legality is decided upon by the Supreme Court of the Republic of Croatia. The earlier State Attorney's Office was authorised to use the same legal means against the decisions of regular courts, which was annulled by the last year's amendments to the Litigation Proceedings Act.

b) Within other competencies derived from special regulations, e.g. the Agricultural Land Act, the Hunting Act and other, the PAO has to give its previous opinion on purchase contracts or lease agreement involving state-owned real estate. This competency is bestowed on PAO in order to ensure the legality of procedure and reduce possible irregularities in the ongoing privatisation process.

If parties proceed with a deal in defiance to the POA's previous negative opinion on its legality, the POA has the right to take action before the competent court in order to have the transaction declared null and void. The POA represents the State and acts with the purpose of protecting legality, hence it is not committed to any instructions from the

Government or other authorities, but it has to submit annual reports to the Croatian Parliament and keep the Government informed whenever it finds necessary to do so due to a great number of cases brought to its attention or the importance of certain cases.

3. Statistics taken from the Annual Work Report

Based on internal updates, in 2003 we were dealing with 38,635 litigation cases in which we act as legal counsels. Of this number 6,620 or 17.1% were lawsuits in which the Republic of Croatia, ministries and state administration bodies were plaintiffs, whereas in 32,015 or 82.9% of cases they were defendants.

POA has filed requests for the protection of legality against 309 court decisions outside the criminal law, although there were many more proposals for resort to this extraordinary legal remedy, but in other cases it was assessed that there were no grounds for filing such requests.

4. Is any reform in the mentioned competencies envisaged?

No reforms are envisaged affecting the competencies of public attorney in respect of Civil Departments, but what is expected in view of the winding-up stage of the privatisation process and the economic consolidation of the State as a whole is a drastic reduction in the number of cases put before the POA.

CZECH REPUBLIC

Powers of the Prosecuting Attorneys Office in non-criminal proceedings

The powers of the Prosecuting Attorney´s Office are given mainly by the Criminal Procedure Act 141/1961 Coll. as amended, by the Prosecuting Attorney´s Office Act 283/1993 Coll. as amended and by other regulations mentioned below.

The Act 14/2002 amended the Prosecuting Attorney´s Office Act 283/1993 Coll. substantially. This Act has become effective on 1. 3. 2002. This amendment extended the powers of the Prosecuting Attorney´s Office by non-criminal proceedings, and therefore the powers are now executed in this sphere, too.

1) The Prosecuting Attorney´s Office is authorised to file **a petition initiating a suit.**

a) as per Section 42 of the Prosecuting Attorney´s Office Act, the prosecuting attorney may file a petition initiating a civil proceedings for invalidity of contract for the transfer of ownership in the cases where provisions that limit the freedom of the contracting parties was not respected at its concluding.

b) as per Sec. 21 and Sec. 29 of Act 2/1991 Coll., on collective negotiation, as amended by Act 519/1991 Coll., Act 118/1995 Coll., Act 155/1995 Coll. and Act 220/2000 Coll. – action to determine illegality of a strike or lock-out,

c) as per Section 90, para. 1 of the Youth Justice Act the prosecuting attorney may propose imposition of the measures concerning young people (child younger than 15, which committed an act otherwise deemed as a crime),

d) as per Sec. 35, para. 3 of the Civil Procedure Code ("CPC"), ie. a petition for

- judgment imposing protective measures,
- order to impose or extend a special institution treatment,
- suspension, limitation or deprivation of parental responsibility,
- unless the proceeding was initiated by the court without the petition or based to a petition filed by another petitioner.

e) The Attorney General is entitled to submit motion to cancel an administrative body decision – in proceedings initiated by indictment in administrative justice according to Section 66, par. 2 of the Rules of Judicial Administrative Procedure

f) Based on own findings obtained at exercise of its power, the applicable Prosecuting Attorney´s Office is as a governmental agency authorized to file a petition for

- dissolution of a trading company under the conditions specified in Sec. 68, para. 6 of the Commercial Code,
- new winding-up of a company as per Sec. 75b, para. 1 or para. 2 of the Commercial Code,

- dissolution of a co-operative under the conditions specified in Sec. 257, para. 1 of the Commercial Code,
- dissolution of a benevolent association under the conditions specified in Sec. 8, para. 4 of Act 248/1995 Coll., on benevolent associations and on modifications and amendments to some laws.

g) Petition for nullity as per Sec. 231, para. 2 of CPC (only in matters specified in Sec. 35, para. 1 of CPC) , having a character of an extraordinary remedial measure.

2) As per Sec. 35, para. 1 of CPS, the Prosecuting Attorney´s Office is authorised to **enter the proceedings** in the following matters:

- consent of a parent to adoption necessity determination,
- judgment imposing protective youthful and young offenders rehabilitation as per Sec. 43, para. 1 and 2 of the Family Act,
- order to impose or extend a special institution treatment,
- suspension, limitation or deprivation of parental responsibility,
- deprivation of legal capacity,
- declaration of the death of a person,
- grant of a permission to take or detain a person in a medical/special treatment institution,
- redemption of instruments,
- commercial register, register of benevolent associations, register of foundations and register of associations of owners,
- bankruptcy and composition including disputes incited by such proceedings (Sec. 35, para. 1, letter k) of CPC,
- association of owners (Sec. 35, para. 1, letter l) of CPC,

some issues concerning trading companies, cooperatives and other legal entities (Sec. 35, para. 1, letter j) of CPC, 200e of CPC. This is the case of proceedings in matters specified in Sec. 9, para. 3, letter b), d), e), f) and g) of CPC, referred to by Sec. 200e of CPC; namely:

- status matters concerning trading companies, cooperatives and other legal entities under the part one, two and four of the Commercial Code, ie. mainly in the matters of

  aa) waiver of an obstacle to the exercise of the statutory body or its member´s function as per Sec. 31, para. 4, of the Commercial Code,

  bb) declaration of a trading company invalidity as per Sec. 68a, para. 2 of the Commercial Code,

  cc) declaration of invalidity of a decision on the company´s legal status change as per Sec. 69g of the Commercial Code,

dd) withdrawal of a partner´s assignment to manage a company as per Sec. 81, para. 3 of the Commercial Code,

ee) dissolution of an unlimited liability company upon a motion of a partner (Sec. 90, para. 1 of the Commercial Code) in the case of material breach of another partner´s duty to perform duly or where the reason for which the company was founded cannot be reached,

ff) exclusion of a member upon a motion of a company as per Sec. 90, para. 2 of the Com. Code for material breach of duty to perform duly,

gg) exclusion of a member from a limited liability company for material breach of duty to perform duly (Sec. 149 of the Com. Code),

hh) termination of a member heir´s participation in a limited liability company (Sec. 116, para. 2 of the Com. Code),

ii) termination of a member´s participation in a limited liability company (Sec. 148, para. 1 of the Com. Code),

jj) review of a member´s share in the liquidation balance of a company (Sec. 75, para. 2 of the Com. Code),

kk) paying off the difference between the price specified in the takeover bid and reasonable price (Sec. 183c, para. 5, of the Com. Code),

ll) appointment of missing members of a joint-stock company board of directors, or its winding-up and liquidation as per Sec. 194, para. 2 of the Com. Code,

mm) adequate security as per Sec. 215, para. 4 of the Com. Code,

nn) provision of sufficient security as per Sec. 220j, para. 1 of the Com. Code,

oo) removal of liquidator of a stock corporation and replacement by another person (Sec. 219, para. 2 of the Com. Code),

pp) trading company winding-up and liquidation in the cases specified in Sec. 68, para. 3, 6, Sec. 113, para. 6, Sec. 119, Sec. 161b, para. 4, Sec. 764, para. 2 of the Com. Code and as per Art. II, clause 4 of Act 142/1996 Coll.,

qq) protection of creditors and liability for damage at a company legal status change against company statutory body members (Sec. 69f of the Com. Code),

rr) petition by shareholders for authorization to call an extraordinary general meeting of a stock corporation (Sec. 181, para. 2 of the Com. Code), decision-

making on invalidity of the stock corporation general meeting´s resolutions (Sec. 183 together with Sec. 131 of the Com. Code),

ss) petitions for invalidity of a contract to merge as per Sec. 220a, para. 11 of the Com. Code,

tt) declaration of invalidity of general meeting´s resolution to merge as per Sec. 220h of the Com. Code,

uu) enforcement of a shareholder´s right to a settlement under the conditions of Sec. 220k, para. 2 of the Com. Code,

vv) determination of a higher charge upon a motion of a shareholder who did not agree with undercharges at exchange of shares (§ 220v of the Com. Code),

xx) declaration of invalidity of a cooperative membership meeting´s resolution to exclude a cooperative member, if the cooperative membership meeting´s resolution is in contrary to laws or by-laws (Sec. 231, para. 5 of the Com. Code),

yy) determination of a share in the cooperative´s liquidation balance (Sec. 765, para. 5 of the Com. Code).

- proceedings in the matters of a benevolent association winding-up and liquidation and on appointing of a liquidator as per Sec. 8, para. 4 and 5, Sec. 9, para. 2 of Act 248/1995 Coll., on benevolent associations and on modifications and amendments to some laws, unless the action is initiated by a motion of the prosecuting attorney as a governmental agency as per Sec. 8, para. 4 of the cited Act.

- proceedings in the matters of winding-up of a foundation or endowment fund, on their liquidation, appointing of the foundation´s or endowment fund´s liquidator and on appointing of new members of the foundation or endowment fund board of directors as per Sec. 7, para. 3 to 5, Sec. 9, para. 2 and Sec. 16 of Act 227/1997 Coll., on foundations and endowment funds and on modifications or amendments of some relevant laws.

- proceedings in the matters of winding-up of a state-owned enterprise and on appointing and removal of its liquidator as per Sec. 6, para. 4 and Sec. 9, para. 3 of Act 77/1997 Coll., on state-owned enterprises. It also may enter the proceedings of a state-owned enterprise dissolution with liquidation and appointing of a liquidator, where the state-owned enterprise incorporator did not adapt its foundation charter and supervisory board to Act 77/1997 Coll. (Sec. 20, para. 4 of Act 77/1997 Coll.).

- proceedings regarding disputes arising from legal relationships between trading companies (cooperatives) and their founders (partners or members) as well as

among the partners (members or founders) themselves, if it is the case of relationships relating to participation in the company (membership in cooperatives), relationships arising from contracts by which a partner´s share is transferred (member´s rights and obligations), relationships relating to registered capital increasing (by admitting a new partner or member), unless it is the case of status matters of trading companies, cooperatives and other legal entities. The proceedings under this clause apply mainly to proceedings in the following matters:

aa) if initiated by an unlimited liability company partner´s petition for payment of the contribution off against another partner as per Sec. 82a of the Com. Code,

bb) if initiated by a limited liability company partner´s petition for payment of the contribution off against another partner as per Sec. 131a, para. 1 of the Com. Code,

cc) if initiated by shareholders appointed to act on behalf of a stock corporation for payment of issue price of shares (Sec. 182, para. 2 of the Com. Code),

dd) if initiated by a petition for entering into a contract to buy participation securities (to replace the consent by the court) as per Sec. 183g, para. 1 of the Com. Code,

ee) if initiated by a petition for concluding a contract or indemnification for a damage due to a breach of a commitment to conclude a contract (Sec. 186a, para. 6 of the Com. Code),

ff) admittance of the right to an indemnification incurred to a directed person due to breach of duty to perform duly of persons specified in Sec. 190b, para. 3 of the Com. Code (Sec. 190b of the Com. Code),

gg) if initiated by a petition of partners for determination of an adequate indemnification as per Sec. 190c, para. 2 of the Com. Code,

hh) if initiated by a petition of a shareholder for indemnification against a legal successor of a terminated share corporation (Sec. 220a, para. 3 of the Com. Code).

3) **Supervision** over adherence to legal regulations

- at serving custody,
- at serving a sentence of imprisonment.
- at serving at treatment in a special institution and protective rehabilitation.

DENMARK

1) In general the Danish prosecution service has no competencies outside the criminal field, but due to the double function of the chief constable mentioned above he and his legal staff play a role in a few cases outside the criminal field e.g. cases concerning compulsory detention in a mental hospital. One can of course discuss if the chief constable is acting as police or prosecutor in such situations. Furthermore and actually linked to their competencies in criminal cases against police officers the regional prosecutors also consider and decide on questions concerning the conduct of police officers when on duty.

2) No comments.

3) The total number of complaints concerning police officers' conduct was 385 in 2003.

4) No reforms are envisaged.

FINLAND

1 through 4. Does the prosecution service of your country have any competences outside the criminal field?

In the main, prosecutors in Finland have no competences outside the criminal field except for certain application matters of only minor importance.

(Such matters include declaring a person legally dead, acting as notary public in property transactions and using the right to speak on behalf of the State regarding compensation payable to a person wrongfully detained unless specific counsel has been appointed. A prosecutor may also apply for a restraining order.)

GEORGIA

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

No, the sole function of the Procuracy is indicting person for a crime and supporting charge before the Court.

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)?

b. Please indicate the background explaining their existence.

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.

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

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.

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

GERMANY

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

Since participation of prosecution service in proceedings to null and void marriage was cancelled in the end of the last century local prosecution service does not have any competencies outside the criminal field.

However, General State Prosecutors are appointed to investigate and charge severe violation of professional conduct by lawyers and tax consultants at special avocation courts. Furthermore they are appointed to act for the State when actions for damages are brought to civil law courts.

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)?

Competencies in investigations and trials against lawyers and tax consultants are corresponding to those in criminal cases. Acting in civil actions is corresponding to competencies of all other parties acting in a lawsuit.

b. Please indicate the background explaining their existence.

The competencies may attribute to historic circumstances.

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.

The role of General State Prosecutors according to investigation and trial at avocation courts for lawyers and tax consultants is corresponding to those in criminal cases. In civil actions it is confined to a perception of fiscal interests.

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

not applicable

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 listed competencies are of subordinated relevance.

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

No.

GREECE

1, 2a, 2c. POWERS OF A DISTRICT ATTORNEY APART FROM CRIMINAL LAW

1. SECURITY MEASURES FOR REAL ESTATES IN DISPUTES OF THE STATE, LOCAL GOVERNMENT ORGANIZATIONS, LEGAL ENTITIES OF PUBLIC LAW WITH INDIVIDUALS (art.22 L. 1539/38). It is referred only to disputes of real estate possession between the State, Local Government Organizations or Legal Entities of Public Law and individuals, that require an urgent settlement. The District Attorney by his decision settles temporarily the situation until the solution of the dispuite by the courts.

2. POWERS IN MATTERS OF VOLUNTARY JURISDICTION-FAMILY LAW. A copy of the petition is imperatively served on matters concerning the certificate of facts for the preparation of a registry act, the pronouncement/removal of presumption of death, appointment/replacement/cessation of a special commissioner, temporary commissioner, supervisory council, licence for the effectuation of certain acts of a minor, of the person having the parental care, of a court custodian, a heir from inventory, a heir of an estate in abeyance, a liquidator of estate, an executor of a testament, adoption and optionally (if the judge orders) on matters of a person's placement under judicial custody. Also, it is served upon the district attorney a copy of the appeal against a judgement that is issued by the proceedings of voluntary jurisdiction with a note for the determination of a date of hearing. Additionally, the district attorney may file an appeal, re-hearing and caveat, while he may file a petition for the certification of a fact for the preparation of a registry act or for correction thereof.

3. INVOLUNTARY HOSPITALIZATION (articles 94-1000 L. 2071/92) i.e. hospitalization without the patient's consent for admission and stay for therapy at an appropriate unit of Mental Health. Upon request of the patient's relatives or even ex-officio if there are none of these persons, the district attorney orders this examination by two doctors of the appropriate specialty. If these two medical opinions disagree, then it is ordered the transfer of the patient in a relevant unit of Mental Health and it is filed a petition at the One-Member First Instance Court by the proceedings of voluntary jurisdiction. Also, through the district attorney, petitions are transferred to the One-Member First Instance Court for interruption or continuation of the involuntary hospitalization while if this exceeds the six months, the district attorney appoints a committee of two psychiatrists who, together with the attending doctor, give their opinion about the hospitalization's extension.

4. REGISTRY ACTS (L.344/76). The District Attorney supervises the registry offices, gives a licence for the registration of the act of attestation of an unsigned registry act, gives the order for the issue of a registry act of death after the interment and within a deadline of thirty days after it, as well as he orders for the correction of mistakes of registry acts that do not concern the place, day, month, year and hour of commitment of the the fact confirmed. Also, for birth, marriage or death of a greek citizen abroad,

provided no registry act was made by the greek consular authority or the local authority, he grants the permission for these to be registered in the Registry Office of Athens, at a special book.

5. BANKRUPTCY (article 573 Commercial Law). The district attorney may go to the bankrupt's residence and attend the inventory. He may also attend any other proceedings of the bankruptcy, become aware of the books and other documents concerning bankruptcy and ask for information from the trustees.

6. SERVICES (for persons living abroad - article 134 Code of Civil Procedure, unkown place of stay - article 135 Code of Civil Procedure, compulsory execution).

7. INSPECTIONS AND AUDIT (art. 265 par.1h L. 1756/88) of the public prosecutors, notaries, registrars of registrations, mortgages, ship registers, land registers, mortgage registers of ships and aircrafts, registrars and clerks, servants and unsalaried court servants.

8. The district attorneys certify the capacity and the genuine signatures of the officials and attorneys and the clerks of their office. The district attorney of first instance also certify the capacity and the genuine signature of the interrogative clerks, public prosecutors, notaries, registrars of registrations, mortgages, ship registers, land registers, mortgage registers of ships and aircrafts, registrars and clerks, servants and unsalaried court servants.

9. He orders for the spiritual solution of the marriage already solved by an irrevocable judgement (art. 50 par.2 L. 590/77),

10. He grants a licence for the effectuation of a civil marriage at another place than that determined as well as a licence of marriage without a previous notification (articles 2, 6 par.3 Presidential Decree 391/82 and 1370 of Civil Code).

11. He intervenes in cases of medical emergency for the avoidance of a risk of life or health of a minor and the parents refuse to grant the relevant permission (art. 1534 Civil Code).

12. He orders for the enterment of unrequested bodies (art. 38 L. 344/76 and Compulsory Law 445/68).

13. The District Attorney of First Instance is entitled to recommend to those who argue, to avoid the commitment of criminal acts and pursue the peaceful solution of their dispute and is entitled to order the services of the state, the legal entities of public law, the organizations of common benefit and all corporations of public domain in general, to deliver documents or to grant copies thereof when asked by legal entities or physical persons entitled to do this or having legal interest for that (article 25 par.4 L. 1756/88).

2b. The above powers are justified by the role the district attorney is called to serve as representative of the state, interested in the protection of the general social interest. Especially in emergencies, by the intervention of the district attorney are secured the fundamental rights of the citizens (i.e. on matters of involuntary hospitalisation) while the audit he exercises in public services, ensures the correct operation thereof and dissuades any arbitrations.

2d. In case of issue of a judgement of security measures for disputes of the State, of Local Government Organisations, Legal Entities of Public Law with individuals, the litigants may file before the district attorney of appeal, a caveat against the judgement of the district attorney of first instance within a period of two months as of the service thereof.

HUNGARY

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

Yes, the prosecution service in Hungary has a lot of competencies outside the criminal area.

The basic rules on the activities and competencies of the prosecution service in Hungary are defined in the Constitution and in the act on the prosecution service of the Republic of Hungary.

The Constitution says that the prosecution service participates in ensuring that everybody (individuals, legal persons, other legal entities) observe the law. If the law was violated, the prosecution service has to act to uphold the law in the cases and manner specified by law.

These competencies of the prosecution service also serve that non-judicial organizations and authorities apply the law correctly, in accordance with the principle of legality.

These competencies of the prosecutor outside the criminal area can be divided into two main types:

The prosecutor:

1. participates in ensuring that everybody observes the law (prosecutorial supervision of the legality)

2. contributes to a correct application of the laws in the course of court proceedings (participation of the prosecutor in the court procedures in certain cases provided by different legal provisions : cases in civil law, labour law, administrative law and law of business , regardless the procedures are litigious or non–litigious).

The structure and activities of the prosecution service in Hungary also reflects the mentioned differences, as beside the criminal branch of the prosecution service, the regional and appellate prosecution offices and the Office of the Prosecutor General has their own civil and administrative law departments.

2a. 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)?

When contributing the correct application of the laws in court proceedings the prosecutor can initiate court procedure:

- for declaring the marriage void;

- for nullifying the marriage if the wife/husband has been incapable at the moment of the marriage service and she/he died since that time;

- for forbidding the wife to use the family name of her husband (if wife was sentenced to imprisonment for committing a crime maliciously and the husband has died before the final sentence);

- (in the name of the child who died earlier) for declaring that the man known as father of the child was not the real father ;

- the man known as the father of the child is not entitled any more to initiate court procedure for declaring he is not the father;

- for nullifying the adoption of minors;

- for claiming child or parents support/alimentation;

- for declaring which of the divorced parents is entitled to live with the child;

- for terminating the parental authority of the mother or the father;

- for declaring the marriage valid, existing or invalid;

- if the person concerned is not able to defend his/her own rights for any reasons;

- for the termination of a foundation if it has become impossible to achieve its objective, or if the foundation's registration is to be refused owing to a change in the law;

  if the legitimacy of the foundation's activities cannot be otherwise ensured. (Then the court can order the foundation's management to restore the lawful operation of the foundation by a specific deadline. If the management fails to comply the court can terminate the foundation.)

- for ensuring the legality of the establishment of public foundations;

- for enforcing the inherent right of a deceased person (former legal person) if a conduct causing defamation to the deceased person infringes upon the public interest.

  Any standard contract condition that is deemed unfair can be contested by the prosecutor.

  If the obligor has not appointed a body to utilize the contribution for the specified purpose, the court can appoint one on the basis of the prosecutor's petition.

If the appointed body fails to utilize the contribution for the specified purpose, the public prosecutor is also entitled to enforce the claims arising there from.

- for establishing conservatorship limiting the competency of a person;

- for the termination of conservatorship;

- for declaring a contract null in case the contract did harm to public interest;

  if legality of the activities of the non-governmental organization (except for political party!) cannot be otherwise ensured;

  if the ecclesiastical legal person violated the law ;

  if the political party violated the law;

- for having a registration cancelled and the original status reinstated on the grounds of invalidity;

- for instituting legal proceedings with the court challenging the facts established in a certificate of citizenship.

  for the purpose of having the registration of the company annulled), if data included in the resolution does not comply with legal regulations (The resolution of registration of business associations, in approval of the application, may not be appealed.)

  against the company at the county court where the company is established to have the founding document annulled within six months from the date of publication of the resolution ordering registration of the company in the Company Gazette.

  in the event of endangerment to the environment, to impose a ban on the activity or to elicit compensation for the damage caused by the activity endangering the environment.

  against any party causing substantial harm to a wide range of consumers by illegal activities aimed at enforcing the interests of consumers even if the identity of the injured consumers cannot be established.

  in the interest of having a violation of public interest eliminated, the public prosecutor may also file an appeal against the building authority's resolution in the second instance within the period of appeal available to the parties.

  against the person who violated the law on animal protection;

appeal for the alteration of resolutions passed in matters of trademark registration and revocation;

to ask for the changing of a decision made in the issue of granting and/or annulling a patent, on the basis their commercial exploitation would be contrary to public order or morality.

for legal remedies against court decisions and actions, if it pertains to a demurrer of execution filed by the prosecutor in question.

for missing persons be declared legally dead by the court five years after the date of disappearance if there has been no information of any kind during this five-year period to indicate that they are alive.

to have the non-profit status of a non-profit organization cancelled, or for reassignment to a lower non-profit category, with the court competent for registration if the operation and asset management of such non-profit organization violates the provisions set forth in this Act, in its instrument of constitution or in the internal regulations drawn up on the basis of such, and if the organization in question fails to remedy the situation in spite of notification by public prosecutor's office.

for the annulment of a contract or contract clause pertaining to the acquisition of title of ownership of arable land.

