

Strasbourg, 7 February 2012

CCPE(2011)7

**CONSULTATIVE COUNCIL OF EUROPEAN PROSECUTORS  
(CCPE)**

**Questionnaire with a view of the preparation of Opinion No. 7  
on the management of the means of the prosecution services**

**Reply from Austria**

### **SECTION I: Status of the prosecution services in the state administration**

1. *Please specify the status of the prosecutor and the prosecution service in your state. Is it an autonomous institution? If yes, how is this autonomy guaranteed?*

In Austria the prosecution service is not an autonomous institution. It consists of prosecution offices (Staatsanwaltschaften and Oberstaatsanwaltschaften) subordinated to the Ministry of Justice.

2. *Does the ministry of justice or another authority govern the activity of the prosecution service? If so, how?*

According to a new provision in the Austrian Constitution (Artikel 90a Bundes-Verfassungsgesetz) the public prosecutors are part of the judiciary. Nevertheless the prosecution service is subordinated to and directed by the Ministry of Justice.

3. *Which authority is responsible for the creation of prosecutor positions?*

The posts of prosecutors are created by the Parliament in the law of the yearly budget of the state (Bundesfinanzgesetz).

4. *Please indicate if there is any connection between the prosecution service and the Ministry of Justice or another public authority in terms of financial and human resources, IT facilities etc. If so, please describe how this connection works.*

The Ministry of Justice administers the budget of the whole judiciary (including the prosecution offices) and controls the expenditure of the means. Public Prosecutors are appointed by the President of the Republic or by the Minister of Justice in accordance with the law of the yearly budget (Bundesfinanzgesetz).

5. *Is the prosecution service independent from other institutions when implementing and managing its own budget?*

The prosecution service does not have an own budget.

### **SECTION II: Financial rules and regulations of the prosecution service**

6. *Does the law governing the prosecution service include provisions on financial management and on the executive's obligation to provide it with the necessary infrastructure?*

No

7. *Please describe how and when the budget of the prosecution service is managed (preparation, distribution of funds between the budget lines).*

The budget of the whole judiciary (including the prosecution offices) is prepared by the Ministry of Justice in negotiations with the Ministry of Finance and settled by the Parliament in the law of the yearly budget of the state (Bundesfinanzgesetz). The Ministry of Justice allocates the appropriations to the Presidents of the four Courts of Appeal (Oberlandesgerichte), who administer also the means of the prosecution offices.

8. *Is there a specific department within the prosecution service responsible for the management of resources?*

No

9. *Is there a national and/or centralised IT system for managing, monitoring and evaluating the budget of the prosecution services? Does this system include a mechanism for increasing the efficiency of the resource management?*

No

### **SECTION III: Resources of the prosecution service**

10. *Please specify the amount of budget of the prosecution service for 2008, 2009, 2010 and 2011 (€ equivalent), indicating the distribution between staff expenditure and other types of expenditure.*

The prosecution service does not have an own budget. Statistics on the means allocated by the Presidents of the Courts of Appeal (Oberlandesgerichte) to the prosecution offices are not available. Therefore no figures can be given.

11. *In your jurisdiction, what resources would you improve access to, and how would you do that (e.g. through partnership agreements, joint investigations, redistribution of resources etc.)?*

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12. *Are the current or future budgets of the prosecution service affected by the 2009-2011 economic crisis?*

Yes. Savings in material resources and partly in human resources are expected.

13. *What instruments are used to allocate resources needed for the good functioning of the prosecution service?*

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14. *Is there any connection between the budgets allocated to the prosecution service and to the judiciary or to law enforcement bodies?*

Yes. There is a common budget for the judiciary and the prosecution service.

15. *Do human resources of the prosecution service depend on other institutions of the judiciary (e.g. Judicial Council, National Schools of Clerks)?*

No

16. *In your jurisdiction, is there any mechanism of rapid reaction which could allow a quick redistribution of means (financial or human resources, logistics) between prosecution services, according to the needs of the system?*

Yes. There is the possibility of staff transfer (with consent of the employee).

17. *Does the General Prosecutor (or equivalent institution) have a specific budget for taking interim/temporary measures in situations when, within a certain prosecution service, human resources are insufficient?*

No

#### **SECTION IV: Budget for investigations**

18. *What steps are required in order to obtain direct access to the resources needed for investigations? Please assess the period of time that elapses between submitting a request for resources and the moment when they are actually obtained.*

Material resources have never been a problem for the realisation of investigations.

19. *Have you ever faced the risk that special investigative techniques (e.g. communication interceptions, legal-genetic expertise, computer search) could not be applied in due time because of insufficient resources? Have insufficient resources in general affected the performance of criminal investigation in normal cases?*

No

20. *Is the resource management performed by the prosecution services during their investigations controlled? Please specify.*

The Auditor General's Office (Rechnungshof) is authorised to control the financial conduct of all public institutions.

21. *What is the resource management procedure when various agencies are involved in the investigation procedure (e.g. the police)?*

Every agency has to pay the costs of its action by itself.

22. *Is it possible for prosecutors to specialise in certain type of crimes? If so, what kind of effect it has had on the results of the prosecution service?*

There is the possibility for specialising in certain types of crimes, such as economic, sexual and financial criminal cases. For the prosecution of corruption and economic crimes a special prosecution office (Zentrale Staatsanwaltschaft zur Verfolgung von Wirtschaftsstrafsachen und Korruption) has been established 2009. The time for an evaluation is too short.

23. *Are there areas of investigation that have priority access to financial or material resources? If so, how and by whom is this priority established?*

No. The legality principle does not allow to give priorities.

#### **SECTION V: Description of the system of management by results**

24. *Do you have a system of management by results? (Please specify.) If yes, is there any problem with this system ?*

No

25. *What kind of objectives are set for the prosecution service, if such a system of objectives exists? Does your system use benchmarks of achieved results?*

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26. *Which authority/authorities is/are competent to set these objectives?*

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27. *What role does the prosecution service play in setting these objectives?*

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28. *Are the objectives coordinated between all authorities of the criminal procedure? If such coordination exists, how does it influence the activities of the prosecution service?*

There is the possibility for installing special investigation teams to increase efficiency.

29. *Are there regulations in your system as regards the optimal workload within prosecution offices? if yes, is the allocation of resources correlated with the workload? Please provide examples.*

The posts of public prosecutors are allocated to the separate prosecution offices depending on the workload.

30. *Is the setting of objectives based on a negotiation system?*

No

31. *Who are parties of the negotiations?*

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## **SECTION VI: Follow-up of results and reporting**

32. *Please indicate if there are any national strategies implemented in your state regarding the resources allocated to the judicial system, including the prosecution service. If so, in what areas were these strategies developed? Please comment on the results of these strategies.*

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33. *Is the attainment of objectives followed up yearly? How?*

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34. *Have any reforms been implemented during the last 5 years aimed at increasing the budget of justice?*

Yes. The reform of the criminal procedure and the installation of a special office for the prosecution of corruption and economic crimes (Zentrale

Staatsanwaltschaft zur Verfolgung von Wirtschaftsstrafsachen und Korruption) required higher personal and material resources.

35. *Is the prosecution service included in the government strategies for enhancing the efficiency of public institutions (e.g. e-governance, external financial audit)?*

Yes

36. *How would you assess internal audit recommendations within the prosecution service?*

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37. *Is the social impact of the prosecutors' activities evaluated? If yes, by whom?*

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