Furthermore - in the framework of supervision of the legality – the prosecutor:

can supervise the legality of rules issued by public administration organs (bodies) of a lower level than the Government and by the organs of self government (local authorities) and other legal means of the state guidance as well as general orders and individual decisions made by them.

the prosecutor can launch a protest against a legal provision if it is against the Constitution or a legal rule of higher level,

makes decisions on petitions, notices of public interest and signalizations about violation of the law, or unlawful omissions of measures by bodies of public administration and any other organs other than courts

can perform examinations or initiate the procedure of the competent organ (body) to carry out an examination for supervising the legality of operation

prosecutor also can ask the leaders of the examined organs for the necessary documents, information and data.

The characteristics of prosecutorial tasks in the area of the supervision of the legality:

- the competence of the prosecutor is restricted to examine whether the operation, rules, and decisions of the organizations fit in with the Constitution and laws. (e.g. the prosecutor can not examine whether the operation and decisions of the organizations are reasonable, effective, economical or not; the prosecutor can solely state whether these organs, individuals,... during their activities and decisions observed the law or not.)

- the prosecutor may not make a decision instead of that organization which he examined. If he finds that the activity or a decision of the organization is against the law, he may initiate a procedure of the superior organization /authority/court or the restitution of the lawful situation by a new procedure of the examined organization. But the prosecutor must not initiate a new procedure if the decision of the organization is based on its discretionary power;

- the task of the prosecutor is the examination of both the actions and operation of the authority;

- the Prosecutor General has competence in controlling the drafts of law, and a number of other legal rules.

- if prosecution service finds that they do not fit in with the law he makes a warning, and eg. if it is against the Constitution, Prosecutor General initiates the procedure of the Constitutional Court;

b. Please indicate the background explaining their existence.

The prosecution service in Hungary has a history of more than 133 years.

The first act (Act XXXIII in 1871) on the Royal Prosecution Service in Hungary also allowed for participation of the prosecutors in civil proceedings, such as in marital and child legitimacy procedures.

Later the Act No 5 in 1972 give the prosecution service a wide range of competences outside the criminal law area, providing also the so called “general competence for the supervision of the legality”.

Since 1994 - the former and relatively wide - competence of the prosecution service has become narrower after the Constitutional Court in its decision had declared the “general competence” of the prosecutor in all civil and administrative cases against the rights of the parties involved in proceedings and therefore unconstitutional.

Because of this decision, the prosecutor ‘ rights to initiate or solely to help the parties in different proceedings was maintained only partly: the prosecutor only has competence in that concrete/particular case if a special legal provision says so, but not in general as it was until 1994 (the competences in details see in Answer to question 2a).

Nowadays the competencies of the prosecutor /listed in Answer 2a)/ constitute a very important part in the system of respect of the rights of the persons/organizations: Without the prosecutors' activities based on the legal provision listed in 2a, there even will not be a chance for terminating the violation of the law eg. in case the interests of the state or the public need to be defended; or the person concerned is not in the position (eg. deceased or incapable) to initiate a court procedure.

Therefore, the competences of the prosecutor are essential, as in several cases it is not to be done without his activity to ensure:

- court revision of the decision of an administrative authority is available for the persons concerned, but in case the decision is against the law and the person concerned does not initiate a court procedure (eg. because the decision is not against the interests of the person concerned, but against the public interest), the prosecutor can still initiate court procedure.
- only the final decisions of different administrative authorities can be appealed at the court, but other (not final!) decisions of them only by the prosecutor,
- in several cases the interest of the state can be defended only by the measure of the prosecutor.

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.

In harmony with the principle of separation of powers and in order to ensure the legality the prosecution service in Hungary has competences only for initiating procedures of (superior) authorities or of courts, if the law was violated:

But outside the criminal law area the prosecution service never has the competence to make a decision instead of, or in the name of other authorities, not even the actions or the decisions of those were unlawful.

Prosecution service is entitled solely to examine whether the law was violated by these organs/authorities and, if necessary, to make either a protest, a warning, or a notice to the competent authorities or initiate court procedures saying the action/measure was unlawful and giving the reason of it.

Consequently the prosecution service in the extra-penal area is usually – either ex officio or upon request - is in the position of supervising and controlling the legality of measures, actions and rules of certain authorities (except the courts), but never has the competence to decide on the merits of the case.

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

Prosecutors outside the criminal law area do not have decision-making powers in Hungary.

They have functions only to consider the petition, the notices of public interest, and signalizations on the alleged violations of law and, if needed, to take different measures to ensure the legality (initiating a procedure of the competent authority/court; writing protest/warning/notice).

They are not entitled to make a decision on the merits of the case, which gives the reason why legal remedy against the conclusions of the prosecutors is not guaranteed by the law.

Of course, the superior prosecutor is entitled to supervise the conclusion of the prosecutor working on the lower level - either ex officio or upon request - and the Office of the Prosecutor General can refer any of these cases to its own competence, or instruct the inferior prosecutors to take necessary measures, too.

Consequently, the measures, conclusions and opinions of the prosecutors can never be challenged by any legal remedy at the courts.

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 the two branches (civil and administrative law branches) of prosecution service has been increasing considerably for years, because both the number of requests for the prosecutorial supervision of the legality and of complaints grew bigger.

<u>In 2003 the total number of measures (involving protests, warnings, notices...)</u>

civil law: 19.249(from among:
7745 on associations,
5141: on foundations,
1601: on business associations)

administrative law branch: 8743

<u>Examinations at public administration bodies, foundations,....:</u>

administrative law branch : 5343

civil law branch: 1204 associations, 764 foundations were examined.

court procedures initiated: 2516 (in 2002:2635):both years 94 per cent of them was successful as courts has agreed with the opinion of the prosecutor.

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

Reforms are not expected to be made in the area of the above mentioned competencies of prosecutors.

ICELAND

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

The answer is no. The prosecution service does not have any competencies outside the criminal field.

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)?

b. Please indicate the background explaining their existence.

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.

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

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.

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

IRELAND

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

Yes, primarily regarding (1) referendum and election petitions and (2) disqualifications of directors of companies.

The primary functions of the Office of the DPP are set out in the legislation establishing the Office - the Prosecution of Offences Act, 1974; see also, e.g. *Annual Report 2002*, Dublin, 2003, chapter 2.

2. 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?)

(i) Referendum and Election Petitions:
Section 3 of the Prosecution of Offences Act, 1974 provided, *inter alia*, that the Director of Public Prosecutions ("the DPP" or "the Director") is to exercise all functions relating to election and referendum petitions previously capable of being performed by the Attorney General. In relation to referendums, this function is regulated by the Referendum Acts. Section 42 of the Referendum Act, 1994 sets out a procedure whereby the DPP may challenge the validity of a referendum on grounds of impropriety or irregularity in the manner in which it was held. It is also worth noting that any citizen who is registered to vote in a presidential election may also bring such a petition to the High Court, and that such petitions are stated in the 1994 Act to be the only means of challenging the validity of a referendum. The High Court may order the recounting of votes in a referendum petition or may order re-voting in a particular constituency on foot of such a petition.

An equivalent provision relating to elections to Dáil Éireann is contained in section 132 and the Third Schedule of the Electoral Act, 1992 (Dáil Éireann is the lower chamber of the Irish parliament).

The role of the DPP in a referendum or election petition is perhaps the most obviously non-criminal function of the DPP. However, there may be a criminal dimension to the reasons for presenting a petition to the High Court, in that electoral fraud (i.e. an offence contrary to Part XII of the Electoral Act, 1992) may be the reason for the challenge to the referendum. The basis for the Director to bring a petition in relation to a Dáil election is possibly narrower than that relating to a referendum petition; for a Dáil election, the DPP may petition "where it appears to" him or her that the election may have been affected by the commission of an electoral offence (section 1 of the Third Schedule of the Electoral Act, 1992), whereas section 43 of the Referendum Act, 1994 refers to such electoral offences as well as to an undefined category of "mistakes or irregularities" in the conduct of the referendum. It does not state in the 1992 or 1994 Acts on what basis the DPP may form a view that an election or referendum is invalid, so the DPP would seem to enjoy a

right of initiative in that regard. The DPP, however, does not have an investigative arm. When exercising his power to prosecute, he does so on the basis of an investigation carried out by another agency, usually the Garda Síochána (the police force).

The rationale for assigning this petition function to the DPP would seem to be related to the statutory independence of the Office of the DPP. The exercise of an impartial or independent judgment in the area of referendum and election matters may have been seen as a way of safeguarding the integrity of the referendum and electoral process and thereby enhancing democracy. However, the parliamentary debates on the 1974 Act throw no light on this motivation.

There are limited provisions on legal remedies in the context of an election or referendum petition. In relation to election petitions under the Electoral Act, 1992, section 17 of the Third Schedule of the Act provides that the High Court may "if it thinks proper" state a case, of its own motion or on the motion of a party to an election petition, for the Supreme Court to address a point of law arising in the course of a petition. It is notable that this recourse to the Supreme Court is not a matter of right, but is within the discretion of the High Court. The Referendum Act, 1994 contains a similar provision in relation to referendum petitions (see section 55).

As a public official exercising a statutory function, the DPP could be subject to a challenge by way of judicial review proceedings as to the performance of his functions, including his functions in relation to referendum or election petition. Judicial review proceedings generally are concerned with matters of procedure and jurisdiction in relation to public bodies; they are not concerned with the merits of a matter – except on very narrow grounds such as bad faith or irrationality. The scope of judicial review in the context of these referendum and election functions of the DPP has never been addressed by the courts.

(ii) Disqualification of Directors:
Under the Companies Act, 1990 (see section 160) and the Building Societies Act, 1989 (see section 64), the DPP has the function of bringing proceedings in court to have a person disqualified as a promoter, officer, auditor, receiver, liquidator or examiner of a company or as a promoter, officer, auditor, receiver or liquidator of a building society.

Disqualifications could be seen as a having a quasi-punitive function and so to be closely related to the policy concerns more strongly reflected in the criminal law proper.

Conviction of the person concerned on a criminal charge is one of the grounds for bringing such an application, but there are other non-criminal grounds, for example, "unfit conduct". Under section 160 of the Companies Act, 1990, an extensive list of grounds for bringing such an applications is set out in relation to companies. For most of these grounds, any member, contributory, officer, employee, receiver, liquidator, examiner or creditor of a company may also bring an application for disqualification of one of these company officers. Some of the grounds of application are more confined in that only either the DPP or the registrar of companies may bring the application (see

subsections (4)-(6) of section 160). A comparable approach is taken under section 64 of the Building Societies Act, 1989.

Specific provision for appeal from the above proceedings is not included in the statutes, however, the normal appeal procedures to a higher court would apply.

(iii) Other:
The Office of the DPP is generally not otherwise involved in non-criminal aspects of the administration of justice.

For example, the Courts Service, the administrative body for the Irish Courts, has recently established a comprehensive review by a committee - the Working Group on the Jurisdiction of the Courts - of the jurisdiction of the different courts in Ireland, under the chairmanship of a judge of the Supreme Court assisted by representatives of the different interests in the system of justice. The first module of the Working Group on the Jurisdiction of the Courts dealt with criminal law, and for the purposes of that module, the Office of the DPP was represented on the Group by a senior official within the Office (the Chief Prosecution Solicitor). However, for the second module of the Working Group's review, dealing with civil law jurisdictional matters, the Office of the DPP will not be represented (for further information, see the Web site of the Working Group: http://www.courts.ie/WGJC.nsf/LookupPageLink/index?OpenDocument).

Occasionally, where an administrative project or scheme is underway that affects the operation of the justice system in general, the Office of the DPP may be involved in non-criminal matters (or matters that have implications equally for criminal and non-criminal law and procedure) to the extent that it may be represented on the committee or group overseeing the work. For example, the Office of the DPP is represented on the Working Group on the Computerisation of the Supreme Court, which operates under the auspices of the Courts Services also and which is tasked with enabling greater use of information technology in the processing of cases and trials by the Supreme 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 functions of the DPP in relation to referendum and election petitions (see (i) in answer to the previous question) have never been invoked to date. The DPP has been made a notice party in election and referendum petitions brought by private individuals. The workload involved in dealing with such occasional cases is small

Statistics on the portion of resources of the Office of the DPP used in bringing proceedings for disqualifying certain corporate officials (see (ii) in previous answer) are not readily available, but again the workload is small.

The amount of time and resources spent on activities referred to in (iii) in answer to the previous question is not extensive in terms of the overall work of the Office. **Usually, a**

particular officer from the Office is assigned to sit on external Working Groups or Committees.

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

In 1998, the *Report of the Public Prosecution Study Group* was published. This Public Prosecution Study Group was appointed by the Government to examine the overall functioning of the prosecution authority in Ireland with a view to assessing the need for reform. It was chaired by a former Secretary to the Government and comprised other senior officials also. The matter of election and referendum petitions and of disqualification of directors being within the remit of the DPP was not considered.

At a statutory level at least, there appears to have been a consistent policy of assigning functions to the DPP concerning referendum and election petitions (see, e.g. the Electoral Act, 1992 and the Referendum Act, 1994). This, however, may simply amount to updating the statutory assignment in the Prosecution of Offences Act, 1974 of such functions to the DPP, rather than that there has been any consistent consideration of the policy of assigning such functions to the Director.

The Office of the DPP itself has asked the Attorney General to consider whether it would be more appropriate to have the above-described functions in relation to referendum and election petitions transferred to another body, given the lack of an immediate connection between these functions and the criminal law and prosecutorial function. In its *Strategy Statement 2001-2003*, Dublin, 2001, the Office stated:

3.3. It is not altogether clear what was the reason for transferring these functions to the Director in 1974. The matter does not appear to have been referred to in the Dáil debates at the time. It may be that it was considered that the Director was an appropriate person to exercise these functions because the basis for bringing election and referendum petitions would in many cases involve an allegation of criminality. If so, this reasoning is not, in the Director's opinion, well founded, as the Director could have to take up a position on an election petition which could compromise a subsequent criminal prosecution. However, it is also possible that the reason for the transfer of this particular function was a desire to have such petitions defended by a non-political person, in view of the possibility that any serving Attorney General could be seen as partisan in relation to an election or a referendum, and that it was in fact intended to confer the Attorney General's former functions on the Director whether or not the petition related to criminality – including, for example, the responsibility to apply to and assist the court on legal issues relating to elections and referendums which might arise in areas unrelated to criminal law.

3.4 Following his review of the matter the Director has come to the conclusion that this function sits uneasily with his primary functions in relation to criminal matters, and has the potential to embroil him in political controversy, compromise his independence, leave him open to allegations of being partisan and involve his office in conflicts of interest. In

addition, there are numerous inconsistencies, anomalies and obscurities in the law. This function could appropriately be transferred to some body other than the Director. If the Director were to be left with any role in this area at all, at the least it would require to be more precisely delineated but the Director's preferred option is that legislation should be introduced to transfer this function to a more appropriate person or agency.

ITALY

First of all, I want to make a reference to the contents of the Document CPGE-BU (2004) 06, where the general frame of these competencies is described at the chapter concerning my Country.

These competencies, very limited and not very important, imply for the PP to take part on hearings before a Court; consequently there is no matter neither of decisions making powers nor of remedies.

The workload is difficult to be calculated, mainly because of the limited importance that these competencies have in practice.

There isn't any envisaged reform in that field.

LATVIA

The Prosecutor General's Office of the Republic of Latvia has been granted line of functions besides the criminal law. The public prosecutor implements operations that are not related to the criminal law through the applications of the physical or juridical persons. Specific functions have been granted to public prosecutors as well as to the Prosecutor – General.

The functions of the Prosecutor – General in the field of non criminal law

The Prosecutor – General has been granted following rights:

1. to plead with an application to Constitutional Court about the approval of laws and regulations which are invalid, if the inferior legal provisions of the legal power are contrary to the superior legal provisions of the legal power;

2. to participate in the meetings of the Cabinet of Ministers (government) and to offer there an opinion about the questions to be examined (consultative function);

3. to participate in the meetings of the *Saeima* (parliament) and with the approval of *Saeima* to offer there one's own opinion about the questions regarding the operation of the prosecutor office (consultative function).

4. to voice a protest to the Senate of the Supreme Court of the Republic of Latvia about legitimate judgment (adjudgment or decision) and the decision that has come into force of the Court of First Instance in the civil case, if:

    - the judgment of the court has not been appealed against the order determined in the law from the independent reason of the participants of the case;
    - with the judgment of the court state or local authority office rights have been involved;
    - with the judgment of the court rights of those people have been involved who have not been the participants of the case.

The Prosecutor – General has voiced seven (7) protests in the winter half of the year 2004, but thirteen (13) protests in the year 2003 in the civil cases.

The functions of the Public Prosecutor in non criminal field

In accordance with the Section 90 of the Civil Procedure, the public prosecutor has rights to pursue a claim or statement in the civil procedure in the following cases:

1. If the rights of acting disabled persons, invalids, minors, prisoners or any other such persons, who have limited possibilities to protect their interests, have been violated.

2. If the rights of the state and local authority have been violated.

The Prosecutor General's Office is the only institution in the Republic of Latvia which has been granted rights by the law to support interests of the state and local authority and to take measures for the protection of the violated rights.

The following statistics can be named when speaking of the imposition of the jurisdiction – fifty-one (51) petition in the civil cases have been filed in the winter half of the year 2004, six hundred thirty – six (636) claims have been adjudicated in the First Instance, one hundred thirty –three (133) appeals have been adjudicated in the Court of Appeal, but sixty-nine (69) cassations in the Court of the Cassation of the civil cases with the public prosecutor being present at them.

Fifty-five (55) applications of the petitions have been filed in the civil cases, one thousand seven hundred forty-seven (1747) petitions have been adjudicated in the First Instance, six hundred thirty-seven (637) in the Court of Appeal, but one hundred seventy-six (176) cassations in the Court of the Cassation of the civil cases with the public prosecutor being present at them[5].

Civil Procedure

The mandatory participation of the public prosecutor in the separate degrees of the case has been determined by the Civil Procedure Law, apart from the fact if the case has been proceeded on the public prosecutor own initiative:

1. Approval and repeal of the adoption (Section 261 of the Civil Procedure Law);

2. Admission of acting disabled persons and foundation of the guardianship (Section 266 of the Civil Procedure Law);

3. Foundation of the guardianship to the person because of undisciplined or improvident life, as well as of immoderate drinking and drug using (Section 274 of the Civil Procedure Law);

4. The announcing of the missing person to be dead (Section 285 of the Civil Procedure Law);

[5] In the named statistics of the civil cases which have been adjudicated in the court with the participation of the public prosecutor, allegations of the state administration offices and action of officials have been included, those are the cases that actually result from the legal administrative relations, because until the 1 February 2004, when Administrative Procedure Law came into force, the order for the cases of this degree were defined by provision of the Civil Procedure Law.

5. To admit strike or announcement of strike illegitimate (Section 393 of the Civil Procedure Law);

The court can also recognise mandatory participation of the public prosecutor of adjudication of the case. The law does not determine cases when court on its own initiative should ask the public prosecutor to adjudicate the case, leaving it to the opinion of the court. In practice it happens in cases if the claim has been pursued against the person, who has limited possibilities to protect his/her interests, for instance, due to age or serious illness and etc.

In the court practice alongside with the cases determined in the law, mandatory participation of the public prosecutor has been recognised in the following degrees of the cases:

1. In the allegations of the Land Register of judge decision;

2. Detraction in the cases of the citizenship.

The public prosecutor who is participating at the proceeding of the case has rights to get acquainted with the materials of the case, declare refusals, submit evidence, take part in the inspection of the evidence, declare request, voice a protest about the verdict or decision. The protest of the public prosecutor against the judgment of court is the reason for proceeding of the case in the court of higher authority, that is, in order of appeal or cassation.

Administrative Procedure

The public prosecutor, when performing the supervision of the law enforcement in the cases of administrative offence, is rightful to:

1. Initiate documentation for an administrative offence;

2. Arrest a judgment in the case of the administrative offence;

3. Voice a protest of the judgment in the case of the administrative offence (Section 242 of the Administrative Offence Code).

Twenty-six (26) cases have been adjudicated in the court with the participation of the public prosecutor in the winter half of the year 2004, but eighty-seven (87) cases of administrative offences in the year 2003.

Besides in the cases of the administrative procedure, when the rights of acting disabled persons, invalids, minors, prisoners or any other such persons, who have limited possibilities to protect their interests, have been violated, the public prosecutor has rights to file an application to the authority or notification to the court to protect rights of the

natural person, which result from the legal administrative relations, that is, not only in the cases which are related with proceeding of cases of administrative offences (Section 29, part 1 of the Administrative Procedure Law, Section 16 of the Prosecutor's Office Law). In this case public prosecutor in the administrative procedure has been granted the same rights as the physical person, in whose protection of interests, notification has been filed, including rights to judicial review of adjudications in the higher authority or court by voicing protest.

Compensation of losses due to groundless disposition of employees of prosecutor's and police office

The Prosecutor's Office is an institution, which decides upon the compensation of losses for physical persons, which have been caused due to groundless disposition of the employees of prosecutor's and police office (function of resolution adoption). This right has been granted in cases when the criminal case is being dismissed in the prosecutor's or police office. The resolution which has been adopted by the prosecutor's office, persona concerned is an titled to appeal against the sentence in the Administrative Court, (the law “about the reimbursement of the caused losses in the result of illegal or groundless disposition of inquiry performer, public prosecutor or judge” Sections 7 and 8).

LIECHTENSTEIN

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

Family law of the Liechtenstein General Civil Code (ABGB, published in the official compilation ASW, LGBl. 1967 no. 34, as amended) provides the public prosecutor with the right to bring legal action in certain cases.

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 ABGB grants the following rights of action to the public prosecutor:

Pursuant to § 158 ABGB, the public prosecutor may contest the legally presumed legitimacy of a child if the husband has not contested it within one year from birth or has died, and if the public prosecutor considers this to be appropriate in the best interests of the child or the child's descendants.

Pursuant to § 164c ABGB, the public prosecutor may bring legal action for determining paternity against the probable father for the common good or in the interest of the descendants if there is not only a recognition of paternity but also reasonable doubt against the paternity of the recognizing party.

These rights of action play a negligible role. They do not affect the functioning of the courts.

b. Please indicate the background explaining their existence.

The office of the public prosecutor only has a subsidiary right of action in the mentioned cases.

The person primarily authorized to bring an action contesting legitimacy pursuant to § 156 et sqq. ABGB is the husband. However, he must contest the legitimacy of the child within one year. Time starts running on the day the husband learns of the circumstances supporting the illegitimacy of the child. The term starts no earlier than at childbirth. The running of time is suspended as long as the husband is prevented from contesting legitimacy by an unforeseen or unpreventable event within the last six months of the term. If the husband of a child's mother has not contested his paternity (i.e. the child's legitimacy) within one year from birth or If he has died, the public prosecutor may contest legitimacy pursuant to § 158 ABGB if he considers this to be for the common good or in the best interest of the child or the child's descendants. The public prosecutor's right of action therefore serves public interests. The public prosecutor's right of action breaks the relatively short term of one year. This is to avoid undue hardship; however,

there is no right on the part of the father or the child for the public prosecutor to bring that action.

The public prosecutor may bring an action pursuant to § 164c ABGB contesting the recognition of the paternity of an illegitimate child pursuant to § 163 et sqq. ABGB in addition to the illegitimate child and the man whose recognition has become legally ineffective because of an abjection, if such action is for the common good or in the best interests of the child or the child's descendants, and if there is a recognition of paternity but also reasonable doubt as to the paternity of the recognizing person. This right of action, too, only serves public interests.

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.

In the mentioned cases of action for the contestation of legitimacy pursuant to §§ 156 et sqq. ABGB and the action for determining paternity, the office of the public prosecutor acts *ex officio*. The decision whether or not an action shall be brought is up to the public prosecutor. Before bringing an action for the contestation of legitimacy or an action for determining paternity, the public prosecutor must examine whether such an action seems appropriate in the public interest or in the best interests of the child or the child's descendants. The public prosecutor only brings the action. The decision is taken by the Princely Court of Justice. In practice, the persons concerned approach the office of the public prosecutor and request that legal action be brought.

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 office of the public prosecutor brings approximately one action contesting legitimacy per year. Over the last few years, there have been no actions for determining paternity against a recognition pursuant to § 164c (3) ABGB. Accordingly, the workload involved is quite low, and no statistics have been collected in that respect.

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

Liechtenstein is not considering a reform of the above-mentioned powers of the office of the public prosecutor outside criminal law.

LITHUANIA

Pursuant to the laws of the Republic of Lithuania, the prosecutor's office has been granted certain competencies outside the criminal field as well.

a. Fulfilling the functions assigned to him, the prosecutor protects the public interest in the cases prescribed by law, in accordance with the procedure and measures established for civil and administrative proceedings. The legislation of the Republic of Lithuania provides no clear explanation of the concept 'public interest', however, this concept ought to be perceived generally as the society interest, which, in individual cases, might be defined to be a specific sphere of social relations or of social group. Besides, the fact that the state interest always equals with the public interest is beyond doubt. The protection of the public interest is an exception to one of the main principles of private law (and of civil procedure as well) – the principle of dispositiveness, according to which any person is entitled to protect the violated rights himself. This exception has been determined for the purposes of protecting a weaker party which is not always capable of applying to the court with a request that the violated right be protected.

b. On 6 November 1992, accompanying the Constitution of the Republic of Lithuania, the 'Law of the Republic of Lithuania on the Procedure for Coming into Force of the Constituion of the Republic of Lithuania' became effective. Article 2 of this Law stipulated that 'laws, other legal acts or parts thereof, which were in force on the territory of the Republic of Lithuania prior to the adoption of the Constitution of the Republic of Lithuania, shall be effective to the extent that they are not in conflict with the Constitution and this Law, and shall remain in force until they are either declared null and void or brought into line with the provisions of the Constitution.' Pursuant to the provisions of this Article, all legal acts which were in force prior to the independence of Lithuania have been reviewed; likewise, amendments to these laws have been adopted for the purposes of bringing them into harmony with the supreme law of the state. Thus, the legal acts which regulated the activities and functions of the prosecutor's office prior to 1992 have been reviewed, and new legal acts, by means of which the provisions of the Constitution of the Republic of Lithuania, determining the constitutional status of the prosecutor's office and legal grounds for its activities, were planned to be implemented, have been adopted.

Up to 1 January 2003, the Code of Civil Procedure of 1964, accompanied by appropriate amendments, was in force in Lithuania. Articles 55 and 56 of this Code provided for the participation of the prosecutor in the civil proceedings. Pursuant to these Articles, in the cases prescribed by law, the prosecutor was entitled to apply to the court with a claim in order to protect the rights of the State and of certain groups of persons (those who were legally incapable, of limited legal capability, juveniles, and the like) as well as the interests safeguarded by the laws. When applying to the court on these grounds, the prosecutor had the procedural rights and duties of a party in the civil proceedings, except for the right to terminate the case by signing a peace agreement. These provisions of the 1964 Code of Civil Procedure were also thoroughly specified in the Civil Code, which was in force since 1964, and where concrete cases, when the prosecutor was entitled to

apply to the court in accordance with the civil procedure, were determined. Apart from the above-mentioned 1964 Code of Civil Procedure and the Civil Code, the prosecutor's function of protecting the public interest was also established in the 'Law of the Republic of Lithuania on the Prosecutor's Office', which was adopted on 13 October 1994 and came into force on 1 January 1995. Accordingly to Subparagraph 7 of Paragraph 2, Article 1 of this Law, 'acting in the protection of lawful interests of the State and defending violated persons' rights in the cases prescribed by law, the prosecutor's office shall collect the material for instituting a civil case and participate in any court when that case is heard'; Paragraph 2, Article 32 of this Law stipulated that 'the prosecutor, when having established the violations of the law, shall, duly considering the nature of these violations, lodge civil actions and claims in any court in accordance with the procedure established by the law on civil procedure, and shall participate in any court when civil cases are heard instituted on the prosecutor's initiative, lodge complaints against unlawful or ungrounded court decisions, rulings, orders that were handed down in these cases.' However, Article 118 of the Constitution of the Republic of Lithuania (adopted in 1992), which determined the constitutional status of the prosecutor's office, stipulated as follows: 'Public prosecutors shall prosecute criminal cases on behalf of the State, shall carry out criminal prosecutions, and shall supervise the activities of the interrogative bodies.' Thus the Constitution determined the functions of the prosecutor's office in the criminal proceedings only, whereas no provisions were made in regard of the prosecutor's participation in the civil proceedings.

This gap in legal regulation resulted in a number of problems: prosecutors had to substantiate their claims to the court lodged for the purposes of protecting persons' rights or the interests of the State. The Constitutional Court of the Republic of Lithuania has also announced its opinion on these prosecutor's activities in its Ruling of 14 February 1994, holding that 'in case some circumstances aggravate the opportunity to exercise one's right to legal protection or make it impossible at all, the declarativeness of the said constitutional right would have to be recognized. Therefore, empowering of state institutions or their officials by law in order to help people in necessary cases to realize the protection of their constitutional rights, is expedient and justifiable but only on condition that it is in compliance with the Constitution.'

By this ruling of the Constitutional Court of the Republic of Lithuania, only one aspect of the public interest was analysed, namely: when the prosecutor applied to the court in accordance with civil procedure for the purposes of protecting the rights and lawful interests of those natural persons who, due to certain objective reasons (minority, senility, physical or psychical disability, etc.), were unable to protect themselves. Another aspect of the public interest is the security of public or state interests and the protection thereof. In the Ruling of 22 February 2001, the Constitutional Court held that the formula 'the rights and interests of the state and other persons safeguarded by laws' employed in Article 55 of the Code of Civil Procedure is to be construed as 'including the rights and interests of the state and various persons in cases of infringement whereof the public interest would be violated also. Alongside, the said formula is to be construed as including such rights and interests which cannot, due to certain circumstances, be

defended by their direct possessor by himself or who has very restricted opportunities to defend them, which also covers his appeal to court.'

Therefore, it is evident that the prosecutor's functions outside the criminal field do not constitute any new form of the prosecutor's activities in Lithuania, simply the former way of legally regulating these activities was not sufficiently clear and precise. On 20 March 2003, the 'Law on the Amendment of Article 118 of the Constitution' was adopted, wherein it was declared that 'prosecutors shall, in the cases prescribed by law, defend rights and lawful interests of an individual, society and the State.' During the period of 2000-2003, new legal acts were also adopted and came into force, namely: the new Civil Code, the new Code of Civil Procedure as well as the revised version of the 'Law on the Prosecutor's Office.' Accordingly to Subparagraph 7, Paragraph 2, Article 2 of the 'Law on the Prosecutor's Office', the prosecutor's office shall, based on the grounds and in accordance with the procedure prescribed by law, protect the public interest. Paragraph 1, Article 19 of the said Law provides as follows: 'Upon establishing a violation of the rights and lawful interests of a person, society or the State, the prosecutors shall protect the public interest in the cases and according to the procedure provided for by laws upon the notification, proposal, application or complaint filed by the person, state or municipal institution or agency, or on their own initiative as well as in cases when the officers, employees of other institutions or persons having equivalent status, who are under the obligation to protect the said interest, failed to take any measures to rectify the violation.' Such legal formula indicates that, when the legal basis regulating this sphere had been reformed, the prosecutor's competencies were extended accordingly. The prosecutor's activities involving the protection of the public interest are not restricted to specific cases, therefore, acting in the protection of the public interest, the prosecutor is entitled to file an action, an application, or a petition before the court whenever he establishes such violation of legal acts which, accordingly to the prosecutor's opinion, substantially influences the rights and lawful interests of a person, groups of persons, society or the State, as well as constitutes reasonable grounds for the legal material claim presented by the prosecutor to be satisfied.

The Code of Civil Procedure guarantees the prosecutor's right to lay an action to protect the public interest. Paragraph 1, Article 49 of this Code provides that the prosecutor, state and municipal institutions and other persons may, in the cases prescribed by law, lay an action to protect the public interest. Under such legal regulation, the prosecutor participates in the civil proceedings as an absolutely independent party, as, the case having been instituted on his initiative, the prosecutor himself is the plaintiff or the claimant. In addition, Paragraph 2, Article 365 of the Code of Civil Procedure provides that, when intending to protect the public interest, the Prosecutor General of the Republic of Lithuania may file an application to the court for the resumption of the civil proceedings in accordance with the procedure established by the rules that regulate the resumption of the proceedings.

The lawgiver not only empowers the prosecutor (after establishing certain violations) to apply to the court for the purposes of protecting the public interest, but also, in particular cases, obliges him to act in this way if the rights and lawful interests of socially weaker

persons have been violated, and these persons themselves are incapable of making use of possible legal remedies provided by the laws. At the present time, the Civil Code and the Code of Civil Procedure of the Republic of Lithuania provide for the prosecutor's right to lay an action, an application or a petition before the court in the following cases: to recognize the transaction concluded by an incapable natural person to be void; to recognize the transaction concluded by a natural person who abuses alcoholic beverages and narcotic substances to be void; to recognize a natural person to be incapable due to mental disease or dementia; to limit legal capacity of a natural person who abuses alcoholic beverages, narcotic or toxic substances; to declare a natural person to be dead; to recognize a natural person to be at unknown location; to restrict the right to independently manage one's finances in respect of a juvenile from 14 to 18 years of age; to designate a temporary administrator in respect of the property of a person whose location is unknown; to recognize a legal person to be unlawfully incorporated, when the purposes of its incorporation are unlawful or in conflict with the public order; to investigate the activities of a legal person, when the activities of a legal person, its managing bodies or their members are in conflict with public interests; to annul the court authorization issued to one spouse to perform specific actions on behalf of both spouses; to annul marriage in the event of violation of conditions set when entering into marriage; to annul false marriage; to terminate marriage in the interests of an incapable spouse, given the conditions of marriage termination; to determine measures for the protection of children's rights, when their parents or guardians (careers) violate children's rights; to restrict the authority of parents or to separate children from their parents; to annul the separation of a child from his parents; to remove the parents from the management of property that belongs to a juvenile; to change the extent and the form of the maintenance ordered to be provided for a child; to reclaim the maintenance of a child from his parents, guardians (careers), who have used it not for the benefits of a child; to annul the guardianship and care granted in respect of a natural person, when the circumstances, on the grounds of which he was recognized to be incapable or partially capable, ceased to exist; to dismiss a guardian (career) from his position, when he unduly perfoms his duties, does not guarantee that the rights and interests of the person under guardianship or care be protected, exploits his rights for personal gain; to establish permanent guardianship (care) for a child; to designate a guardian (career) for the child to whom permanent guardianship (care) has been granted; to grant care and to designate a carer for a capable natural person who, because of his condition of health, is unable to exercise his rights and duties independently. Having guaranteed the prosecutor's right to apply to the court in these specific cases, the lawgiver raises the presumption of the presence of the public interest. Moreover, Paragraph 4, Article 19 of the 'Law on the Prosecutor's Office' ought to be highlighted here, providing as follows: 'acting in the protection of the public interest, the prosecutors who prosecute on behalf of the State shall file a civil action, provided it has not been filed, if damage has been caused by a criminal act to the State or a person who, because of his minority, illness, dependence on the accused or due to other reasons is unable to defend his rights or legitimate interests in court.

Furthermore, reference should also be made to the fact that, upon the establishment of administrative courts in Lithuania, in 1999, the prosecutor fulfills the function of protecting the public interest in accordance with the procedure of administrative

proceedings as well, in cases when administrative legal acts adopted by the administrative entities of the State or municipalities violate the public interest. Subparagraph 3, Paragraph 3, Article 5 of the 'Law of the Republic of Lithuania on Administrative Proceedings' provides that the court shall handle an administrative case 'upon the application of the prosecutor […], filed in cases prescribed by law, for the purposes of protecting State interests or any other public interests.' Paragraph 1, Article 56 of the said Law provides as follows: 'in the cases prescribed by law, the prosecutor […] may file an application before the court for the purposes of protecting the public interest or the rights of the State, municipalities, persons, and the interests safeguarded by the laws.' In this case, the prosecutor has the procedural rights and duties of the party in a case.

Pursuant to the 'Law on Administrative Proceedings', the prosecutor is also entitled to apply to the court with a request to resume proceedings of an administrative case provided that there are certain grounds established by law. Besides, the prosecutor has a right to apply to the court with a petition to investigate whether an administrative act (or part of it) corresponds with a law or a governmental resolution; he also has a right to apply to the court with a request to investigate the legitimacy of the act of general character, when this act has been adopted by a social organization, a community, a political party, a political organization, or an association.

Hence, to sum up, it can be asserted that, in Lithuania, the prosecutor's activities outside the criminal field constitute quite a significant part of all the functions assigned to the prosecutor.

c. Article 3 of the 'Law on the Prosecutor's Office' stipulates as follows: 'The prosecutor shall make his decisions independently and individually, based on laws and the principles of reasonableness, respect human rights and freedoms, presumption of innocence as well as the principle of equality of persons before the law, state institutions and officials, irrespective of their social and family status, duties, occupation, convictions, views, origin, race, gender, ethnic origin, language, religious beliefs and education.' This Article also provides that 'lawful demands and decisions of the prosecutor shall be binding on all state and municipal institutions and agencies, their officials, public servants and employees, natural and legal persons and must be complied with in the entire territory of the State of Lithuania. Failure to comply with the demands and decisions of the prosecutor shall make the above-listed entities liable under law.' These provisions are applicable to all activities of the prosecutor and all the functions performed by him, thus including the prosecutor's activity outside the criminal field as well. As mentioned above, the 'Law of the Republic of Lithuania on the Prosecutor's Office' and the Code of Civil Procedure, while guaranteeing the prosecutor's function to protect the public interest, also oblige him to lay an action before the court in the cases prescribed by law, and provide for the prosecutor's right to take the initiative to apply to the court if there are reasonable grounds to assume that the public interest has been violated. Therefore, acting outside the criminal field, the prosecutor is entitled to decision-making, and he acts independently and individually while reaching those decisions.

Acting in the protection of the public interest in accordance with the procedure established by law, the prosecutor does not perform any advisory role because, when performing this function and applying to the court, he is a party in the civil or administrative case. However, it should be noted that Paragraph 2, Article 49 of the Code of Civil Procedure provides that the state or municipal institutions, differently from the prosecutor, may, in the cases prescribed by law, be included as the members of the proceedings by the court, or enter the proceedings on their own initiative, in order to present a conclusion in the case, aiming to fulfill the functions assigned to them, provided that this involves the protection of the public interest.

d. Paragraph 4, Article 3 of the 'Law of the Republic of Lithuania on the Prosecutor's Office' stipulates that the acts and decisions of the prosecutor may be appealed against to a superior prosecutor following the procedure established by law. This right to appeal is granted to every interested person who holds that the prosecutor's decision violates his rights or lawful interests. This mechanism starts to operate in the sphere of the protection of the public interest when persons lodge complaints, file applications or petitions to the prosecutor's office, and the prosecutor in charge of handling of these documents makes respective decisions. In the case when, acting in the protection of the public interest on his own initiative, under an obligation prescribed by law or upon the request of interested persons or competent institutions, the prosecutor reaches a procedural decision and applies to the court following the procedure established by the Code of Civil Procedure or the 'Law on Administrative Proceedings', respective procedural provisions are applied, and the rules for appealing against the decisions of the court to the court of higher instance become effective.

3. Yearly activity of the prosecutor's office done in the sphere of the protection of the public interest is summed up in the statistics and their reports, which are prepared accordingly to the data from the whole Lithuania. To illustrate the prosecutors' activities in the protection of the public interest, we would like to introduce some data of the year 2003.

Within the year 2003, the prosecutors of Lithuania filed 12 applications before the court following the procedure established by the 'Law on Administrative Proceedings', laid 760 actions following the procedure established by the Code of Civil Procedure, and 719 actions following the procedure established by the Code of Criminal Procedure. It ought to be emphasized that Article 117 of the Code of Criminal Procedure of the Republic of Lithuania stipulates that the prosecutor who prosecutes on behalf of the State must file a civil action, provided it has not been filed, if damage has been caused by a criminal act to the State or a person who, because of his minority, illness, dependence on the accused or due to other reasons is unable to defend his legitimate interests in court. Therefore, pursuant to this provision, the prosecutor is also obliged by the lawgiver to protect the public interest in the circumstances established by law in criminal proceedings. Consequently, when preparing yearly statistical data in respect of activities in the sphere of the protection of the public interest, the civil actions laid in accordance with the procedure established by the Code of Criminal Procedure by the prosecutor, who prosecutes on behalf of the State in a criminal case, are also included.

The cost of real actions and applications of material nature that were filed in 2003 amounted to 22.3 million LTL, 22.2 million LTL whereof were related to the material interests of the State, and 175 908 LTL were related to the interests of natural persons. Last year, 317 actions, applications and petitions were filed in the protection of the interests of natural persons, 175 whereof were filed in the protection of children's interests.

Last year was also marked by a particular focus of attention on the efforts to establish illegitimate acts of restoration of ownership rights to the land, forests and water reservoirs, initiated while carrying out the land reform. Upon establishing such acts, the prosecutors initiated the institution of 21 civil and administrative case in courts on the grounds of the repeal of 62 administrative acts and 15 transactions that followed them.

Last year, 1033 actions, applications and petitions of the prosecutors were handled in courts; 1007 whereof were granted. Pursuant to the granted actions, applications and petitions of the prosecutors, the recompensation of material damage of 4 004 763 LTL on behalf of the State and other persons was awarded.

3. Due to the fact that, as mentioned above, both the amendment of the Constitution of the Republic of Lithuania concerning the status of the prosecutor's office, and new legal acts regulating the prosecutor's activities in the sphere of the protection of the public interest were adopted and came into force only in the period of 2000-2003, this legal basis is not planned to be reformed. It is assumed that legal regulation of the prosecutor's activities in the protection of the public interest may vary insofar as it is related to the coordination of legal acts of the European Union (Lithuania became its member on 1 May 2004), and incorporation thereof into the national legal framework.

On the other hand, because of a changed legal regulation, the above-discussed sphere of the prosecutor's activities is currently undergoing rapid alterations with respect to working practice, which inevitably causes quite a number of problems which, hopefully, may be solved shortly by harmonizing the practice of Lithuania's courts in the cases when certain issues concerning the participation of the prosecutor, who protects the public interest, in the proceedings are being dealt with.

LUXEMBOURG[6]

Question 1:

The Luxembourg legislature has conferred on the public prosecutor numerous competencies outside the criminal field, notably in civil law, commercial law, health law or again in special matters such as the welfare of young persons in respect of domestic violence and in relation to money laundering.

Question 2:

(a) In civil law the Public Prosecutor is responsible for ensuring the proper conduct of matters relating to civil status and thus supervises the registration officers.

Under Article 183 of the New Code of Civil Procedure the communication of civil cases for the purposes of submissions on the part of the public prosecutor is regulated as follows:

"The following cases shall be communicated to the State Prosecutor:

1) those concerning *ordre public*;

2) those concerning the status of persons, with the exception of cases of divorce and judicial separation, and those relating to the organisation of the guardianship of minors, to the opening, amendment or lifting of guardianship or supervision of adults and also to the protection of justice;

3) procedures for settling disputes as to jurisdiction, challenges of judges and referrals;

4) actions for damages against judges;

5) cases in respect of or concerning persons presumed absent;

The State Prosecutor may nonetheless be formally notified all the other cases in which he believes his services to be necessary; the court may even order it of its own motion. If the case is communicated, the State Prosecutor presents his submissions either orally at the hearing or in writing to the court; the written submissions are communicated to the parties before the order closing the proceedings referred to in Article 233 et seq."

In certain specific matters the public prosecutor again intervenes when *ordre public* is affected (for example questions relating to the custody of children in divorce proceedings).

In civil matters the public prosecutor has a purely advisory role, except as regards relations with the registration officers, where he has a supervisory role.

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[6] Original reply received in French, see Appendix

The Principal State Prosecutor also makes submissions in all cases coming before the Court of Cassation, even though the public prosecutor has no jurisdiction in that court in social law matters. This means that the Principal State Prosecutor is regarded as a main party in criminal matters and as a party joined in the proceedings in other cases where he is not a direct party to the proceedings.

B) In commercial law the public prosecutor may request that a trader be made bankrupt or placed in administration. Likewise, the public prosecutor may request that a bankrupt person or a director of a company declared insolvent be prohibited from pursuing an occupation where he has been guilty of gross negligence directly connected with the insolvency.

The public prosecutor may also seek the winding-up and liquidation of a company subject to Luxembourg law which carries out activities contrary to the criminal law constituting a serious breach of the provisions of the Code of Commerce or the laws governing commercial companies, including in matters relating to the right of establishment.

C) The public prosecutor has no role in social law or administrative law.

D) The Principal State Prosecutor plays a leading role in the administration of the courts, where he administers the budget allocated to the courts and is the link between the various judicial services and the Ministry of Justice. In that capacity the Principal State Prosecutor is also consulted in respect of applications for the various posts to be filled in both the prosecution service and the judiciary.

The Principal State Prosecutor and the State Prosecutors are also responsible for maintaining order and discipline, the proper conduct of the service and the implementation of laws and regulations within the courts. They may submit observations in that regard to the President of the Supreme Court of Justice and the President of the District Court.

E) a) As regards money laundering, the Luxembourg legislature decided to allocate the task of the Financial Intelligence Unit to the State Prosecutor at the Luxembourg Court, who is thus responsible not only for prosecuting money laundering offences but also, as the central authority, for receiving reports of suspect transactions from members of the professions subject to the statutory obligation to cooperate and, last, in the context of international anti-money laundering cooperation, for communicating information on money laundering cases to the authorities of another State responsible for combating money laundering.

With reference to suspect transactions, the State Prosecutor may give instructions not to implement a transaction suspected of being connected with money laundering or with the financing of terrorism.

Such instructions are limited to a maximum period of validity of three months from the date on which they are communicated to the professional persons concerned.

The law does not make provision for a special procedure as regards the investigation of the freezing of assets by the Principal State Prosecutor; therefore the procedures available under the general law may be initiated.

The Luxembourg Prosecution Service therefore exercises significant extra-criminal powers in regard to money laundering.

The existence of that special feature in Luxembourg may be explained primarily by the fact that it was not considered desirable to establish a new service.

b) As regards domestic violence, the Law of 8 September 2003 provides that a person committing violence within a household may be excluded from the home for a period of 10 days with the consent of the Prosecution Service; this applies not only where violence has occurred but also where there is merely an indication that the person concerned is preparing to commit a physical assault on a person with whom he cohabits.

In that case, the Prosecution Service may therefore find it necessary to intervene outside the strictly criminal field.

c) In public health matters, the Prosecution Service is also empowered to have a person who represents a danger to himself or to others placed in a secure psychiatric unit where *ordre public* or public security so requires. A person placed in such a unit has a right of appeal before the court against such a measure.

d) In Luxembourg the welfare of young persons is not considered a matter for the criminal law. The legislature regards a young person as a developing person who, in the event of committing misdeeds, must be regarded as the victim of society rather than as the perpetrator of a criminal offence. If a minor is considered to be in danger the Prosecution Service may order that he be placed in a special institution for a period not exceeding one month. However, the Youth Court must be advised forthwith of the measure that has been taken and may adopt a different measure in respect of the young person in question.

Question 3

The activities of the prosecution service in the various fields are of real significance, although it is not possible to state precise figures. It should be noted, however, that two full-time posts and one half-time post as law officer are devoted exclusively to money laundering (in the Luxembourg Prosecution Service, out of a total of 22 law officers). As regards company liquidation, in 2004 the Prosecution Service submitted more than 400 requests for the winding-up and liquidation of companies.

Two law officers are responsible for the welfare of young persons.

Domestic violence matters, which admittedly have a criminal aspect, are also extremely time-consuming.

Question 4

No reform in the competencies of the public prosecutor is envisaged at the moment. However, in certain professional circles the view is taken that it would be preferable if the Financial Intelligence Unit were to be separated from the prosecution service.

MOLDOVA

In conformity with article 51 part 2 of the Criminal Proceeding Code (came into force on 12.06.2003) the prosecutor has the right to initiate a civil case against the accused, defendant or against the person who is materially responsible for the deed of the accused, defendant:

1) in the interest of the damaged person, that finds him/herself in a state of inability to act or of dependence before the accused, defendant, or for other reasons, cannot exercise his/her right to initiate a civil case;

2) In the interest of the state.

Also, the prosecutor presents the general interests of society and defends the legality. The prosecutor defends the rights of the persons with desabilitis and incapacities, the old persons, the children, minors.

MONACO[7]

QUESTION 1

Yes, in pursuance of our domestic law, the prosecution service also has responsibilities in the civil, commercial and administrative spheres. It is active in all the courts.

QUESTION 2 (a, b, c, d)

In civil cases

In accordance with the provisions of Articles 72 *et seq* of Act No 783 on Judicial Organisation, of 15 July 1965:

"The officials of the prosecution service shall also make submissions in civil matters, in cases and on the conditions for which the Code of Civil Procedure provides.

They shall act in civil matters, not through action, but only through submissions in the cases referred to the courts.

They shall act *ex officio* where public policy so requires.

The officials of the prosecution service shall stand up, with their heads covered, when stating the case for the prosecution or making their submissions to hearings.

They shall not attend the deliberations which precede judgments.

They shall nevertheless be required to attend all the assemblies and deliberations relating to internal order and service; they shall be entitled to have added to the deliberations registers the prosecution case which they deem it appropriate to make in this respect".

In accordance with the provisions of Articles 184 to 187 of the Code of Civil Procedure:

"The prosecution service shall make its submissions in the following cases:

1. Those relating to public policy, public property, the Prince's private property, public institutions, and donations and legacies for the benefit of the poor;
2. Those relating to civil status;
3. Those relating to the organisation and administration of temporary or permanent guardianship;
4. Objections to jurisdiction;
5. Challenges to judges;
6. Actions for damages against judges;
7. Cases relating to marriage settlements concerning movable or immovable property;

[7] Original reply received in French, see Appendix

8. Cases of minors, even if declared of full age and capacity; of persons deprived of legal capacity, of persons placed in institutions for the mentally ill, of persons with judicial guardians and, more generally, cases in which one of the parties is represented by a supervisor or an administrator appointed by the court;
9. Cases of persons presumed or declared to be missing;
10. Cases in which the defendant, without a known address or residence in the Principality, did not have the writ served on him or her and fails to appear;
11. Cases of persons who have obtained legal aid;
12. Requests for possession of an estate;
13. Requests for admission that a document is genuine or for proof of handwriting, where the genuineness of a document is challenged;
14. Civil procedures relating to forgery;
15. Requests for revocation;
16. Requests for enforcement of foreign judgments and decisions;
17. Proceedings relating to execution against real property;
18. Objections to the apportionment of the proceeds of execution and to orders;
19. Cases relating to bankruptcy;

and, more generally, all cases where the law requires the prosecution service to be heard.

The prosecution service may also make submissions in all other cases where it considers it useful to intervene. It may always, to this end, apply for documents to be produced for inspection. The court may also *ex officio* order such documents to be produced.

The prosecution service shall make its submissions immediately following the pleadings or, if it requires more time, at a hearing which will be scheduled.

This will be mentioned in the record of the hearing.

Once the prosecution service has made its submissions, the parties may not, on any pretext, take the floor. They will be allowed only to add to their file simple notes drawing attention to any errors of fact that they claim have been made or replying to new arguments.

Such notes must be communicated in advance to the other party and to the prosecution service, who may immediately reply in the same way".

<u>In commercial cases</u>

Under Articles 580 to 586 of the Commercial Code,

"The administrator, as soon as he is aware of the facts for which Articles 574 to 576 (culpable bankruptcy) provide, shall inform the Principal State Prosecutor and the bankruptcy judge.

The latter shall report to the president of the court within three days.

This official shall immediately inform the Principal State Prosecutor, who shall then, at least eight days in advance, summon the debtor or the director of the legal person to a hearing on a set date by the court in chambers in the presence of the administrator, or of the latter, duly summoned by the chief registrar.

The Principal State Prosecutor may also, on his own initiative, refer a case to the court using the same procedure.

The debtor or the director of the legal person shall appear in person; he may have the assistance of a lawyer; if he is unable to attend for reasons duly proven, he may be represented by a defence counsel.

When a personal writ has been served, the decision handed down in the person's absence cannot be challenged.

Any challenge shall be made through a declaration lodged with the general registry within 15 days of service of the decision and containing an address for service within the Principality.

Cases shall be called for hearing through a writ issued on application by the Principal State Prosecutor.

The administrator shall be summoned by the chief registrar.

An appeal may be lodged only by the person declared bankrupt or the Principal State Prosecutor. An appeal shall take the form of a declaration lodged with the general registry within 15 days of the delivery of the judgment.

Cases shall be called for hearing through a writ issued on application by the Principal State Prosecutor.

The administrator shall be summoned by the chief registrar.

The appeal shall be decided within three months.

An application for a retrial shall be decided on the written evidence, in accordance with the provisions of Article 458 of the Code of Civil Procedure.

The final judgment ordering or entailing culpable bankruptcy or one of the measures to which Article 576 refers shall be published, in an extract, in the *Journal de Monaco*, at the expense of the person declared bankrupt.

It shall be recorded in the commerce and industry register and, where applicable, in the register of non-commercial partnerships, whether it concerns an individual or the directors of a legal person.

Any person who, in pursuance of Article 579 (2), wishes to be released from a conviction delivered against him, shall make an application to the court.

The court shall issue its ruling after hearing the administrator, and on the basis of the reasoned submissions of the Principal State Prosecutor.

Articles 588 (1), 590 and 591 shall be applicable.

A decision limiting the period of the prohibition or releasing the person declared bankrupt therefrom shall be published in pursuance of the provisions of the preceding article".

Act No 783 on Judicial Organisation, of 15 July 1965:

"The Principal State Prosecutor shall deal with everything related to general order. He shall supervise civil status matters, property matters, the rights of people in financial hardship, the rights of unauthorised and authorised women in respect of their marriage settlements, the rights of missing persons, the rights of minors and the rights of persons deprived of legal capacity.

He shall also carry out the other duties attributed to him by legislation or orders".

In constitutional and administrative matters

(Sovereign Order No. 2984 on the organisation and functioning of the Supreme Court, of 16 April 1963)

The Principal State Prosecutor or his deputy shall fulfil the functions of the prosecution service in the Supreme Court (Article 5).

The prosecution service shall make submissions in the name of the law (Article 31).

QUESTION 3

The prosecution service is, in practice, represented at all hearings, where its representatives may speak freely. It is under an obligation to make written submissions to the main courts.

QUESTION 4

Significant reform of the Code of Criminal Procedure is currently being prepared for submission to the legislature during the first half of 2005.

At the same time, work has begun on "tidying up" the Code of Civil Procedure.

It is the Principality's aim to have a corpus of legislation which meets European standards.

NETHERLANDS

Question 1
Yes. The Public Prosecutions Department is charged with the enforcement of the legal order under criminal law **and other duties laid down by law** (Section 124 of the Judiciary (Organisation) Act (*Wet op de Rechterlijke Organisatie*). The "other duties laid down by law" are set out in special legislation.

Question 2
The duties of the Public Prosecutions Department are very diverse. They are explained below for various areas. These do not include the Public Prosecutions Department's duties under administrative law (particularly the Traffic Regulations (Administrative Enforcement) Act *(Wet Administratiefrechtelijke Handhaving Verkeersvoorschriften)*).

Duties of the Public Prosecutions Department in the law of persons and family law

a) In different places of Book 1 of the Dutch Civil Code (*Burgerlijk Wetboek*), the Public Prosecutions Department is granted explicit powers to take action. The powers can be categorised under the general heading of the law of persons and family law, but concern different sub-areas within this field of law:

1. Powers of the Public Prosecutions Department with respect to the registers of births, deaths and marriages, but relating more specifically to drawing up and registering documents, as well as the validity of documents and additions and improvements to the registers.
2. Powers of the Public Prosecutions Department with respect to marriage and registered partnership: interruption, solemnisation and nullification of marriages.
3. Intervention in matters concerning minors: acknowledgment, placement under supervision, custodial placement, relief of or dismissal from parental authority.
4. Intervention in matters concerning guardianship, placement under administration and mentorship.
5. Powers of the Public Prosecutions Department in the event of absence, missing persons and confirmation of death in certain cases.

b) Intervention by the Public Prosecutions Department in the field of the law of persons and family law has a long history. It emerges from such history that the duties of the Public Prosecutions Department should be seen in the light of representation of the interests of minors and other persons in need of "protection", the *personae miserabiles*.

c) Re 1: Regarding the registers of births, marriages and deaths, the Public Prosecutions Department has a primarily supervisory role for the purposes of maintaining public order.

Re 2: The powers relating to marriage and registered partnership comprise discretionary powers as well as the obligation to take action in certain cases. These are mainly subsidiary powers. Obligations to take action: obligation to interrupt an intended

marriage if any of the impediments to marriage contained in Sections 31 to 34, 41 and 42 of Book 1 of the Dutch Civil Code should be known; obligation to interrupt a registered partnership if any of the impediments contained in Sections 31, subsections 1 and 3, 32, and 41, subsections 2 and 3 should be known.

Re 3: Supervisory function for the Public Prosecutions Department. The Public Prosecutions Department does not often exercise the powers in this field independently. The Child Care and Protection Board (*Raad voor de Kinderbescherming*) takes a central position in relation to child protection. The powers of the Public Prosecutions Department serve as safeguards.

Re 4: These are subsidiary powers. The Public Prosecutions Department has no obligation to make applications for guardianship, administration or mentorship. Others are also authorised to apply for guardianship orders, administration orders or mentorship.

Re 5: In certain cases of absence, missing persons and confirmation of death, the actions of the Public Prosecutions Department relate on the one hand to providing legal certainty and, on the other hand, to protecting the interests of people whose existence has become uncertain.

d) Indirect decision-making powers.

Duty and powers of the Public Prosecutions Department contained in the Psychiatric Hospitals (Compulsory Admissions) Act (*Wet BOPZ*)

a) The Psychiatric Hospitals (Compulsory Admissions) Act assigns various tasks to public prosecutors. For example, they can request court orders for admission and stay and, in certain cases, they are involved in leave and release. The Public Prosecutions Department is also charged with enforcing decisions in the context of the Psychiatric Hospitals (Compulsory Admissions) Act, as well as monitoring and reporting duties.
b) The Public Prosecutions Department takes a central position in the Psychiatric Hospitals (Compulsory Admissions) Act. Its central position in matters concerning the mentally disturbed is rooted in history. Not only does it protect the interest of society in public order and safety, but also the interest of psychiatric patients.

c) Its role is varied; see under a).

d) Indirect decision-making powers.

Duty and powers of the Public Prosecutions Department in inheritance law

a) The Public Prosecutions Department has powers relating to testamentary obligation, letters testamentary, executors, testamentary administration and the settlement of estates. In themselves, the powers are limited.

b) From a historical perspective, people have considered it necessary to give the Public Prosecutions Department the opportunity to intervene, in view of the general interest in preventing irregularities.

c) Supervisory and advisory.

d) The Public Prosecutions Department has no obligation to exercise its powers. In general, the Public Prosecutions Department only takes action when interested parties do nothing (subsidiary powers). Such cases do not occur often in practice. The power relating to letters testamentary is not subsidiary, but exclusive.

e) Indirect decision-making powers.

Duty and powers of the Public Prosecutions Department in economic transactions

a) The Public Prosecutions Department has several instruments under civil law to intervene in economic transactions to prevent or put an end to the abuse of legal entities. First of all, the Public Prosecutions Department has a supervisory and advisory role in this regard. Secondly, the Public Prosecutions Department can turn to the courts with a specific request concerning a legal entity. For example, the Public Prosecutions Department can request the court to dissolve or nullify a legal entity. It can also request an order to place the assets of the legal entity under administration, revocation of decision-making power, liquidation, freezing of shares and correction of the annual accounts. Prior to dissolution, but also separately from this, the Public Prosecutions Department can request the Enterprise Section of the Amsterdam Court of Appeal to launch an investigation into the policy and course of affairs in a legal entity, called an inquiry. Lastly, in certain cases, the Public Prosecutions Department can submit an application for insolvency.

b) The powers originated mainly in the context of combating the abuse of legal entities in economic transactions.

c) Various: e.g. supervisory and advisory.

d) Indirect decision-making powers.

Duty and powers of the Public Prosecutions Department in insolvency law

a) The Public Prosecutions Department itself has the power to demand an insolvency order. In addition, it can be heard by filing a claim, namely in cases where creditors file an application for an insolvency order, and in cases involving discharge from insolvency. Lastly, the Public Prosecutions Department takes a position as executor of a commitment order.

b) The background of the Public Prosecution Department’s role in insolvency law is the prevention of the defrauding of creditors and abuse of trade.

c) Various
d) Indirect decision-making powers.

Question 3
Not possible to generate statistical data in this connection.

Question 4
Not at present.

NORWAY

The Prosecuting Authority in Norway is only concerned with criminal cases and its competences are defined in the Code of Criminal Procedure.

POLAND

Re. 1.
Yes. The basic legal act specifying the tasks and competences of the prosecution service in Poland is the Act of June 20, 1985 on the prosecution service (Journal of Laws of 2002 No. 21, it. 206 as amended), which provides in art. 2 that the task of the prosecution service is to guard law and order and oversee prosecution of offenses. The function of guardian of law and order appointed by this provision is executed by the prosecutor by taking measures provided for by the law also in non-criminal proceedings: in administrative proceedings, in court-administrative proceedings and in civil proceedings, and by taking other actions on the basis of the law.

Re. 2
a) and b) – Detailed competences and status of prosecutor in administrative proceedings is specified by regulations of art. 182-189 of the Act – Code of Administrative Procedure. By virtue of the regulations, a prosecutor is authorized to request the proper administrative body for institution of proceedings for the purpose of removal of an unlawful state of affairs, and to request participation in any stage of administrative proceedings for the purpose of assurance that the proceedings and settlement of the matter are compliant with the law. A prosecutor is also authorized to file an objection against a final decision (such that may not be appealed in the course of the instance), if the regulations of the law provide for reinstatement of proceedings, finding a decision invalid, or for its revocation or amendment. Objection is a special means of appeal against a final decision and serves solely a prosecutor. Filing of an objection has the effect that a proper administrative body is obliged to institute appropriate administrative proceedings by virtue of office (for reinstatement of proceedings, for finding the appealed decision invalid, or for revocation or amendment of such decision).

A prosecutor participating in administrative proceedings is served with the rights of a party (he is not a party, but in administrative proceedings is vested with such rights as serve a party). A prosecutor is not connected with any of the parties to the proceedings.

A prosecutor may further, by virtue of art. 5 of the Act on prosecution service, question lawfulness of a resolution of a local government or ordinance of a voivode, and request the issuing body or a supervisory body for amendment or revocation thereof; in case of a resolution of a local government a prosecutor may also apply to an administrative court for finding it invalid.

The rights of a prosecutor in court-administrative proceedings are specified in the Act of August 30, 2002 – Law on proceedings before administrative courts (Journal of Laws No., 153, it. 1270 as amended). By virtue of art. 8 of this act a prosecutor may participate in any ongoing proceedings, and also file a complaint, a cassation complaint, an appeal and a complaint for reinstatement of proceedings, if in his opinion the protection of law and order or human and civil rights so require. In such case the prosecutor is served with the rights of a party.

It should be added that the referenced act – Law on proceedings before administrative courts (art. 265) requires the Prosecutor General or his deputy to participate in a session of the entire composition Supreme Administrative Court or that of its Chamber; in sessions of seven judges of the Supreme Administrative Court, participation of a prosecutor of the National Prosecutor's Office is obligatory.

The basis for action of a prosecutor in civil proceedings is constituted by the provisions of art. 7 and art. 55-60 of the Code of Civil Procedure and art. 22, 86 and 127of the Family and Custody Code , and a number of special norms contained in other laws. A prosecutor may initiate any civil proceedings, except proceedings for divorce, and may request participation in any ongoing civil proceedings. He may also appeal any court decision subject o an appellate measure, and demand reinstatement of proceedings concluded with a final and binding court decision.

A prosecutor takes specific actions in civil proceedings, if in his opinion this is required by protection of law and order, citizens' rights or social interest.

Filing suit in favor of a specific person, a prosecutor becomes a party to the proceedings, however he may not dispose of the subject of dispute independently. If a prosecutor filing suit is not acting in favor of a specific person (files suit against all parties), he is a party and may dispose of the subject of dispute independently. However, if a prosecutor requests participation in ongoing proceedings, he then is not a party to the proceedings, and his rights are specified by art. 60 of the Code of Civil Procedure.

Further, a prosecutor participates in sessions of the Supreme Court, at which protests are considered concerning elections to the Seym and Senate of the Republic of Poland; the Prosecutor General participates in sessions of the Supreme Court concerning the validity of these elections.

c) A prosecutor in non-criminal proceedings does not fulfill any of the roles mentioned in it. 'c' of the questionnaire. In Poland a prosecutor has a special position in administrative proceedings, court-administrative proceedings and in civil proceedings. He is either a party, or not being a party, has the same rights that serve a party. He has no decisive powers, however participating in proceedings as a party or on the rights of a party, he is to assure in specific proceedings adherence to the law by bodies of administration and courts, and by participants of these proceedings.

d) A prosecutor is not authorized to issue decisive settlements (decisions) in any of the commented non-criminal proceedings, whereas courts and bodies of administration are not bound by the position presented by a prosecutor. However, a prosecutor decides individually on the need to take in specific proceedings actions, for which he is authorized by law (file suit, file a request, apply for participation, etc.). Consideration of a request for a prosecutor to take such actions does not take place in formalized proceedings. A decision of a prosecutor on denial to take such actions may be verified by a superior in complaint proceedings.

Re. 3.
According to statistical data for the year 2003, prosecutors nationwide filed 5616 measures in administrative proceedings and court-administrative proceedings, including:

- 119 complaints to the Supreme Administrative Court
- 4,402 requests for institution of administrative proceedings
- 145 appeals
- 834 objections
- 33 requests for revocation of a resolution of a local government body
- 94 requests for revocation of ordinance of a voivode.

In civil proceedings, prosecutors in 12,221 cases initiated institution of proceedings and in 14,321 cases requested participation in proceedings instituted on initiative of other entities.

PORTUGAL[8]

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

The Portuguese Public Prosecution Service performs a wide variety of duties in different spheres. Its tasks include conducting prosecutions, promoting the rule of law, representing the State, incapacitated persons and those with no permanent residence, *ex officio* representation of workers and the defence of collective and wider interests in accordance with procedural law; it also fulfils an advisory role.

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

The Public Prosecution Service performs its advisory functions through the intermediary of the Consultative Council of the Office of the Attorney-General of the Republic. Under the terms of Article 37 of the Rules governing the Public Prosecution Service, the Consultative Council is responsible for:

- issuing qualified opinions on matters of legality in cases where consultation is required by law, or at the request of the President of the Assembly of the Republic or the Government;
- ruling, at the request of the Government, on the form and legal content of draft legislation;
- ruling on the lawfulness of contracts in which the State is an interested party, where its opinion is required by law or is requested by the Government;
- informing the Government, through the Minister for Justice, when legislative texts are unclear, inadequate or contradictory, and proposing the relevant amendments;
- ruling on questions put to it by the Attorney-General of the Republic in the exercise of his duties.

The power of the Public Prosecution Service to intervene in questions of constitutionality applies to all the courts; intervention may take the form of an appeal against a judicial decision refusing to apply a legal rule on the ground of unconstitutionality or applying a legal rule already declared unconstitutional by the Constitutional Court (specific review of constitutionality).

As regards the general review of constitutionality, the Attorney-General may request the Constitutional Court, after examination, to issue a generally binding ruling declaring a legal rule to be unconstitutional, or declaring a rule contained in a legislative instrument or regional legislative instrument, or issued by organs with supreme authority, to be unlawful, on the basis of the provisions laid down by law (Article 281(2) of the

[8] Original reply received in French, see Appendix

Constitution of the Portuguese Republic and Article 72 of Law No. 28/82 of 15 November 1982).

In the financial court (Court of Auditors) the Public Prosecution Service represents the State, upholds the rule of law and brings actions to enforce financial liability.

In particular, the Public Prosecution Service conducts criminal prosecutions; it may bring charges based on audit opinions to be approved by the Assembly of the Republic or the regional assemblies, forwarded to it by those bodies for the purposes of enforcing liability. It may also bring charges on the basis of the reports approved by the 1st or 2nd Chamber of the Court of Auditors following the approval, monitoring and checking of accounts, although it is not bound by the characterisation of the facts contained in the opinions or reports (Articles 28 and 29 of the Law on the Organisation and Procedures of the Court of Auditors).

In the administrative courts, the Public Prosecution Service represents the State, upholds the democratic rule of law and safeguards the public interest. It has powers to propose action and intervene in main proceedings and preliminary proceedings aimed at protecting values and assets enshrined in the Constitution, such as public health, the environment, town planning, spatial planning, quality of life, the cultural heritage and the property of the State, the autonomous regions and the local authorities (Article 51 of the Rules governing the Administrative and Fiscal Courts and Article 9(2) of the Code of Administrative Procedure).

In the tax courts, the Public Prosecution Service is responsible for upholding the rule of law, safeguarding the public interest and representing persons who are absent, have no permanent address or are incapacitated. It is also heard in all legal cases before the final ruling is handed down (Article 14 of the Tax Procedure Code).

In the commercial courts, the role of the Public Prosecution Service is to uphold the law, safeguard the public interest and represent the State and persons who are absent, have no permanent residence or are incapacitated.

The Public Prosecution Service also has powers to propose actions to wind up companies (Article 83 of the Tax Procedure Code and Article 89(1) of the Law on the Organisation and Functioning of the Courts). In addition, it has the power to request a declaration of insolvency as the representative of entities whose interests it defends (Article 182 of the Tax Procedure Code, Article 20(1) of the Code of Procedure for Company Recovery and Bankruptcy and Article 89(1)(a) of the Law on the Organisation and Functioning of the Courts).

Although it is not the applicant in such cases, the Public Prosecution Service is called upon to intervene in bankruptcy and insolvency proceedings and in cases where the public interest is at stake (Article 3(1)(l) of the Rules governing the Public Prosecution Service).

In the maritime courts, the Public Prosecution Service upholds the rule of law and acts as the principal party in cases in which it represents the State, the autonomous regions, the local authorities and persons who are incapacitated or absent. It acts as an associated party in proceedings where it does not represent these entities, but where they are interested parties.

In the labour courts, in addition to representing the State, the Public Prosecution Service is responsible in particular for defending *ex officio* the social rights of workers and their families (Article 3(1)(d) of the Rules governing the Public Prosecution Service and Articles 6 and 7(a) of the Labour Procedure Code).

The Public Prosecution Service also has the task of representing hospitals and caregiving institutions in cases relating to nursing staff or hospital staff, the medical supplies connected with the provision of clinical services, prostheses and orthopaedic apparatus and any other services or provisions made or paid for the benefit of victims of work accidents or occupational diseases, and the enforcement thereof, where no enforcement agency exists, and the representation of persons who, as the result of a court order, provide such services or supplies (Article 7(b) and 7(c) of the Labour Procedure Code and Article 85(d) of the Law on the Organisation and Functioning of the Courts).

In labour-related cases, the Public Prosecutor is responsible for conducting conciliation in cases aimed at enforcing rights arising out of work accidents (Article 99 of the Labour Procedure Code).

Where the civil courts are concerned, the Public Prosecution Service upholds the rule of law and acts as the principal party in cases in which it represents the State, the autonomous regions and the local authorities and persons who are absent, have no permanent address or are incapacitated, and when it is representing collective or wider interests. Where it is not representing such entities, but the latter are interested parties in the case, or the case is aimed at protecting collective or wider interests, the Prosecution Service participates as joint plaintiff (Articles 3(1)(a) and 5 of the Rules governing the Public Prosecution Service and Articles 12(3), 15, 16, 17 and 20 of the Civil Procedure Code).

The Civil Procedure Code stipulates a series of cases in which the Public Prosecution Service usually acts as the principal party, such as the disqualification or incapacity of an entitled person, reviews of foreign judgments, providing reasons for the absence or the status of an heir, liquidation of assets and in particular, in the case of inventories, enforced payment of costs and fines and applications to the bench with a view to harmonisation of case-law.

Before the family courts, the role of the Public Prosecution Service is to defend the rule of law and the interests of minors, particularly in cases concerning the exercise of parental responsibility and adoption (Article 82(1)(c) and (d) of the Law on the Organisation and Functioning of the Courts).

The Public Prosecutor is also responsible for commencing proceedings to establish paternity or maternity.

In the juvenile courts, the particular role of the Public Prosecution Service is to ensure court intervention to protect and promote the rights of children and young people at risk, when their legal representatives or persons entrusted with their care pose a threat to their safety, maintenance, education and development or when such threat arises from the actions or omissions of a third party or of the child or young person, and the former are taking insufficient action to counter the threat (Articles 3, 11 and 72 of the Law on the Protection of Children and Young People at Risk).

Where an act committed by a minor between the ages of 12 and 16 constitutes a criminal offence (Article 40 of the Law on the Supervision of Young Offenders), it is the task of the Public Prosecution Service to:

- direct the inquiry with a view to investigation of the act classified by the law as a criminal offence, and establish the needs of the young person in terms of rehabilitation, with a view to a decision on the enactment of supervisory measures;
- advocate the steps it deems to be necessary and take action to uphold the law and defend the interests of the young person;
- act to ensure that supervisory measures are enforced;
- issue compulsory opinions on appeals, applications and complaints filed in accordance with the law;
- issue compulsory opinions on personal rehabilitation plans for young persons subject to non-custodial supervision or detained in young offenders' institutions;
- visit young offenders' institutions and maintain contact with the young people detained therein.

Under the terms of Article 2 of Decree-Law 272/2001 of 13 October 2001, which entered into force on 1 January 2002, the Public Prosecution Service acquired fresh decision-making powers in respect of applications relating to:

- withdrawal of consent, where the reason for the application is the incapacity or absence of the person concerned;
- authorising the transfer or disposal of property belonging to the absent person, once the provisional or final decision on administration has been referred;
- ratifying actions undertaken by the representative of the incapacitated person, independent of authorisation to that effect.

The Public Prosecutor also has powers to rule on agreements concerning the exercise of parental responsibility vis-à-vis minors in cases of separation or divorce by mutual consent, for which the Director of the Civil Registry Office has sole competence.

The Public Prosecution Service also intervenes in the running of the administrative services which form the basis for its activities vis-à-vis the courts (Article 74(4) of the Organic Law on the Courts).

b. Please indicate the background explaining their existence

Although the Public Prosecution Service as a stable institution began to emerge prior to 1832, the final steps in its organisation were not completed until the adoption of the Decree on judicial reform.

The main underpinnings of the Public Prosecution Service's institutional role as laid down in that piece of legislation have remained unchanged, particularly as regards the tasks it performs, which from the outset have been many and varied.

The role of the Public Prosecution Service in addition to conducting prosecutions extends to any case where the public interest is at stake or involving persons afforded special protection by the State; its tasks include upholding the rule of law and defending the independence of the courts, in addition to its advisory functions.

The introductory report to the legislation (Decree of 24 October 1901) restructuring the Public Prosecution Service contained the following passage: *"Representing society before the courts, defending national assets, investigating and prosecuting criminal offences, protecting incapacitated persons, enforced recovery of State loans, strict and unwavering supervision of the application of laws and the difficult and important task of acting as an advisory arm of government: such is the huge range of tasks comprising the vital and complex role of the Public Prosecution Service"* [editorial translation].

Hence, the Public Prosecution Service has a long-standing tradition linked both to the advancement of social objectives and the defence of persons recognised by the State as particularly vulnerable, and to defence of the State's assets, reflected in its representation of the State in legal proceedings, its representation of workers and its role in defending collective and wider interests.

c. Please indicate the role played by the public prosecutor in exercising these duties: advisory role – *ex officio* or on request – supervisory role or decision-making role.

The advisory role, exercised via the Consultative Council, takes the form of legal opinions (the entities which may call upon the Consultative Council of the Attorney-General's Office are listed in the reply to 1a. above).

The Attorney-General has the power to ensure that all prosecutors adhere to and support the opinions of the Consultative Council; thus, prosecutors are obliged in particular to appeal against any decision handed down by the courts which is not in accordance with them. As a result, the opinions of the Consultative Council have a role in harmonising case-law.

Once approved by the Government or other entities which have requested them, the legal opinions are published in the State Gazette (*Diário da República*) and constitute, for the relevant departments, the official position on the matters with which they deal (Articles 37, 42 and 43 of the Rules governing the Public Prosecution Service).

As regards the role assigned to it under the Law on the Supervision of Young Offenders, especially in directing the inquiry with a view to investigating whether a criminal offence has been committed and determining the needs of the young person in terms of rehabilitation, the Public Prosecution Service has the power to make decisions during the inquiry stage as to whether supervisory measures are required.

Hence, the Public Prosecutor may make a preliminary decision not to proceed if the offence committed carries a custodial sentence of less than one year and if supervisory measures are unnecessary in view of the lack of seriousness of the offence, the previous and subsequent conduct of the young person and his educational and social integration and integration within the family (Article 78).

When the investigation has been concluded, the inquiry stage continues, and the Public Prosecutor either requests the commencement of court proceedings or decides to drop the proceedings if he concludes that: a) the act was not committed; b) there is insufficient evidence of the act having been committed; c) no supervisory measures are needed, when the act constitutes a criminal offence carrying a custodial sentence of no more than three years (Articles 86 and 87 of the Law on the Supervision of Young Offenders).

With regard to its functions under Decree-Law 272/2001 of 13 October 2001 (referred to at 2a. above), the Public Prosecution Service intervenes at the request of the parties and is invested with decision-making powers. These do not apply to agreements concerning the exercise of parental responsibility with regard to minors in the context of divorce by mutual consent and separation of persons or property; in such cases, its intervention is *ex officio* and takes the form of an opinion.

Although the Public Prosecutor's intervention takes the form of an opinion, the divorce case will be forwarded to the Civil Registry Office only if the opinion finds that the agreement safeguards the interests of the minors concerned in a satisfactory manner (Article 14(6)).

If the Public Prosecutor takes the view that the agreement does not safeguard the interests of the children adequately, the petitioners for divorce may make the appropriate amendments, which may result in a new agreement. This in turn will be assessed by the Public Prosecution Service. Alternatively, if the petitioners are not in agreement with the proposed amendments, the case will be referred to the court which has jurisdiction over the Civil Registry Office in question (Articles 14(4), 14(5) and 14(7)).

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

As regards the decision-making powers ascribed to the Public Prosecution Service during the inquiry stage by the Law on the Supervision of Young Offenders, the decisions of the Public Prosecutor cannot be challenged, in particular by the victim; this applies particularly to preliminary decisions not to proceed (Article 78) or decisions to drop the proceedings (Article 87).

In the case of a preliminary decision not to proceed, the injured party must be notified; however, the law makes no provision for any remedy (Article 78).

With regard to a decision to drop proceedings following completion of the investigation, provision is made for intervention by a higher administrative authority; however, this occurs *ex officio*. There is no provision for the injured party to intervene, given that he or she is not even notified of the decision to drop the proceedings (Articles 87 and 88).

As regards the decision-making powers conferred on it by Decree-Law 272/2001 of 13 October 2001, the Public Prosecution Service's decision may be challenged by means of investigation of the corresponding action by the court, at the request of the parties who wish their claim to be re-examined (Articles 3(6) and 4(6)).

3. Please give an indication (statistics, if available) of the actual exercise of these duties and the workload they entail for the public prosecution service as a whole.

The statistics relating to the activities of the Public Prosecution Service are taken from the Attorney-General's report for 2003.

In 2003 the Consultative Council received 197 cases, in addition to 67 cases carried over from 2002. Of the total, 177 cases were closed and 87 were carried over to 2004.

In the case of the administrative and fiscal court (the Central Administrative Court), prosecutors in the administrative disputes section were involved in virtually all the cases dealt with in 2003; they issued 1 664 decisions in the form of opinions, the bulk of which were accepted. As regards the overall procedural picture in the section dealing with tax disputes, a total of 2 789 cases were dealt with, of which 1 256 were closed.

In the district administrative courts, proceedings were instituted against the State in 590 cases, while the State took action against other entities in 1 869 cases. Follow-up action was taken on the decisions handed down in 4 133 cases, which were referred to the Public Prosecution Service for approval.

In the tax courts of first instance, action was taken in 52 120 cases, 11 547 of which were closed.

In the labour courts, proceedings were begun in 22 046 cases concerning work accidents; at the end of the year, the Public Prosecution Service had 76 cases on its books awaiting the start of proceedings.

Also in the labour courts, the Public Prosecutor instituted proceedings and challenged decisions in a total of 3 979 cases, 222 of them relating to work contracts.
In the civil courts and in the sphere of representing and defending the interests of the State, the autonomous regions, the local authorities and incapacitated persons, absent persons or those without a permanent residence, the Public Prosecution Service commenced proceedings in 3 486 cases. Some 96% of cases in which a ruling was handed down were allowed.

In the civil courts, the Public Prosecution Service challenged 227 decisions handed down by the courts of first instance.

The total number of inventories filed as required by law was 2 362.

In the family courts, 2 511 cases relating to proceedings to establish paternity were referred to the Public Prosecution Service. Sufficient evidence was obtained to commence proceedings in 457 cases, while a further 527 cases were discharged. A total of 1 547 cases were concluded when paternity was recognised.

Action was taken in a total of 43 559 cases relating to the regulation, amendment and prohibition of the exercise of parental authority, to adoption, to the establishment, amendment and enforcement of maintenance orders and to child custody orders.

In the juvenile courts, 8 165 inquiries were instigated, and action was taken on 10 990 cases. A total of 7 700 cases were closed, 4 986 following a decision not to proceed. In the remaining cases, a request was made to commence court proceedings.

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

In recent years there has been occasional criticism of the representation of the State by the Public Prosecution Service, particularly in relation to the defence of State assets and the representation of workers and their families in the labour courts.

The representation of the State’s property interests has also been the target of some criticism within the Public Prosecution Service itself.

However, no legislative steps have so far been taken to amend the system in operation.

SERBIA AND MONTENEGRO

(REPLY FROM MONTENEGRO)

I.
Constitution of the Republic of Montenegro, passed in 1992, introduces some novelties regarding the competencies of the State Prosecutor. Within the competences of the State Prosecutor, the Constitution has determined the authority of the State Prosecutor to represent the Republic in property and legal matters, as it was prescribed in Article 5 of the Law on State Prosecutor from 1992.

The Law on State Prosecutor, passed in 2003, more precisely defines the State Prosecutor's competences. In accordance with the Article 21 of this Law, the State Prosecutor, besides his/her representative function, in some appropriate sense, also has an advisory function. Provision of this Article prescribes that the Chief State Prosecutor may, before initiating a procedure, undertake all necessary measures in order to settle the dispute by mutual agreement, if so allowed by the nature of the dispute, and the Paragraph 2 of the same Article sets forth that the Chief State Prosecutor may provide the entities whose property rights and interests he/she is representing with the legal opinion on conclusion of property law agreements and an opinion on other property law issues, when required to do so.

The Chief State Prosecutor performs his/her representative function in proceedings before Regular Courts, Commercial Courts and State Administration Authorities. In such proceedings the Chief State Prosecutor has a status of legal counsel of the Republic of Montenegro and, in accordance with that status, he/she is authorized to undertake all legal actions for the purpose of protecting the rights and interests of the Republic of Montenegro and its authorities.

Besides the representative function, determined by the Law on State Prosecutor, the Chief State Prosecutor is authorized to perform other legal actions prescribed as its competence by special regulations. In performing this function, the Chief State Prosecutor can undertake legal actions prescribed by:

- Law on Civil Procedure
- Law on Executive Procedure
- Law on Extra Judicial Procedure
- Law on General Administrative Procedure
- Law on Administrative Dispute
- Law on Offences
- Law on Property of the Republic of Montenegro
- Law on Debits and Management of the Public Sector's Debts
- Law on Family Relations

THE LAW ON CIVIL PROCEDURE - prescribes the authority of the State Prosecutor (Articles 416 to 420) to fill a petition for protection of legality, against any final Court

verdict (judgment or decision), as an exceptional legal remedy, regardless the use of right to fill some regular legal remedy.

Only the State Prosecutor has a right to fill a petition for protection of legality, and this is because of the uniformity of the implementation of law and protection of legality in general interest, and this is a deference from the revision that can be filled, as an extraordinary legal remedy, by the parties in the procedure for the purpose of protection their own interests.

THE LAW ON EXECUTIVE PROCEDURE - prescribes the possibility for the State Prosecutor to request the cessation, respectively delaying of the execution (Articles 282 to 284). This possibility can be realized only when the State Prosecutor estimates that in the concrete case exists a legal basis for lodging an extraordinary legal remedy against the executive document (judgment or decision) that represent the basis for allowing the execution with a view to fulfilling obligations determined by the executive document.

THE LAW ON GENERAL ADMINISTRATIVE PROCEDURE - State authorities and local self-government authorities shall be obliged to proceed according to this law when, directly applying legal regulations, they decide in administrative matters on rights, obligations or legal interests of a natural person, legal person or other party, as well as when they perform other affairs determined by this law (Article 1.)

Institutions and other legal persons shall also be obliged to proceed according to this law when, in exercising public authority, they decide in administrative matters, i.e. when they perform other affairs (Article 2.)

Against final decisions passed in procedures defined by this Law, by which it have been decided on rights, obligations or legal interests of a natural and legal persons, the Chief State Prosecutor may request retrial, if that decision violates the Law (Article 245, paragraph 4. and Article 263).

THE LAW ON ADMINISTRATIVE DISPUTES - In administrative disputes, courts decide on the legality of an administrative act and on the legality of other individual administrative acts by which a state authority or an institution or other legal person, in exercising public authority, decides on rights, obligations or legal interests of a natural or a legal person in administrative matters.

In accordance with aforementioned Law, the State Prosecutor is authorized to initiate administrative dispute, under condition that the law has been violated to the advantage of a natural person, legal person or other party, by an administrative or other act (Article 2, Paragraph 3); and the Paragraph 4 of the same Article prescribes the competence of the State Prosecutor to institute an administrative dispute when, by an administrative or other act, the law has been violated to the prejudice of the state, a local self-government unit, institution or other legal person. This Law also prescribes that the State Prosecutor can fill a petition for protection of legality against the decision of the Supreme Court Council, if that decision violates the Republican law, other regulation or general act (Article 20).

New Law on Administrative Dispute (Official Journal of the Republic of Montenegro, No. 60/03), which has entered into force and whose implementation has been postponed until the beginning of work of the Administrative Court, gives more competences to the State Prosecutor. Namely, the State Prosecutor may accede the administrative dispute that has been initiated and conducted between other parties, for the sake of protection of the public interest. In accordance with this Law, the State Prosecutor may submit a request for extraordinary reconsideration of a court decision issued by the Administrative Court, if he consider that the decision is based on a violation of the material law, or on a violation of the rules of procedure in the administrative dispute, which might have affected the deciding in the matter.

LAW ON OFFENCES - regulates conditions of offensive liability, conditions for issuing and applying sanctions for offences, system of sanctions, offence procedure, procedure for execution of decisions on offences, as well as the organization and work of the Misdemeanor authorities. This Law, in the Article 183, determines the authority of the State Prosecutor to fill a petition for protection of legality against final decision, if he/she considers that this decision violates the law or other regulation on offences.

All aforementioned authorities of the Chief State Prosecutor are established for the purpose of protection the legality and the public interest, and to provide the uniformity in implementation of laws and other regulations.

In addition to above mentioned laws, authorities of the State Prosecutor are established also by the Law on Property of the Republic of Montenegro, the Law on Debits and Management of the Public Sector's Debt, the Law on Public Procurements and the Law on Family Relations.

LAW ON PROPERTY OF THE REPUBLIC OF MONTENEGRO – for the purpose of protection, control and record of a state property, this Law, in the Article 19, prescribes the obligation of state authorities to submit the contracts on management of state property to the Chief State Prosecutor within 15 days from their signing. In that regard, the Chief State Prosecutor shall be obliged to fill a complaint for nullifying the Contract, if he/she estimates that the Contract has been concluded contrary to the law and other regulations.

LAW ON DEBITS AND MANAGEMENT OF THE PUBLIC SECTOR'S DEBT – This law regulates the manner and procedure of debits of the State, establishes limits of indebtedness, functioning and responsibility of public sector authorities for management of debts of the Republic, defines the procedure of issuing the State's Guarantees, data processing and reporting about the debts of the Public Sector.

Article 12 of this Law sets fort the obligation for the State Prosecutor to estimate constitutional and legal procedure of debit and, in that direction, upon the request of foreign investor, gives the legal opinion by which he/she confirms that the constitutional and legal procedure have been respected.

LAW ON PUBLIC PROCUREMENT – This Law, in Article 81 Paragraph 1, prohibits false agreements aimed to the market control, restricted competition, frauds in biddings and bribery.

Violation of aforementioned prohibitions represents the legal basis for the Chief State Prosecutor to institute the appropriate procedure and to undertake all necessary measures, in accordance with the Article 81, paragraph 6 of this Law. These measures can include the restitution of means or property of the persons that have gained illegal riches in the Republic and, when it is possible, abroad.

LAW ON FAMILY RELATIONS– For the purpose of protecting family, and particularly the rights and interests of children, this Law establishes the competence of the State Prosecutor to institute the procedure for annulling a marriage, from reasons listed in the Article 51. The State Prosecutor is also authorized to initiate the procedure for deprivation of parental rights, with same powers that have other parent or authority for guardianship.

The right of the Chief State Prosecutor to initiate the procedure for deprivation of parental right is also determined by the Law on Extra Judicial Procedure (Article 81).

II.

The general characteristic of the State Prosecutor in the performing the functions prescribed by the Constitution of the Republic of Montenegro from 1992 and by the Law on State Prosecutor, and which can be realized through the representation of the Republic and its authorities in property law transactions, as well as of the competences prescribed by other law, is that the State Prosecutor performs his/her function in two manners: as an independent state authority and as a legal counsel of a party in the procedure.

A State Prosecutor acts as an independent state authority in exercising his/her right to apply an extraordinary legal remedy, or to institute an administrative dispute, but in performing the representative function from the Article 20 of the Law on State Prosecutor, he/she has a status of legal counsel of a party in the procedure.

A State Prosecutor, within his/her constitutional and legal status, is not an authority that directly implements the Law and decides on merits on rights and obligations of natural and legal persons. In exercise of his/her function, prescribed by the Law on State Prosecutor in articles 17, 20 and 23, and by special aforementioned laws, the State Prosecutor only brings or initiates the beginning of the procedure, (both, in line of duty, or upon the request of a party in the procedure), thus the nature of the State Prosecutor's decisions doesn't permit the possibility to apply any legal remedy against them.

The Republic of Montenegro, by passing a great number of organizational, material and procedural legislation, has encompassed the process of legislative reform, and we can say that all recently passed laws are in accordance with the European Union law. The Law on State Prosecutor from 2003 has been prepared and adopted during the criminal justice

reform process and it introduces new standards and rules regarding the competences and functions of the State Prosecutor.

SLOVAKIA

Does the prosecution service in your country have any competencies outside the criminal field?

The legal regulation (Act on the Public Prosecution Service) is based on the Constitution of the Slovak Republic, articles 149 to 151. The Public Prosecution Service is an independent hierarchical uniform system of the state units headed by the Prosecutor General, and it protects the rights and interests guaranteed by the law to individuals, legal entities and the State. Though, the scope of powers of the Public Prosecution Service is not confined solely to the criminal field by the Constitution, since it is a general body for the protection of law.

The prosecutors perform their duties outside the criminal field as follows:

- in the proceedings before the courts (a special law empowers the prosecutor to join a civil judicial proceeding commenced concerning the matters fully listed, and to file a motion to commence a civil judicial proceeding),
- representing the State in the proceedings before the courts, if a separate law provides so
- within the scope of that law, supervising the law observance by the public administration bodies
- participating in the legislation process.

2. 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 competencies of the prosecutor within the extra-criminal field can be divided into two basic categories:

The first one is the prosecutor's competence in the civil proceeding (article 19, Act on the Public Prosecution Service). The prosecutor performs that power within the scope defined by separate laws. If a separate law provides so, the prosecutor is empowered to file a civil motion for the instigation of a civil proceeding, to join a pending civil proceeding concerning the following matters: legal capacity, declaration of death, entries in the Commercial Register, upbringing of a minor, guardianship, bankruptcy and settlement. Moreover, the prosecutor is empowered to represent the State in the proceeding before the court under the separate laws (on behalf of the State, the prosecutor files a petition for instigation of a proceeding). The prosecutor is empowered to file a remedial measure against a judgment of a court in the civil proceeding, while the Prosecutor General is empowered to file an extraordinary relief against a valid decision of a court pronounced in the civil proceeding (an extraordinary appellate review) under the conditions defined in a separate law (article 243 e), par. 1 Civil Procedure Code).

The second category of the prosecutor's competence is the supervision over compliance with laws by the public administration bodies (articles 20 and subs., Act on the Public Prosecution Service).

The supervision above is performed on the basis of instigations (requests) by individuals and legal entities requiring the prosecutor to examine the legality of a decision-making and other steps taken by the public administration bodies, and to carry out measures to prevent the breaches of law, to find and remove the breaches of law and to protect the rights violated.

However, the prosecutor is empowered to carry out the checks by his/her own initiative (ex offo) to examine the compliance with laws and other generally binding regulations by the public administration bodies concerning the matters terminated.

While carrying out the supervision over the compliance with laws and other generally binding regulations by the public administration bodies, the prosecutor uses the following legal instruments:

- prosecutor's protest
- prosecutor's notice
- petition to instigate the court proceeding under a separate law (article 35, par. 1, a), and article 250 zf of the Civil Procedure Code).

By performing the supervision tasks, the Public Prosecution Office does not get the superiority position over the bodies checked. The Prosecution is not empowered to check on the effectiveness or the efficiency of proceedings carried out by those bodies, neither the Prosecution can not impose binding obligations on them, neither to apply any other directive means to infringe their operation.

The Public Prosecution Service is not, and it cannot be a body that could replace a decision-making activity of a court or of a public administration body. The Public Prosecution Service must not take decisions on behalf of a court, neither issue orders or decisions and impose them to the courts. The prosecutor can only express his/her opinion about certain phenomena, proceeding or decision, and he/she can apply the legal instruments in order to instigate the public administration body to deal with an issue, or if there is such a need, to instigate an independent court to deal with a matter.

3
The Public Prosecution Office though does not have any decision-making power outside the criminal field (it cannot discharge or vary any decisions taken by the public administration bodies or courts).

However, the steps taken by a prosecutor, and the way in which he/she has dealt with a instigation filed by an individual or by a legal entity, may be subject of examination by a superior prosecutor, if a repeated instigation is submitted, or if a superior prosecutor proceeds so by his/her own initiative.

3. Please give an indication (statistics, if available) of the effective use of these competencies and the workload they entail for prosecution service as a whole.

There were 13 701 cases in the 2003 which the prosecutors have dealt with outside the criminal field. In the 2002, they handled 13 340 cases.

In the 2003, they have joined 1652 pending cases in civil proceedings (in the 2002, it was 1636 cases). The prosecutors have filed 126 instigation for commencement of civil judicial proceedings (in the 2002, it was 125 instigations). The General Prosecutor of the Slovak Republic has filed 86 extraordinary appellate reviews against valid court decisions taken within civil judicial proceedings in the 2003 in the 2002 he has filed 330 extraordinary appellate reviews). The achievement reached is about 75%.

The public administration bodies have dealt with 1013 prosecutor's protests in the 2003. From among them, there were 894 protests successful (in the 2002, 1152 protests were dealt with, 907 successfully). The prosecutors have filed 1050 notices for the purposes of removing the breaches of law and other generally binding regulations in the 2003 (in the 2002, 1069 notices). The prosecutors have carried out 1188 checks in the public administration bodies in the 2003 (in the 2002, there were 1213 checks carried out).

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

By the own initiative of the public prosecutors, no reforms are expected to be made in the above mentioned competencies of prosecutors. However, some efforts have been made, sporadically, namely by the Ministry of Justice of the Slovak Republic, in order to reduce those competencies. For example, in relation to the bill on the new Act on Family, the possibility for the prosecutor to join the case if it concerns the upbringing of minors is not supposed any more, neither the possibility for the Prosecutor General to file a motion to deny paternity in those cases where the legal time limit has expired to the parents for filing such a motion.

SLOVENIA

The new Slovenian Constitution (Ur. list RS 1/91), in the chapter entitled "Organisation of the state", following on from provisions on the National Assembly, the National Council, the President of the Republic, the Government, state administration, national defence and the judiciary, in point g), under the title "State Prosecutor's Office" (Article 135), first establishes the function of the state prosecutor as a body for the prosecution of perpetrators of criminal offences that also has "... **other powers provided by law**". In the second paragraph it further lays down that the organisation and powers of state prosecutor's offices is provided by law. Pursuant to these constitutional provisions, as well as the provisions of the third paragraph of Article 2 and Article 9 of the State Prosecutor Act, general authorisations are regulated, pursuant to which the state prosecutor or the state prosecutor's office is entitled to file procedural acts and other legal remedies in civil and other court proceedings, as well as in administrative proceedings, if the law so provides. Among these are key powers relating to the extraordinary legal remedy of a **request for the protection of legality**. This is an extraordinary legal remedy which state prosecutors general (the State Prosecutor General's Office of the Republic of Slovenia) are authorised to file against final decisions pursuant to the provisions of the fourth paragraph of Article 13 of the State Prosecutor Act. The Supreme Court of the Republic of Slovenia rules on this legal remedy.

Despite a number of theoretical reservations and legislative proposals, these powers have been preserved in the new **Civil Procedure Act**. The powers, scope, conditions and procedure according to which the State Prosecutor's Office of the Republic of Slovenia (now the State Prosecutor General's Office of the Republic of Slovenia) may file the extraordinary legal remedy of a **request for the protection of legality** against a final court decision in **civil and commercial law cases** are laid down in Articles 385 to 391 of the ZPP**. In labour law cases** this extraordinary legal remedy has been left out of the newly adopted law and replaced with a new legal remedy – permitted revision.

Pursuant to the provisions referring to the application of the Civil Procedure Act, it is possible to file this extraordinary legal remedy against final court decisions issued in other civil court proceedings (in **execution** proceedings, in **forced settlement**, **bankruptcy and liquidation** proceedings, in **non-litigious and land register proceedings**, in proceedings pursuant to the **Inheritance Act,** and in cases involving the **register of companies**).

The authorisations of the state prosecutor as a **party capable of being sued** in proceedings are regulated by a number of other laws: the Non-Litigious Procedure Act (Ur. list SRS 30/86), in proceedings for the removal of contractual capacity (first paragraph of Article 45), death announcements (second paragraph of Article 83, first paragraph of Article 90) for the production of evidence regarding a death (second paragraph of Article 94); and the Marriage and Family Relations Act, in actions for the annulment of marriage pursuant to the second paragraph of Article 36. These authorisations are rarely used in practice, or used only in exceptional cases.

We have identified a trend, which is in line with the principles of modern states based on the rule of law, for the prosecutor's office (a state body) to withdraw from the final phase of court proceedings based on the equality of position and the free disposition of their disposal of procedural and material claims. One such case is the waiving of the powers of the state prosecutor to file an action on account of the voidness of contracts according to the law of obligations, which the new Code of Obligations (Ur. list RS 83/2001), in force since 1 January 2002, no longer recognises.

The authorisation pursuant to Article 11 of the State Prosecutor Act, according to which the state prosecutor may request the suspension or stay of execution of a judicial or administrative decision when such execution might give rise to irreparably damaging consequences, if he has a basis for using a legal remedy against such an executable decision, has also been narrowed. According to the previous regulation, the court had to stay such execution; pursuant to the new regulation, this decision is within the jurisdiction of the court (third paragraph of Article 11).

Explicit authorisation to file the extraordinary legal remedy of a request for the protection of legality is also regulated by the **Administrative Dispute Act** (Article 80), i.e. against a Supreme Court decision, where this court rules on an appeal against a decision issued by the Administrative Court in the first instance. Here we draw attention to the provision of Article 19 of the ZUS, pursuant to which the Government of the Republic of Slovenia, as the substitutive representative of the public interest, has appointed an expert employee of the State Prosecutor General's Office. In a short period it has dealt with over 20 actions in which the state, its bodies and constituent administrative organisations have appeared as a party before the Administrative Court, which are legal persons and are represented by the attorney general, in accordance with Article 7 of the Attorney General Act. Our experiences so far have shown that the issue of such "substitutive" representation of the public interest still needs to be systemically regulated, alongside the prior demarcation of the roles of other state bodies as representatives of the public interest, particularly the attorney general's office. In several provisions the authorisations of the state prosecutor as the representative of the public benefit are regulated by the new **General Administrative Procedure Act** (in force since 1 April 2000).

By way of conclusion, let us mention the following:

- the powers of the state prosecutor's office pursuant to the provision of the third paragraph of Article 11 of the Reciprocity Act and the fourth paragraph of Article 34 of the Legal Aid Act[9], according to which the state prosecutor is entitled to file a suit in an administrative dispute against a decision against which there is no ordinary legal remedy.

- **procedures for the regulation of entry in the register of deaths** pursuant to the provisions of Articles 19a to 19d of the Register of Birth, Deaths and Marriages Act, according to which the prosecutor's office is the body authorised, in addition to others, to file a proposal for the entry of the death of a person who lost his life

in postwar incidents and whose death has, up to now, not been entered in the register of deaths.

Other remaining authorisations have not had an effect on the volume of prosecutorial work in the year in question, either in terms of their scope or content.

The precondition and guiding principle for the appearance of the state prosecutor in all the above-mentioned procedures is the **"public interest".** Although legal regulations do not explicitly define the term, in decisions on filed requests for the protection of legality, judicial practice has formulated a position that the purpose of the intervention of the state prosecutor to safeguard the legal order lies above all in securing the conditions for the coordination of court practice.

Safeguarding the **direct interests of parties**, decided on in a final decision and against which the legislator did not envisage the possibility of judicial protection in the third instance, is therefore of a **subordinate nature**. Every established deficiency asserted in the initiative in a specific final decision does still not therefore constitute reasonable grounds for measures to be taken by the state prosecutor. On the other hand, the state prosecutor may also file, on the basis of an initiative from a party, a request for the protection of legality to the detriment of that party. Within these frameworks the important criteria for testing initiatives by parties are the following in particular:

- an assessment of whether the taking of measures will contribute to the final settlement of the disputed relationship;
- the possibility of removing errors that have resulted in parties being deprived of the right to judicial protection;
- if decisions are involved that contravene moral principles or if the judicial protection of the disposal of parties recognised on their basis contravenes compulsory regulations.

The state prosecutor's office interprets and uses authorisations to intervene in final and concluded civil-law proceedings that are defined by the primary autonomy of parties restrictively.

The **new Administrative Procedure Act** does not define **the public benefit**, which is a precondition for the participation of the state prosecutor in administrative proceedings, either. From the substantive interpretation of other provisions, for example the definition of extremely urgent measures in an administrative property, it follows that insured property is that defined by the public benefit, legal order, public security, morals, direct danger to life and human health, economic interests, etc. Only within such limits do we recognise the role of the state prosecutor in dealing with initiatives of parties for a review of the legality of final court decisions issued in civil proceedings.

SPAIN

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

Yes, the Spanish Prosecutor has many competencies outside the criminal field.

2a. 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)?

We have some competencies in civil proceedings, for example in the defense of minors and people with mental or physical disabilities.

We also have competencies in administrative and social proceedings in cases that may involve human rights.

b. Please indicate the background explaining their existence.

The prosecutor's competencies outside the criminal field, are supported in the Spanish constitution (Art 124) and the organic statute of the public prosecution service (Art 1 y 3)

Article 1.
The Public Prosecution Service has as its mission to promote the action of justice to defend legality, citizens' rights and the legally protected public interest, acting ex officio or at the request of the interested parties, likewise to ensure the independence of the Courts and to strive in Court for the satisfaction of the interest of society.

Art 3.
For the completion of the missions established in article 1, it falls to the Public Prosecution Service:

.....

3. To ensure respect for constitutional institutions and for fundamental rights and public liberties with all proceedings required in the defence thereof.

.....

6. To take part, in defence of the law and of the public interest or the interest of society, in action concerning marital status and other action established in the Law.

7. To participate in such civil action as determined by law when the interest of society is involved or when minors or incapacitated or handicapped persons are affected, until and unless ordinary counsel is provided.

.....

12. To file appeals for the protection of constitutional rights, likewise to participate in action heard by the Constitutional Court in the defence of legality, in the fashion established by law.

13. In matters concerning the criminal liability of minors, to exercise the functions entrusted to it by specific legislation, wherein it must endeavour to satisfy the greatest interest of the minor.

14. To participate in procedures heard by the Court of Payments in the cases and fashion provided for by law. Likewise to defend legality in action initiated under administrative law and labour legislation wherein the Public Prosecution Service is called to participate.

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.

This depends, generally the main role in this case is an advisory and supervisory role but in some case the prosecutor initiates the legal action

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

No, because in this case the prosecutor doesn't have the final decision.

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.

It is very difficult to give accurate statistics, but in any case, the above mentioned competencies are of lesser importance than their intervention in criminal proceedings

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

I think at this moment, not reform are envisaged in this competencies.

SWEDEN

Prosecutors´ competencies outside the criminal field

No
–
–
No

SWITZERLAND[10]

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

No, it does not fulfil any general role of a non-criminal nature. However, when investigating crimes, as an independent criminal prosecution body, it goes without saying that it respects the rights guaranteed by domestic laws and international agreements ratified by Switzerland, particularly human rights.

2a. 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.

n/a.

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.

n/a.

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

n/a.

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.

n/a.

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

No, it does not.

[10] Original reply received in French, see Appendix

FORMER YUGOSLAV REPUBLIC OF MACEDONIA

Yes, Public prosecution has competencies outside criminal field. Public prosecution has competencies in civil law and administrative law.

Public prosecution of Republic of Macedonia file unordinary law remedies in civil proceeding and in administrative law. Public prosecution file a Seeking protection under law to the Supreme Court of Republic of Macedonia and give opinion about revisions in civil cases and also files a initiatives to the Constitutional court if the law is not according the Constitution and the Laws. Also initiates proceedings for erasing the civil associations from the register and can request deleing of the execution. Public prosecutor has role of supervisor when he files unordinary law remedies against decree absolute to the Supreme Court of Republic of Macedonia and in that way he controls the verdicts that courts made.

In 2003 Public prosecution of Republic of Macedonia has received 1705 initiatives for seeking protection under law in civil law, and Public prosecution has filed 196 seeking protection under law to the Supreme court of Republic of Macedonia. The Supreme court of Republic of Macedonia has worked with 92 seeking protection under law, 47 are excepted and 45 were refused. In 2004 there are more initiatives for seeking protection under law in civil law. In 2003 Public prosecution of Republic of Macedonia has received 61 administrative cases, 40 of them were refused.

There is a preposition for withdrawing the seeking protection under law in civil proceedings.

TURKEY[11]

1. Yes.

(According to the Turkish Constitution:

"ARTICLE 140. Judges and public prosecutors shall serve as judges and public prosecutors of courts of justice and of administrative courts. These duties shall be carried out by professional judges and public prosecutors.

Judges shall discharge their duties in accordance with the principles of the independence of the courts and the security of tenure of judges.

The qualifications, appointment, rights and duties, salaries and allowances of judges and public prosecutors, their promotion, temporary or permanent change in their duties or posts, the initiation of disciplinary proceedings against them and the subsequent imposition of disciplinary penalties, the conduct of investigation concerning them and the subsequent decision to prosecute them on account of offences committed in connection with, or in the course of, their duties, the conviction for offences or instances of incompetence requiring their dismissal from the profession, their in-service training and other matters relating to their personnel status shall be regulated by law in accordance with the principles of the independence of the courts and the security of tenure of judges.

Judges and public prosecutors shall exercise their duties until they reach the age of sixty-five; promotion according to age and the retirement of military judges shall be prescribed by law.

Judges and public prosecutors shall not assume official or public functions other than those prescribed by law.

Judges and public prosecutors shall be attached to the Ministry of Justice where their administrative functions are concerned.

Those judges and public prosecutors working in administrative posts within the system of legal services shall be subject to the same provisions as other judges and public prosecutors. Their categories and grades shall be determined according to the principles applying to judges and public prosecutors and they shall enjoy all the rights accorded to judges and public prosecutors".)

2.a. The prosecution service bears some administrative responsibilities. It is responsible for prison administration (remand prisons and other places of detention) and corresponds with the Ministry of Justice.

- authorisation of public payments and receipts,
- enforcement of sentences,

[11] Original reply received in French, see Appendix

- stays of execution,
- role in the judicial commission (with judges),
- participation in disciplinary board,
- participation in disciplinary decisions,
- participation in prisons board,
- evaluation of officials (of prisons and prosecuting authorities),
- representative responsibility, etc.

2.b. Already explained (2.a.)

2.c. Advisory, supervisory and decision-making roles.

2.d. Yes, decisions can be challenged. In respect of some decisions, an appeal may be made to the enforcement magistrate (remand prisoners, convicted persons), appeals are possible to the administrative court and, where some decisions are concerned, appeals may also be made to the disciplinary board.

3. Insufficient statistics are available, because legislation is often changed.

4. Yes, there is a raft of reforms relating to the responsibilities of the prosecution service. One, for instance, relates to criminal procedure, and work is under way with a view to creating the office of Principal State Prosecutor.

UKRAINE

1. The competence of the prosecution service of Ukraine is specified in the Law of Ukraine "On Public Prosecution", adopted by the Parliament of Ukraine on November 5, 1991 with amendments to it.

Pursuant to the Law, the public prosecution of Ukraine constitutes the unified system, entrusted, in accordance with the Constitution of Ukraine and this Law, besides the legal capacity to conduct criminal proceedings, with the following functions:

- to appear for the prosecution in the court on behalf of the State, that is the exclusive competence of the bodies of public prosecution;
- to represent interests of the citizen or the State in the court in cases envisaged by law, that is accomplished by bringing of actions in the interests of citizens (deprived of the possibility to defend their rights by themselves) of the State on their violated rights and freedoms;
- to supervise the observance of laws by the bodies, which exercise operative search activity, inquiry and pre-trial investigation, that is accomplished in the course of supervision of the investigation of criminal matters, detention and arrest of citizens, conduct of operative search activity and restoration of rights and interests of citizens both by their complaints and in the course of verifications;
- to supervise the observance of laws in the course of execution of court decisions in criminal matters, as well as implementation of other coercive measures, related to the limitation of personal freedom of citizens (that is accomplished by the conduct of relevant verifications and submission of acts of prosecutor`s response to detected violations with the following judicial restoration of violated rights and freedoms of citizens).

2. a. The competence of the bodies of public prosecution of Ukraine in the field of enforcement of administrative law consists in the supervision of observance of requirements of legislation by relevant bodies, which are entitled to take administrative measures, including judicial authorities. In case of detection of violations they submit the document of prosecutor`s response to an unlawful decision of the relevant body, in consequence of which the violated rights are restored directly by the body, which took the decision on enforcement of official reprimand, as well as through reversal of such decision by a court judgment. In case of detection of infringements of rights to social security, the issue is decided similarly.

In accordance with requirements of the Law of Ukraine "On Public Prosecution", supervision and administration of activity of courts are not within the competence of the public prosecution of Ukraine, as the judicial system is related to the independent branch of power in our country.

b. The above-mentioned competences are conditioned by the requirements of the Constitution of Ukraine and the Law of Ukraine "On Public Prosecution", in accordance with which the bodies of public prosecution of Ukraine are entrusted with the exercise of

higher function of supervision, related to the protection of legal interests of citizens and the State. The exhaustive list of supervision functions of the public prosecution is above.

c. In compliance with requirements of the legislation in force of Ukraine, the prosecutors, exercising these competences, ensure the fulfillment of their powers by the way of conduct of supervision activity, which calls forth the necessity to require elimination of detected infringements, as well as taking of decisions for the restoration of rights and freedoms of citizens and protection of public interests. It is accomplished by the way of submission to competent authorities of documents of prosecutor`s response.

d. The decisions taken by the prosecutor can be appealed to the higher prosecutor or by bringing an action. The appeals to the court can be lodged against actions of the prosecutor or his omission concerning the issues, connected with exercise of supervision by the prosecutors.

3. The effectiveness of exercise of prosecutor`s supervision functions in our country primarily depends on the operation of a real mechanism, which would allow to ensure the compliance with laws of Ukraine of subjects of the State and citizens. As the practice shows, effectiveness of work of the bodies of public prosecution beyond criminal field is high enough, because most of measures of prosecutor`s response to detected infringements are related to measures aimed at restoration of violated rights and freedoms of citizens or public authorities by relevant competent bodies. The scope of activity of the bodies of public prosecution beyond criminal field constitutes nearly one half of the full scope of work.

4. In relation with actual processes in Ukraine, aimed to democratization of the development of our society and establishment of the rule of law, the functioning of the bodies of public prosecution became aware of the positive development as well. First of all, it concerns the reform of activity of the bodies of public prosecution, which consists in the elaboration and further adoption of a new law “On Public Prosecution”, taking into consideration the proposals and wishes of the European institutions, that were involved in the process of monitoring of the national legislative base in the field of procuracy activity. The Law “On Political Reform in Ukraine” adopted recently by the Verkhovna Rada of Ukraine, in accordance with which the functions of public prosecution come within transformation in compliance with reality of the present-day life, will exert a significant influence on legislative security of the activity of the bodies of public prosecution of Ukraine.

UNITED KINGDOM
(REPLY FROM NORTHERN IRELAND)

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

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)?

b. Please indicate the background explaining their existence.

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.

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

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.

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

Prosecutors in this jurisdiction do not exercise any function outside the criminal field.

There is no plan to revise this.

APPENDIX

COUNCIL OF EUROPE CONSEIL DE L'EUROPE

Site web de la Conférence:
www.coe.int/prosecutors/

Strasbourg, 19 octobre 2004

CPGE-BU (2004) 08

Conférence des Procureurs Généraux d'Europe

Bureau de coordination

COMPETENCES DES PROCUREURS EN-DEHORS DU DOMAINE PENAL

QUESTIONNAIRE (French version)

1. Le ministère public de votre pays a-t-il des compétences en-dehors du domaine pénal ?

2 a. Si oui, quelles sont ces compétences (s'agissant, par exemple, du droit administratif, civil, social et commercial et/ou du fonctionnement et de la gestion des juridictions) ?

b. Veuillez indiquer les circonstances qui expliquent leur existence.

c. Veuillez indiquer le rôle joué par le ministère public dans l'exercice de ces compétences : rôle de conseil – *ex officio* ou sur demande – rôle de supervision ou rôle de décisionnaire.

d. Lorsque des procureurs ont des pouvoirs décisionnaires, existe-t-il des voies de recours pour contester leurs décisions ? Si oui, veuillez préciser.

3. Veuillez donner des précisions (statistiques, si vous en avez) sur l'usage effectif de ces compétences et la charge de travail qu'elles entraînent pour le ministère public dans son ensemble.

4. Votre pays envisage-t-il une réforme portant sur les compétences du ministère public indiquées plus haut ?

REPLIES RECEIVED IN FRENCH

ANDORRA

1. Le Ministère Public de votre pays dispose-t-il de compétences en dehors du domaine pénal?

Oui

a) En cas de réponse affirmative, quelles sont ces compétences (s'agissant par exemple du droit administratif, civil, social, commercial et/ou du fonctionnement et de la gestion des juridictions)?

L'article 93.1 de la Constitution du 28 avril 1993 stipule que : «Le Ministère Public a pour mission de veiller à la défense et à la mise en œuvre de l'ordre juridique, ainsi qu'à l'indépendance des tribunaux et il lui appartient de demander devant ceux-ci l'application de la loi pour la sauvegarde des droits des citoyens et la défense de l'intérêt général.»

Que conformément à ce que stipule l'article I de la Loi sur le Ministère Public du 12 décembre 1996, celui-ci «1. Veille à ce que la fonction juridictionnelle soit menée à terme efficacement, conformément aux lois et dans les termes et les délais que celles-ci stipulent, en exerçant s'il y a lieu les actions, les recours et les procédures pertinentes ;
2. Veille au respect des institutions constitutionnelles et des droits fondamentaux et des libertés publiques, au moyen des procédures que saurait réclamer leur défense ; 3. Exerce les procédures que la loi lui confère en défense de l'indépendance des juges et tribunaux.»

De même, l'article 3 de la Loi sur le Ministère Public stipule que «Dans le domaine de la mission dont il est chargé, le Ministère Public :
(…)
10. Intervient dans toutes les procédures civiles dans lesquelles des personnes absentes, mineures, incapables ou privés de moyens ont des intérêts et, en tant que partie, il exerce le droit au recours. S'il y a lieu, en son intérêt, il promeut la constitution de l'organe de tutelle.

11. Intervient, conformément à ce que stipulent les lois opportunes, dans la procédure d'*habeas corpus* et dans la procédure d'urgence et préférentielle de tutelle des droits et libertés reconnus aux chapitres III et IV de la Constitution, ainsi que dans les recours ou procédures de garantie constitutionnelle, et dans les procédures relatives à toutes questions d'inconstitutionnalité contre des lois et décrets législatifs et, le cas échéant, dans la procédure incidente d'inconstitutionnalité.

12. Intervient, en défense de l'intérêt général, conformément à la Loi du registre civil, dans toutes les procédures ayant trait à l'état civil des personnes.

13. Intervient dans les procédures disciplinaires suivies contre juges et magistrats.

14. Remet des rapports en vue de la résolution des dossiers d'inscription au Barreau d'Andorre, dans les termes que stipule le Code de procédure pénale.
Ainsi que dans la liste des personnes admises à exercer comme avocats.

15.- Exerce toutes les autres fonctions qui lui son attribuées par la loi.

En outre, conformément à ce que stipule l'article 60 de la Loi qualifiée sur le mariage, du 30 juin 1995, «1.- L'action en nullité du mariage civil ou aux fins du divorce appartient: …/…b) Au Ministère Public » ; et selon ce que stipule l'article 53 de cette même loi qualifiée, «Toutes les mesures relatives 'a l'éducation et à la garde des enfants sont prises dans leur intérêt et bénéfice. La juridiction civile statue après avoir recueilli si possible l'avis des enfants mineurs, entendu le Ministère Public.

De même, la Loi qualifiée sur l'adoption et sur les autres formes de protection du mineur en danger, du 21 mars 1996, et la Loi Qualifiée sur l'état d'incapacité et les organismes tutélaires du 3 novembre 2004, confèrent au Ministère Public une intervention au niveau de la constitution et du contrôle des organismes tutélaires et des adoptions.

b) Veuillez signaler les circonstances qui expliquent l'existence de ces compétences.

L'intervention du Ministère Public est rendue nécessaire, compte tenu de la vulnérabilité et de la nécessité de protection des personnes qui sont submergées ou susceptibles d'être concernées par lesdites procédures, et des garanties qu'il convient d'accorder aux droits fondamentaux et aux libertés publiques constitutionnellement reconnus.

c) Veuillez signaler le rôle développé par le Ministère Public dans l'exercice de ses compétences : rôle de conseil – *ex officio* ou sur demande – rôle de supervision ou rôle de décision.

Que conformément à ce que stipule l'article 5 de la Loi sur le Ministère Public, «1.L'action du Ministère Public demeure assujettie à la Constitution et aux lois. 2.Le Ministère Public se prononce, informe et exerce les actions pertinentes ou, s'il y a lieu, il s'oppose à celles indûment formulées, conformément au système en vigueur.»

La précédente comporte que l'intervention du Ministère Public dans les procès susmentionnés se fasse au moyen de rapports à caractère obligatoire non contraignant, le Ministère Public étant habilité à interjeter recours en degré

d'appellation contre les résolutions qu'il considérerait non conformes au système juridique en vigueur.

d) Lorsque le Ministère Public a pouvoir de décision, existe t'il des voies de recours en vue de contester des décisions? Si oui, veuillez les préciser.

Le Ministère Public n'exerce le pouvoir de décision qu'à propos des plaintes directement formulées devant le Ministère Public et sur les diligences d'enquête du propre Ministère Public.

Les résolutions que le Ministère Public adopte à propos de ces plaintes ou diligences ne sont pas susceptibles de faire l'objet de recours. Néanmoins, les parties intéressées peuvent reproduire les prétentions exposées et, le cas échéant, déboutées par le Ministère Public, devant les organismes juridictionnels compétents.

2. Veuillez apporter des précisions (statistiques, si vous en disposez) quant à l'usage effectif de ses compétences et la charge de travail que celles-ci comportent pour le Ministère Public dans son ensemble.

ANNÉE JUDICIAIRE	**00-01**	**01-02**	**02-03**	**03-04**
PÉNAL	4363	4372	5209	6335
CIVIL	419	489	501	613
CONSTITUTIONNEL	28	20	21	20
DROITS FONDAMENTAUX	27	8	23	15
PLAINTES	25	18	27	21
DILIGENCES D'INVESTIGATION	11	15	19	19

BELGIUM

Le ministère public de votre pays a-t-il des compétences en-dehors du domaine pénal?

Si oui, quelles sont ces compétences? Veuillez indiquer le rôle joué par le ministère public dans l'exercice de ces compétences: rôle de conseil – ex officio ou sur demande – rôle de supervision ou rôle de décisionnaire?

L'intervention du ministère public dans les matières dites civiles est réglée dans l'article 138 alinéa 2 du Code judiciaire: *Dans les matières civiles, le ministère public intervient par voie d'action, de réquisition ou d'avis. Le ministère public agit d'office dans les cas spécifiés par la loi et en outre chaque fois que l'ordre public exige son intervention.*

Le terme « ordre public » se retrouve dans beaucoup de matières à caractère civil, par conséquence le champ d'intervention du ministère public est très étendu. Le ministère public, en dehors du domaine pénal, peut intervenir au moyen d'avis, d'action ou de réquisition.

Il exerce plusieurs rôles : celui de partie principale dans les cas où il est tenu d'office de rendre un avis ou dans les cas où l'ordre public est menacé; d'investigateur dans une cause (voir les articles 138, 931 et 1280 du Code judiciaire); et d'exécuteur de décisions judiciaires.

Le ministère public poursuit, d'office et sur demande, l'exécution des décisions judiciaires dans toutes les dispositions qui intéressent l'ordre public (article 139 du Code judiciaire).

Il exerce en outre une fonction importante en droit économique en recherche et poursuite d'infractions économiques et financières (article 764, alinéa 8 du Code judiciaire.) et en droit social.

1. L'avis du ministère public

Quand le ministère public donne un avis, il ne le fait pas à la demande des parties au litige. Le ministère public intervient **d'office,** par exemple dans une procédure de filiation.

Cette intervention consiste en un contrôle de l'exacte portée de la loi dans des matières qui touchent à l'ordre public, sans que cet ordre doive être mis en péril. Dans son avis le ministère public donne la solution qui doit, à son estime, conduire à une 'juste et saine' interprétation de la loi. L'avis peut être écrit ou oral et ne lie pas le juge. Il est purement consultatif.

Cependant il est incontestablement utile qu' « un magistrat vienne de façon objective et impartiale, exposer et préciser au tribunal le point de vue du droit, tel qu'il se dégage du dossier et des débats et qui commande la solution du procès. (…) Son intervention

contribuera efficacement (…) à approfondir à l'occasion des affaires délicates ou difficiles ; elle favorisera une meilleure administration de la justice »[12].
Dans les procédures d'attribution de nationalité, le ministère public donne son avis aux autorités administratives.

2. Le droit d'action du ministère public

Le ministère public intervient d'office, dans les cas où la loi l'autorise explicitement ainsi que dans les cas où l'ordre public ou l'intérêt général sont mis gravement en péril par un état de choses auquel il importe de remédier. Par exemple action d'annulation d'un mariage blanc.

Dans ces cas, il lui est permis d'enclencher le procès civil, d'y intervenir et même d'exercer une voie de recours. Le ministère public peut aussi interjeter appel d'une décision dans une cause à laquelle il n'était pas partie, ou dans laquelle il a donné un avis.

Ce recours n'a pas seulement pour objet d'assurer la légalité de la décision et de veiller à l'unité de la jurisprudence, mais aussi de protéger les parties qui se seraient mal défendues.

Les compétences du ministère public dans des matières non pénales sont considérables. Ils se situent dans les matières commerciales, les matières familiales, les matières concernant la protection de la jeunesse, le droit du travail, la procédure disciplinaire. Le parquet est compétent en matière de poursuites disciplinaires à l'égard de juges, d'huissiers de justice, de notaires et d'avocats.

Pour une explication plus détaillée et pour connaître quelques autres compétences voir annexe 2.

d. Lorsque des procureurs ont des pouvoirs décisionnaires, existe-t-il des voies de recours pour contester leurs décisions? Si oui, veuillez préciser.

Les interventions du ministère public sont jugées par les tribunaux. Ces jugements sont susceptibles d'appel ou de cassation.

L'appel est un recours ordinaire par lequel la partie qui se sent lésée par le jugement soumet ce jugement à une juridiction supérieure afin de le faire modifier. Dès qu'un jugement est prononcé, il peut être interjeté appel, même s'il s'agit d'une décision avant dire droit ou d'un jugement par défaut.

La Cour de cassation veille à l'application correcte de la loi par les cours et tribunaux et ne juge par conséquent que de la légalité de la décision contestée. La Cour de cassation ne se prononce donc pas sur le fond. En d'autres termes, elle connaît en dernier ressort

[12] H. Solus et R. Perrot, *Droit judiciaire privé*, Paris, Sirey, tome I, n° 87.

des décisions dont elle a été saisie en raison d'une violation de formes substantielles ou de formes prescrites à peine de nullité.

3. Veuillez donner des précisions sur l'usage effectif de ces compétences et la charge de travail qu'elles entraînent pour le ministère public dans son ensemble.

Dans un arrondissement judiciaire avec une population de 250.000 habitants, il y a un procureur et dix-huit substituts. Deux substituts s'occupent des affaires non pénales. Chacun traite par an environ 400 dossiers dans lesquels il intervient par action et 250 dossiers dans lesquels il intervient par avis par an.

4. Votre pays envisage-t-il une réforme portant sur les compétences du ministère public indiquées plus haut?

Actuellement non.

LUXEMBOURG

1ière question :

Le législateur luxembourgeois a attribué au ministère public de nombreuses compétences en-dehors du domaine pénal et ceci notamment dans le droit civil, le droit commercial, le droit de la santé ou encore dans des matières spéciales comme par exemple la protection de la jeunesse en matière de violences domestiques et en matière de blanchiment.

2ième question :

A) En droit civil le Parquet veille au bon ordre en matière d'état civil et dirige de ce fait les officiers de l'état civil.

Aux termes de l'article 183 du Nouveau Code de Procédure Civile la communication des affaires civiles aux fins de conclusions de la part du ministère public est réglée comme suit :

« Seront communiquées au Procureur d'Etat les causes suivantes :

1) celles qui concernent l'ordre public ;

2) celles qui concernent l'état des personnes, à l'exception des causes de divorce et de séparation de corps, et celles qui sont relatives à l'organisation de la tutelle des mineurs, à l'ouverture, à la modification ou à la mainlevée des tutelles ou curatelles des majeurs ainsi qu'à la sauvegarde de justice ;

3) les règlements de juge, les récusations et renvois ;

4) les prises à partie ;

5) les causes concernant ou intéressant les personnes présumées absentes.

Le Procureur d'Etat pourra néanmoins prendre communication de toutes les autres causes dans lesquelles il croira son ministère nécessaire ; le tribunal pourra même l'ordonner d'office. Si la cause est communiquée, le Procureur d'Etat fait connaître ses conclusions soit oralement à l'audience soit par écrit au tribunal, les conclusions écrites étant communiquées aux parties avant l'ordonnance d clôture visée par les articles 223 et suivants. »

Dans certaines matières spécifiques le ministère public intervient encore dès que l'ordre public est touché (par exemple les questions de garde des enfants dans une procédure de divorce).

En matière civile le ministère public a exclusivement un rôle de conseil sauf pour ce qui est de ses relations avec les officiers de l'état civil où il exerce un rôle de superviseur.

Le Procureur Général d'Etat prend également des conclusions dans toutes les affaires qui sont soumises à la cour de cassation même si comme en matière de droit social le ministère public n'y a aucune compétence. Il s'entend que le Procureur Général d'Etat est considéré comme partie principale dans les affaires pénales et comme partie jointe dans les autres affaires où il n'et pas directement une partie au procès.

B) En droit commercial le ministère public peut demander la mise en faillite d'un commerçant ou encore sa mise sous gestion contrôlée. De même le ministère public peut demander une interdiction professionnelle à l'égard d'un failli ou d'un dirigent d'une société déclarée en état de faillite lorsque ceux-ci ont commis des fautes graves en relation directe avec la faillite.

Le ministère public peut encore demander la dissolution et la liquidation d'une société soumise à la loi luxembourgeoise qui poursuit des activités contraires à la loi pénale en ce qui contrevient gravement aux dispositions du code de commerce ou des lois régissant les sociétés commerciales, y compris en matière de droit d'établissement.

C) En droit social et en droit administratif le ministère public ne joue aucun rôle.

D) En ce qui concerne le fonctionnement et la gestion des juridictions un rôle prépondérant revient au Procureur Général d'Etat lequel gère le budget attribué aux instances judiciaires et constitue en fait le lien entre les différents services judiciaires et le ministère de la Justice. C'est ainsi que le Procureur Général d'Etat avise également toutes les demandes pour les différentes postes à pourvoir au sein de la magistrature tant debout qu'assise.

Le Procureur Général d'Etat et les Procureurs d'Etat veillent encore au maintien de l'ordre et de la discipline, à la régularité du service et à l'exécution des lois et règlements au sein des juridictions. Ils peuvent faire des observations à cet égard au président de la cour supérieure de justice et au président du tribunal d'arrondissement.

E) a) En matière de blanchiment le législateur luxembourgeois a décidé de confier la mission de la Cellule de Renseignement Financier au Procureur d'Etat près le tribunal de Luxembourg qui a ainsi compétence non seulement pour la poursuite des infractions consistant en des actes de blanchiment mais encore de recevoir en tant qu'autorité centrale les déclarations d'opération suspecte de la part des professionnels soumis à l'obligation légale de coopération et finalement, dans le cadre de la coopération internationale pour la lutte contre le blanchiment, la communication aux autorités d'un autre Etat responsable de la lutte contre le blanchiment, des informations sur des actes de blanchiment.

Par rapport à des transactions suspectes le Procureur d'Etat peut donner une instruction de ne pas exécuter une opération suspectée de blanchiment ou de financement de terrorisme.

Une telle instruction est limitée à une durée maximale de validité de trois mois à partir de la communication de l'instruction aux professionnels.

La loi ne prévoit pas une procédure spéciale à l'égard de l'instruction de blocage du Procureur d'Etat, ce qui fait qu'on doit admettre que les procédures de droit commun peuvent être engagées.

Le Parquet de Luxembourg exerce donc en matière de blanchiment d'importantes attributions extra pénales.

L'existence de cette spécificité luxembourgeoise s'explique surtout par le fait qu'on n'a pas voulu constituer un nouveau service.

b) En matière de violences domestiques la loi du 8 septembre 2003 prévoit que l'auteur de violences au sein d'une communauté de vie peut faire l'objet d'une mesure d'expulsion du domicile pour une durée de 10 jours de l'accord du ministère public et ceci non seulement s'il y a eu violences mais encore s'il y a uniquement des indices que l'auteur se prépare à commettre à l'égard d'une personne proche avec laquelle elle cohabite une infraction contre la vie ou l'intégrité physique.

Dans ce cas le Parquet peut donc être amené à intervenir en dehors du domaine pénal proprement dit.

c) En matière de santé publique le ministère a encore l'attribution de provoquer le placement dans un milieu psychiatrique fermé d'une personne qui constitue un danger pour elle-même ou pour autrui si le l'ordre ou la sécurité publique. La personne placée a un droit de recours devant le tribunal contre une telle mesure.

d) La matière de la protection de la jeunesse n'est pas considérée en droit luxembourgeois comme relevant du droit pénal. Le législateur considère un jeune comme un être en devenir qui en cas de méfaits de sa part doit être considéré plutôt comme victime de la société que comme auteur d'une infraction pénale. Si un mineur est considéré comme étant en danger il peut être placé par le Parquet dans une institution spéciale pour une durée n'excédant pas un mois. Le juge de la jeunesse doit cependant être averti immédiatement de la mesure prise et peut prendre une autre mesure à l'égard du mineur en question.

3ième question

Les activités du ministère public dans les différentes matières sont d'une importance réelle sans qu'il soit possible de les chiffrer avec précision. A noter toutefois que par exemple en matière de blanchiment 2 tâches entières et une demie-tâche de magistrats y sont exclusivement consacrées (au Parquet de Luxembourg sur un total de 22 magistrats) En matière de liquidation de sociétés le Parquet a introduit en 2004 plus de 400 demandes tendant à la dissolution et à la liquidation de sociétés.

Deux magistrats sont en charge de la protection de la jeunesse.

La matière de violences domestiques, qui a certes un volet pénal, prend également beaucoup de temps.

4ième question

Aucune réforme portant sur les compétences du ministère public n'est envisagée à l'heure actuelle. Il est cependant un fait que certains milieux professionnels préféreraient que le Cellule de Renseignement Financier soit détachée du Parquet.

MONACO

QUESTION 1

Oui, en vertu des dispositions de notre droit interne, le ministère public a également des compétences en matière civile, commerciale et administrative.

Il est présent devant toutes les juridictions.

QUESTION 2

A-B-C-D

En matière civile – selon les dispositions

des articles 72 et suivants de la loi n° 783 du 15 juillet 1965 portant organisation judiciaire.

« Les officiers du ministère public sont tenus de donner aussi des conclusions au civil, dans les causes et aux conditions réglées par le Code de procédure civile.

Ils agissent au civil, non par voie d'action, mais seulement par voie de réquisition dans les procès dont les juges ont été saisis.

Ils agissent d'office lorsque l'ordre public le commande.

Les officiers du ministère public, en faisant aux audiences leurs réquisitions ou en donnant leurs conclusions se tiendront debout et couverts.

Ils n'assistent pas aux délibérés précédents les jugements.

Ils sont cependant appelés à toutes les assemblées et délibérations qui regardent l'ordre et le service intérieur ; ils ont le droit de faire inscrire sur les registres des délibérations, les réquisitions qu'ils jugeront à propos de faire à ce sujet ».

des articles 184 à 187 du Code de procédure civile :

« Le ministère public donnera ses conclusions dans les causes suivantes :

1) *Celles qui concernent l'ordre public, le domaine public, le domaine privé du Prince, les établissements publics, les dons et legs au profit des pauvres ;*
2) *Celles qui concernent l'état des personnes ;*
3) *Celles qui concernent l'organisation et l'administration des tutelles ou curatelles ;*
4) *Les exceptions d'incompétence ;*
5) *Les récusations ;*

6) *Les prises à partie ;*
7) *Les causes concernant la dot, mobilière ou immobilière, sous le régime dotal ;*
8) *Les causes des mineurs même émancipés ; celles des interdits, des personnes placées dans un établissement d'aliénés, des personnes pourvues d'un conseil judiciaire, et généralement celles où l'une des parties est représentée par un curateur ou un administrateur judiciaire ;*
9) *Les causes des personnes présumées ou déclarées absentes ;*
10) *Celles dans lesquelles le défendeur, qui n'a dans la Principauté ni domicile ni résidence connus, n'a pas été touché par l'assignation et ne comparaît pas ;*
11) *Les causes des personnes qui ont obtenu l'assistance judiciaire ;*
12) *Les demandes d'envoi en possession de succession ;*
13) *Les demandes en reconnaissances ou vérification d'écriture, si la sincérité de l'acte est contestée ;*
14) *Les procédures en faux civil ;*
15) *Les demandes en rétractation ;*
16) *Les demandes à fin d'exécution des jugements et actes étrangers ;*
17) *Les incidents de la saisie immobilière ;*
18) *Les contredits dans les distributions par contribution et dans les ordres ;*
19) *Les causes concernant les faillites ;*

Et généralement toutes celles pour lesquelles la loi ordonne que le ministère public sera entendu ».

« Le Ministère public pourra conclure, en outre, dans toutes les autres causes où il croira son intervention utile. Il pourra toujours demande à cet effet que les pièces lui soient communiquées. Cette communication pourra aussi être ordonnée d'office par le tribunal ».

« Le ministère public donnera ses conclusions immédiatement après les plaidoiries ou, s'il requiert un délai, à l'audience qui sera fixée.

Mention en sera faite à la feuille d'audience ».

« Après les conclusions du ministère public, les parties ne pourront, sous aucun prétexte, obtenir la parole. Il leur sera seulement permis de joindre à leur dossier de simples notes pour signaler les erreurs de fait qu'elles prétendraient avoir été commises ou pour répondre à des moyens nouveaux.

Ces notes devront être préalablement communiquées à la partie adverse et au ministère public, qui pourront y répondre de la même façon sur-le-champ.

<u>En matière commerciale</u>

articles 580 à 586 du code de commerce :

« Le syndic, dès qu'il a connaissance de faits prévus aux articles 574 à 576 (faillite personnelle), en informe le procureur général et le juge-commissaire. Celui-ci, dans les trois jours, fait rapport au président du tribunal.

Ce magistrat en informe aussitôt le procureur général qui doit alors faire assigner, huit jours au moins à l'avance, le débiteur ou le dirigeant de la personne morale, pour être entendu à jour fixe par le tribunal siégeant en chambre du conseil, en présence du syndic ou celui-ci dûment convoqué par le greffier en chef.

Le procureur général peut aussi, de sa propre initiative, saisir le tribunal selon les mêmes modalités ».

« Le débiteur ou le dirigeant de la personne morale comparaît en personne; il peut se faire assister d'un avocat ; en cas d'empêchement dûment justifié, il peut se faire représenter par un avocat-défenseur ».

Lorsque l'assignation a été faite à personne, la décision rendue par défaut n'est pas susceptible d'opposition ».

« L'opposition est faite par déclaration au greffe général formé dans les quinze jours de la signification de la décision et contenant élection de domicile dans la principauté.

L'affaire est appelée à l'audience, sur assignation délivrée à la requête du procureur général.

Le syndic est convoqué par le greffier en chef »

« L'appel ne peut émaner que de la personne condamnée et du procureur général. Il est formé par déclaration au greffe général dans les quinze jours du prononcé du jugement.

L'affaire est appelée à l'audience sur assignation délivrée à la requête du procureur général.

Le syndic est convoqué par le greffier en chef.

L'appel est jugé dans les trois mois ».

« Le pourvoi en révision est jugé sur pièces conformément aux dispositions de l'article 458 du Code de procédure civile ».

« La décision passée en force de chose jugée qui prononce ou entraîne la faillite personnelle ou l'une des mesures visées à l'article 576, est publiée, par extrait, au Journal de Monaco, aux frais de la personne condamnée.

Elle est mentionnée au répertoire du commerce et de l'industrie et, le cas échéant, au répertoire de sociétés civiles qu'elle concerne une personne physique ou les dirigeants d'une personne morale ».

« La personne qui, conformément au second alinéa de l'article 579, demande à être relevée de la condamnation prononcée contre elle, saisit le tribunal par requête.

Celui-ci statue après audition du syndic et sur les conclusions motivées du procureur général.

L'alinéa premier de l'article 588 ainsi que les articles 590 et 591 son applicables.

La décision qui limite la durée de l'interdiction ou qui en relève le condamné est publiée conformément aux dispositions de l'article précédent ».

Loi n° 783 portant organisation judiciaire du 15 juillet 1965) –

« Le procureur général veille à tout ce qui concerne l'ordre général.

Il surveille l'état civil, le domaine, les droits des indigents, des femmes non autorisées et de celles autorisées lorsqu'il s'agit de leurs dots ; ceux des absents, des mineurs et des interdits.

Il remplit également les autres fonctions qui lui sont attribuées par les lois et ordonnances ».

En matière constitutionnelle et administrative

(Ordonnance Souveraine n° 2.984 du 16 avril 1963 sur l'organisation et le fonctionnement du tribunal suprême)

Le procureur général ou son substitut remplit les fonctions du ministère public près le tribunal suprême (art 5).

Le procureur général conclut au nom de la loi (art. 31).

QUESTION 3

En pratique, le ministère public est représenté à toutes les audiences où il prend la parole librement. Il prend obligatoirement des conclusions écrites devant les juridictions les plus importantes.

QUESTION 4

Aujourd'hui une importante réforme du Code de procédure pénale est en cours d'élaboration pour être soumise au législateur dans le courant du premier semestre 2005.

Parallèlement un « toilettage » du Code de procédure civile est engagé.

L'objectif de la Principauté est de disposer d'un corpus législatif conforme aux standards européens.

PORTUGAL

1. Le ministère public de votre pays a-t-il des compétences en dehors du domaine pénal?

Au Portugal, le ministère public se caractérise par son polyformisme, ses compétences s'étendant à divers échelons, y compris l'exercice de l'action publique, la promotion de la légalité, la représentation de l'Etat, des personnes incapables et de celles à domicile inconnu, la représentation *ex officio* des travailleurs, la défense des intérêts collectifs et diffus aux termes de la loi procédurale, ainsi que l'exercice de fonctions consultatives.

2.a Si oui, quelles sont ces compétences (s'agissant, par exemple, du droit administratif, civil, social et commercial et/ou du fonctionnement et de la gestion des juridictions)?

Le ministère public exerce fonctions consultatives par l'intermédiaire du Conseil consultatif du Parquet général de la République, à qui incombe, dans cette matière (article 37 du Statut du ministère public):

- D'émettre des avis restreints au domaine de la légalité, dans les cas de consultation prévus par la loi ou à la demande du Président de l'Assemblée de la République ou du Gouvernement ;
- De se prononcer, sur demande du Gouvernement, sur la forme et le contenu juridique de projets de textes législatifs ;
- De se prononcer sur la légalité des contrats dans lesquels l'État est partie intéressée, lorsque son avis est exigé par la loi ou demandé par le Gouvernement ;
- D'informer le gouvernement, par l'intermédiaire du ministre de la Justice, lorsque les textes législatifs sont obscurs, renferment des insuffisances ou sont contradictoires, et de proposer les modifications à y apporter ;
- De se prononcer sur les questions que le procureur général de la République, dans l'exercice de ses fonctions, soumet à son appréciation ;

L'intervention du ministère public en matière de constitutionnalité s'étend à toutes les juridictions, à travers l'interjection d'appels à l'encontre de décisions juridictionnelles qui rejettent l'application de toute norme basée sur son inconstitutionnalité ou appliquant une norme déjà déclarée inconstitutionnelle par la Cour constitutionnelle (contrôle spécifique de la constitutionnalité).

Dans le domaine du contrôle abstrait, le procureur général de la République peut demander à la Cour constitutionnelle d'apprécier et déclarer, avec force générale obligatoire, l'inconstitutionnalité de toute norme et l'illégalité de normes comprises en des actes législatifs, diplômes légaux régionaux ou émanant d'organes de souveraineté, sur base des fondements contenus à la loi (article 281-2-e de la Constitution de la République Portugaise et article 72 de la Loi nº 28/82, du 15 novembre).

Auprès la juridiction financière (Cour de Comptes), le ministère public représente l'Etat, défend la légalité et exerce l'action à responsabilité financière.

Le ministère public exerce, en particulier, des fonctions de poursuite pénale, pouvant déduire l'accusation sur base d'avis de comptes à être approuvés par l'Assemblée de la République ou par les assemblées régionales lorsque celles-ci lui les remisent aux fins d'implémentation de la responsabilité financière. Il peut aussi déduire accusation sur base des rapports approuvés par la 1ère. ou la 2e. Chambre de la Cour de Comptes à la suite d'actions de confirmation, contrôle et vérification comptable, bien qu'il ne reste pas engagé par la qualification juridique des faits contenue audits avis ou rapports (articles 29 et 89 de la Loi portant sur l'organisation et la procédure de la Cour de Comptes).

Auprès les juridictions de l'ordre administratif, le ministère public représente l'Etat, défend la légalité démocratique et promouvoit l'éffectivation de l'intérêt public, ayant de la légitimité pour proposer et intervenir aux affaires principales et préliminaires visant la défense de valeurs et de biens constitutionnellement consacrés tels que la santé publique, l'environnement, l'urbanisme, l'aménagement du territoire, la qualité de vie, le patrimoine culturel et les biens de l'Etat, des Régions autonomes et des collectivités locales (article 51 du Statut des juridictions de l'ordre administratif et fiscal et article 9-2 du Code de procédure administrative).

Auprès la juridiction tributaire, il incombe au ministère public de défendre la légalité, promouvoir l'intérêt public et représenter les personnes absentes, à domicile inconnu et incapables. De surcroît, il est aussi ouï dans le cadre de toutes les affaires judiciaires avant le prononcé de la décision définitive (article 14 du Code de procédure et du procès tributaire).

Auprès les tribunaux de commerce, il appartient au ministère public de défendre la légalité, promouvoir l'intérêt public et représenter l'Etat, les personnes absentes, à domicile inconnu et incapables.

Il a aussi de la compétence pour proposer des actions en dissolution de sociétés (article 83 du Code de procédure et du procès tributaire et article 89-1-e de la Loi sur l'organisation et le fonctionnement des juridictions de l'ordre judiciaire); de surcroît, le ministère public a aussi de la compétence pour demander la déclaration d'insolvabilité en représentation des entités dont les intérêts lui soit confiés (article 182 du Code de procédure et du procès tributaire, article 20-1 du Code de faillites et récupération d'entreprises et article 89-1-a de la Loi portant sur l'organisation et le fonctionnement des juridictions de l'ordre judiciaire).

Bien qu'il n'y soit pas la partie requérante, il incombe au ministère public d'intervenir aux affaires de faillite et d'insolvabilité, ainsi qu'aux affaires ayant de l'intérêt public (article 3-1-l du Statut du ministère public).
Auprès les tribunaux maritimes, le ministère public défend la légalité et intervient aux affaires à titre principal lorsqu'il représente l'Etat, les Régions autonomes, les collectivités locales, les personnes incapables et absentes. Le ministère public intervient

aux affaires à titre accessoire lorsqu'il ne représente pas ces autorités, mais celles-ci sont des parties intéressées.

Auprès les juridictions prud'homales, en dehors de la représentation de l'Etat, il incombe en particulier au ministère public de défendre *ex officio* les travailleurs et les membres de leurs familles en matière sociale (article 3-1-d du Statut du ministère public et articles 6 et 7-a du Code de procédure du travail).

Il lui appartient aussi de représenter les hôpitaux et les institutions dédiées à l'assistance dans des affaires ayant trait au personnel infirmier ou aux hôpitaux, à la distribution de médicaments découlant de la prestation de services cliniques, aux appareils de prothèse et d'orthopédie ou aux services ou prestations effectués ou payés au bénéfice de victimes d'accidents de travail ou maladies professionnelles et correspondantes exécutions, dès qu'ils ne disposent pas de services d'exécution, ainsi que la représentation des personnes qui, suivant une ordonnance du tribunal, aient rendu ces services ou fait ces fournissements (article 7-b, 7-c du Code de procédure du travail et article 85-d de la Loi portant sur l'organisation et le fonctionnement des juridictions de l'ordre judiciaire).

En matière d'affaires de travail, il incombe au ministère public de diriger la phase de conciliation en des affaires visant l'implémentation de droits découlant d'accidents de travail (article 99 du Code de procédure du travail).

Pour ce qui est de la juridiction civile, le ministère public défende la légalité et il a une intervenance principale aux affaires lorsqu'il représente l'Etat, les Régions autonomes et les collectivités locales, les personnes absentes, à domicile inconnu ou incapables et lorsqu'il représente les intérêts collectifs ou diffus. Lorsqu'il ne représente pas ces entités, mais celles-ci sont des parties intéressées dans l'affaire ou bien l'affaire vise à la réalisation des intérêts collectifs ou diffus, le ministère public intervient à ces affaires à titre accessoire (article 3-1-a et 5 du Statut du ministère public et articles 12-3, 15, 16, 17 et 20 du Code de procédure civile).

Le Code de procédure civile prévoit un ensemble de cas auxquels le ministère public intervient d'habitude à titre principal, tel que dans les cas d'interdiction légale et d'inaptitude d'ayant droit, de révision de jugements étrangers, de justification de l'absence et de la qualité d'héritier, de la liquidation de patrimoine et, en particulier, dans les cas d'inventaires, d'exécution par frais et d'amendes et du recours pour le collège de juges en vue de l'harmonisation de la jurisprudence.

Auprès les tribunaux pour les affaires familiales il appartient au ministère public de défendre la légalité et les intérêts des mineurs, notamment en des affaires visant à régler l'exercice de l'autorité parentale et l'adoption (article 82-1-c, 82-1-d de la Loi portant sur à l'organisation et le fonctionnement des juridictions).

Il incombe encore au ministère public d'entamer l'affaire en recherche officieuse de paternité visant la détermination judiciaire de la paternité et de la maternité.

Auprès les tribunaux pour les mineurs il incombe au ministère public, en particulier, de promouvoir l'intervention du tribunal en vue de la promotion des droits et de la protection de l'enfant et des jeunes en danger lorsque leurs représentants légaux ou les personnes chargées de leur garde portent atteinte à leur sécurité, entretien, éducation et développement ou lorsque l'atteinte résulte de l'action ou de l'omission de tierce personne ou de l'enfant ou jeune, et ceux-là n'y s'opposent de manière adéquate à écarter ce danger (articles 3, 11 et 72 de la Loi relative à la protection des enfants et jeunes en danger).

Lorsqu'un fait commis par un mineur âgé de 12 à 16 ans est passible d'être typifié comme une infraction pénale (article 40 de la Loi tutélaire éducative), il incombe au ministère public de:

- Diriger l'enquête en vue de l'investigation de l'existence du fait typifiée par la loi comme une infraction pénale et déterminer le besoin d'éducation du mineur pour le droit, en vue de la décision sur l'application d'une mesure tutélaire éducative;
- Promouvoir les démarches qu'il estime utiles et recourir, en défense de la loi et de l'intérêt du mineur;
- Promouvoir l'exécution des mesures tutélaires;
- Donner obligatoirement des avis sur des appels, requêtes et plaintes interjetées ou déposés aux termes de la loi;
- Donner obligatoirement un avis sur le projet éducatif personnel du mineur soumis à l'accompagnement éducatif ou confiné à un centre éducatif;
- Faire des visites à des centres éducatifs et contacter avec les mineurs y confinés.

Depuis le 1er. janvier 2002, suivant l'entrée en vigueur du Décret-loi 272/2001, du 13 octobre, le ministère public a aussi acquis de la compétence pour rendre des décisions ayant trait aux requêtes pour (article 2):

- Enlever le consentement, la raison de la requête étant celle de l'incapacité ou de l'absence de la personne concernée;
- Autoriser l'aliénation ou la libre disposition des biens appartenant à la personne absente, dès que la curatelle provisoire ou définitive ait été déférée;
- Ratifier des actes commis par le représentant de la personne incapable indépendamment d'autorisation à cet effet.

Le ministère public jouit aussi de la compétence pour se prononcer sur l'accord concernant l'exercice de l'autorité parentale vers les enfants mineurs en des affaires en séparation et divorce d'un commun accord dont la compétence exclusive repose sur le responsable du Bureau de registre de l'état civil.

Le ministère public intervient encore dans la gestion des services administratifs sur lesquels repose son activité auprès les juridictions (article 74-4 de la Loi organique des juridictions de l'ordre judiciaire).

b. Veuillez indiquer les circonstances qui expliquent leur existence

Bien que le dévoilement du ministère public en tant que structure stable soit antérieur à 1832, l'organisation définitive du ministère public ne fut achevée qu'à travers le «Décret portant sur la réforme des justices».

Les traits fondamentaux sur lesquels repose l'esquisse institutionnelle du ministère public consacré dans cette réglementation sont restés immuables en particulier en matière de compétences, lesquelles portent un caractère polyformique dès le début.

L'intervention du ministère public, en-dehors de l'exercice de l'action publique, s'étend à toutes les affaires portant sur un intérêt public ou à lesquelles interviennent des personnes qui l'Etat doit protéger en spéciale, y compris la promotion de la légalité, la défense de l'indépendance des tribunaux et l'exercice de fonctions consultatives.

Au rapport introductif au diplôme (Décret du 24 octobre 1901), qui restructurait la réorganisation du ministère public, on pourrait lire comme suit : «*la représentation de la société auprès les tribunaux, la défense de la propriété nationale, l'enquête et la poursuite d'infractions pénales, la protection des personnes incapables, le recouvrement coercitif des crédits de l'Etat, la supervision stricte et constante de l'application des lois et la difficile et importante compétence de membre consultatif du Gouvernement : voilà le vaste champ d'application auquel la mission fondamentale et complexe du ministère public doit s'étendre*.»

La magistrature du ministère public a donc une longue tradition liée autant à la promotion d'objectifs sociaux et à la défense des personnes à qui l'Etat reconnaît une fragilité spéciale, qu'à la défense des intérêts patrimoniaux de l'Etat se traduisant dans la représentation de l'Etat en justice et des travailleurs ou l'attribution d'un rôle relevant en matière de défense des intérêts collectifs et diffus.

c. Veuillez indiquer le rôle joué par le ministère public dans l'exercice de ces compétences: rôle de conseil – ex officio ou sur demande – rôle de supervision ou rôle de décisionnaire.

Les fonctions consultatives, exercées à travers le Conseil consultatif, deviennent matérialisées en des Avis juridiques (Les entités qui peuvent déclencher l'intervention du Conseil consultatif du Parquet général de la République se trouvent listées à la Réponse 1.a) ci-dessus.

Le procureur général de la République peut déterminer que la doctrine des Avis juridiques soit suivie et soutenue par tous les magistrats du ministère public, ce que les astreint, en particulier, à interjeter appel des décisions rendues par les tribunaux qui ne

suivent pas cette doctrine. Les avis juridiques du Conseil consultatif jouent, de ce fait, un rôle relevant vers l'uniformisation de la jurisprudence.

Lorsque homologués par le Gouvernement ou par d'autres entités les ayant demandé, les Avis juridiques sont parus au Journal Officiel «*Diário da República*», pour valoir, à l'égard des respectifs services, comme l'interprétation officielle des matières qui d'en ont fait l'objet (articles 37, 42 et 43 du Statut du ministère public).

En ce qui touche les compétences exercées par le ministère public à l'abri de la Loi tutélaire éducative, nommément dans la direction de l'enquête en vue de l'investigation de l'existence d'un fait typifié par la loi comme une infraction pénale et de la détermination de la nécessité éducative du mineur pour le droit, il lui fut octroyée de la compétence décisoire, en phase d'enquête, à l'égard de la nécessité d'application de la mesure tutélaire éducative.

Ainsi, le ministère public peut classer liminairement l'enquête lorsque le fait est typifié comme infraction passible de peine privative de liberté à durée maximale d'un an et lorsque l'application de la mesure tutélaire prouve être inutile face à la réduite gravité des faits en cause, aux agissements antérieurs et postérieurs du mineur et à son intégration familiale, éducative et sociale (article 78)

Lors de la conclusion de l'investigation, l'enquête est poursuivie et le ministère public requiert l'ouverture de la phase juridictionnelle ou bien il classe l'affaire lorsqu'il devient convaincu que :
a) le fait n'a pas eu lieu ; b) les indices portant sur la commission du fait en cause sont insuffisants ; c)il n'y a pas lieu à l'application de mesure tutélaire, lorsque le fait est qualifié en tant qu'infraction pénale passible de peine privative de liberté à durée maximale non supérieure à trois ans (articles 86 et 87 de la Loi tutélaire éducative).

En ce qui touche les fonctions exercées à l'abri du Décret-Loi 272/2001, du 13 octobre (mentionnée à 2.a) ci-dessus), l'intervention du ministère public est menée sur demande des intéressés et est imbue de compétence décisoire, sauf pour l'avis qu'il rend sur l'accord concernant l'exercice de l'autorité parentale à l'égard de mineurs d'âge, dans le cadre des affaires en divorces à consentement mutuel et en séparation de personnes et biens. Dans ces affaires, son intervention est faite *ex officio* et acquiert la forme d'avis.

Bien que cette intervention du ministère public acquiert ladite forme d'avis, l'affaire en divorce ne sera remis pour le Bureau de registre de l'état civil que lorsque cet avis estime que l'accord sauvegarde, de manière satisfactoire, les intérêts des mineurs (article 14-6).

Si le ministère public estime que l'accord manque de sauvegarde satisfactoire des intérêts des mineurs, les requérants du divorce y peuvent introduire des modifications en ce sens, pouvant produire un nouveau accord – lequel sera, à la foi, soumis à l'appréciation du ministère public – ou bien l'affaire en divorce sera déférée au tribunal du ressort ayant juridiction sur le lieu du Bureau de registre en cause si les requérants ne sont pas d'accord avec les modifications suggérées (articles 14-4, 14-5, 14-7).

d. Lorsque des procureurs ont des pouvoirs décisionnaires, existe-t-il des voies de recours pour contester leurs décisions ? Si oui, veuillez préciser.

Les pouvoirs décisionnaires octroyés au ministère public, en phase d'enquête, par la Loi tutélaire éducative, en particulier lorsque la décision est au sens du classement liminaire (article 78) ou du classement (article 87), ne sont pas passibles de contestation, surtout de la part de la victime.

En ce qui concerne le classement liminaire, bien que la partie lésée doive être notifiée de telle décision, aucune possibilité de réaction n'est prévue à la loi (article 78).

En ce qui concerne le classement à la suite de la clôture de l'enquête, bien que la possibilité d'intervention hiérarchique soit prévue, cette intervention est faite d'office. La possibilité pour la partie lésée d'y intervenir n'est pas prévue attendu que la décision de classement ne lui sera même notifiée (articles 87 et 88).

Les pouvoirs décisionnaires octroyés au ministère public par le Décret-Loi 272/2001, du 13 octobre, peuvent être contestés à travers l'instruction de la correspondante action par devant le tribunal par les parties intéressées, qui désirent voir leur prétention réappréciée (articles 3-6 et 4-6).

3. Veuillez donner des précisions (statistiques, si vous en avez) sur l'usage effectif de ces compétences et la charge de travail qu'elles entraînent pour le ministère public dans son ensemble.

Les précisions statistiques sur l'activité du ministère public concernent le Rapport du Parquet général de la République, pour l'année de 2003.

Le Conseil consultatif a reçu, au cours de 2003, 197 affaires qui se sont rejointes aux 67 affaires restées pendantes de l'année 2002. De ce total, clôture a été donnée à 177 affaires et 87 ont été transférées pour 2004.

Auprès la juridiction administrative et fiscale, la Cour centrale administrative, les magistrats du ministère public à la section du contentieux administratif sont intervenus en quasi toutes les affaires traitées au cours de l'année 2003, ayant émis 1 664 avis décisifs qui, en règle, ont fait l'objet d'acceptation. En ce qui touche le mouvement procédural global de la section de contentieux tributaire, un total de 2 789 affaires ont été traitées, desquelles 1 256 ont été closes.

Auprès les juridictions de cercle de l'ordre administratif, 590 affaires ont été entamées à l'encontre l'Etat, tandis que 1 869 affaires ont été entamées à l'encontre d'autres entités. Il a été donné suite aux décisions rendues dans 4 133 affaires, lesquelles ont ainsi été déférées au ministère public pour visa.

Auprès les juridictions tributaires de première instance, 52 120 affaires ont été mouvementées, dont 11 547 ont été closes.

Auprès la juridiction prud'homale ont été entamées 22 046 affaires en raison d'accidents de travail et, á la fin de l'année 203, 76 affaires étaient à la charge du ministère public en vue d'être entamées.

Auprès la juridiction prud'homale, au cours de 2003, le ministère public a entamé et contesté un total de 3 979 affaires, dont 222 concernaient des contrats de travail.

Auprès la juridiction civile et en matière d'intervention en représentation et défense des intérêts de l'Etat, des Régions autonomes, des collectivités locales, des personnes incapables, á domicile connu et absents, le ministère public a entamé 3 486 affaires. Le taux d'admissibilité des affaires ayant fait l'objet de décision s'est centré sur 96%.

Aux juridictions civiles, le ministère public a formé opposition à l'égard de 227 décisions rendues par les tribunaux de première instance.

2 362 a été le nombre total d'enregistrements d'inventaires exigés par la loi.

À la juridiction pour les affaires familiales, ont été distribuées 2 511 affaires concernant des recherches officieuses de paternité, ayant été obtenue de la preuve suffisante pour entamer 457 affaires, tandis que 527 autres affaires ont été rejetées en raison de non-lieu. Un total de 1547 affaires ont été conclues en raison de reconnaissance d'enfant.

Un total de 43 559 affaires ont été mouvementées en matière de réglementation, modification et interdiction de l'exercice de l'autorité parentale, d'adoption, détermination, modification et exécution d'aliments, et d'attribution judiciaire d'un mineur.

Auprès la juridiction pour les mineurs, ont été entamées 8 165 enquêtes, et 10 990 ont été mouvementées. Il fut donnée clôture à 7 700 affaires, dont 4 986 en raison de classement. Pour les autres, la phase juridictionnelle fut demandée.

4. Votre pays envisage-t-il une réforme portant sur les compétences du ministère public indiquées plus haut ?

Au cours des dernières années, de temps à temps, la représentation de l'Etat par le ministère public a fait l'objet de critiques, nommément en ce qui concerne la défense des intérêts patrimoniaux et la représentation, auprès la juridiction prud'homale, des travailleurs et des membres de leurs familles.

La représentation des intérêts patrimoniaux de l'Etat par le ministère public est aussi une cible de quelques voix critiques au sein du ministère public.

Cependant, jusqu'à présent, aucune procédure législative en vue de la modification du système en vigueur n'a été déclenchée.

SWITZERLAND

1. Le ministère public de votre pays a-t-il des compétences en-dehors du domaine pénal?

Non, il n'a pas de rôle général de nature non pénale à remplir. Mais lorsqu'il élucide des délits, en tant qu'autorité de poursuite pénale indépendante, il va de soi qu'il veille au respect des droits garantis par les lois internes et les traités internationaux ratifiés par la Suisse, en particulier des droits de l'homme.

2a. Si oui, quelles sont ces compétences (s'agissant, par exemple, du droit administratif, civil, social et commercial et/ou du fonctionnement et de la gestion des juridictions)?

Sans objet.

b. Veuillez indiquer les circonstances qui expliquent leur existence.

Sans objet.

c. Veuillez indiquer le rôle joué par le ministère public dans l'exercice de ces compétences: rôle de conseil – *ex officio* ou sur demande – rôle de supervision ou rôle de décisionnaire.

Sans objet.

d. Lorsque des procureurs ont des pouvoirs décisionnaires, existe-t-il des voies de recours pour contester leurs décisions? Si oui, veuillez préciser.

Sans objet.

3. Veuillez donner des précisions (statistiques, si vous en avez) sur l'usage effectif de ces compétences et la charge de travail qu'elles entraînent pour le ministère public dans son ensemble.

Sans objet.

4. Votre pays envisage-t-il une réforme portant sur les compétences du ministère public indiquées plus haut?

Non, il n'y en a pas.

TURKEY

1. Oui.

(La Constitution de Turquie: “La profession de juge et de procureur

ARTICLE 140: Les juges et les procureurs exercent leurs fonctions au sein de juridictions judiciaires et administratives. Ces fonctions sont remplies par des magistrats de carrière.

Les juges exercent leurs fonctions conformément à la garantie dont ils jouissent et au principe de l'indépendance des tribunaux.

La loi réglemente, conformément à ce principe et à cette garantie, les qualifications des juges et procureurs, leur nomination, leurs droits et devoirs, leurs traitements et indemnités, leur avancement, leur mutation, à titre temporaire ou définitif, quant au lieu ou à la fonction, leur formation au sein de la profession et les autres questions relevant de leur statut, et détermine dans quelles conditions ils peuvent faire l'objet de poursuites et de sanctions disciplinaires; d'enquêtes et d'inculpations en raison d'infractions relatives à leurs fonctions ou commises dans l'exercice de celle-ci; et d'exclusion de la profession en raison de leur culpabilité ou de leur incompétence.

Les juges et les procureurs exercent leurs fonctions jusqu’à l'âge de soixante-cinq ans révolus; la limite d'âge ainsi que les conditions d'avancement et de retraite des juges militaires sont réglementées par la loi.

Les juges et les procureurs ne peuvent assumer aucune fonction, officielle ou privée, en dehors de celles qui sont prévues par la loi.

Les juges et les procureurs relèvent du ministère de la Justice en ce qui concerne leurs fonctions administratives.

Les juges et les procureurs chargés de fonctions administratives dans des services de justice sont soumis aux dispositions relatives aux juges et procureurs. Ils sont répartis en classes et en degrés selon les principes relatifs aux juges et procureurs et bénéficient de tous les droits reconnus à ces derniers”).

2. a. Le ministère public a des responsabilités d’administratives. Il s’occupe des administrations pénitentiaires (la maison d’arrêt, de détention etc.). Il est en correspondance avec le ministère de la justice.

- La fonction ordonnateur
- Exécuter une peine
- Sursis à l’exécution
- La fonction de la commission de justice (avec les juges)

- Participer à la commission de disciplinaire
- Participer à la décision disciplinaire
- Participer à la commission pénitentiaire
- Noter ses fonctionnaires (les fonctionnaires des établissements pénitencier
- et les fonctionnaires du parquet)
- La compétence de représentation etc.

b. J'ai déjà expliqué (2/a)

c. Il y a de rôle de conseil, rôle de supervision et rôle décisionnaire.

d.Oui, il y a un recours contre ses décisions. Pour quelques décisions recourir au juge l'exécution (détenu préventif, condamné), on peut faire recours devant le tribunal administratif et pour quelques décisions on peut faire recours à la commission de disciplinaire aussi.

3. Il n'y a pas assez de statistiques. Parce qu'il y a beaucoup de changement des lois.

4. Oui. Il y a un paquet de réforme sur les compétences du ministère public. Par exemple, sur une projet de la procédure pénale et il y a un travail pour créer un procureur général de Turquie.