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**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**

Replies from Germany

Section I: Status of the prosecution services in the state administration

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

The prosecution service is part of public administration under the head of the Ministry of Justice.

2. Does the Ministry of Justice or another authority govern the activity of the prosecution service? If so, how?

The prosecution service is by law governed by the principle of legality meaning that there is a duty to investigate whenever there are allegations of a crime committed. Although theoretically the Ministry of Justice could issue orders just as in any other administration, any such intervention would trigger careful public scrutiny. Thus, in practice there are no interventions by the ministry of justice and no interference with the duties assigned by law.

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

The respective ministry of justice according to practical needs (see question 28).

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.

Since the prosecution service is part of the administration of the Ministry of Justice it is the Ministry's responsibility to provide for all kind of necessary resources, be it human, financial or technical. The past has shown that the Ministry has taken this task very seriously especially in budgetary negotiations on government level and parliament where advocating for justice infrastructure requires particular insistence. Any shortcomings would immediately fall back on the respective Minister who is politically liable which is a strong incentive for adequate support.

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

Since the prosecution service is part of the 'ordinary' administration governed by cameralistics there are only very few fields where the respective prosecution office is really free to manage certain amounts (e.g. a certain budget intended for repairs allocated to the individual prosecution offices).

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?

As described, the prosecution service is a subordinated authority of the respective Ministry of Justice which decides on general and specific rules for the administration of the means allocated to it by parliament as the responsible body for the public budget.

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

The cameralistic budgetary system provides for certain parts of the global budget to be used for certain purposes in the year to come as decided by parliament, i. e. remuneration of prosecutors, cost of investigation, offices, IT-infrastructure etc. These budget lines are determined by way of estimate based on the experience of previous years. As there is a long experience and a rather large body of prosecutors which reduces the effect of individual anomalies (e.g. unusually complex investigations in a particular case) on the overall result these expectations tend to be quite accurate; in consequence, the budget usually is more or less cost-effective. If not, more means may and will be allocated by parliament at a later stage during the year to fulfil the public responsibility of an effective criminal justice system as prescribed by law.

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

The administration of means is carried out by the Ministry of Justice that delegates some of its responsibilities to the administrative branch of the Higher Regional Courts and to the Prosecutors General of the Länder (states) – and on the federal level to the Federal Prosecutor General.

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 resource management?

This depends on the state. In Baden-Württemberg, for example, all public spending is controlled by an SAP-tool that includes cost-performance calculation. This allows for comparing cost and needs of different prosecution offices within the state. Yet, it is not cost efficiency as such that is wanted but best practices and an instrument for the Ministry of Justice and parliament for a more accurate allocation of resources. In other states, there is a separate IT-system for the finances of the judiciary including the prosecution service.

Section III: Resources of the prosecution service

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

Since the prosecution service is part of the judicial system which is in total administered by the Ministry of Justice there is no such thing as a special budget for the prosecution service. And since the responsibility for the judicial system falls within the competence of the Länder there is no nation-wide judicial budget either. Thus, an answer to this question would require detailed information from all 16 Länder which is not freely available. However, the actual annual judicial budget for Baden-Württemberg (roughly 11 million inhabitants) lies at € 1.470 million, of which 50% is spent on personnel and another 19% for pensions. Among the 19.000 persons employed in total there are 1600 persons working in prosecution offices. The figures for the previous years are quite similar.

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.)?

It would always be desirable to have more prosecutors dealing with the caseload. Yet, recent achievements on a data based system of assessing personnel (see question 28) have created a more transparent way of allocating staff. Since the administration of justice is a public task to be carried out in utmost independence from any undue influence there are limits as to going new ways of funding.

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

Since the code of criminal procedure obliges the prosecution service to investigate any reported or otherwise identified facts that allow the conclusion of an offence being committed (principle of legality) there is no possibility to draw back from this core task for financial reasons. Thus, cuts on budget might only be possible in infrastructure such as postponement of refurbishments. As of now, however, the government's approach to handle the crisis was rather to increase public spending in order to increase domestic demand and thus to attenuate the consequences of the economic crisis. Nonetheless, general budget cuts would affect the judiciary as well.

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

The cameralistic system relies on evidence based estimates founded on spending in previous years. Statistics in criminality show that there is not much variation over the years and allow for a quite accurate calculation. Apart from that, there are a specific data based system of assessing personnel (see question 28) and an IT-system as described in no. 9 which are used to allocate resources.

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

The Ministry of Justice also administers the budgets allocated to the courts, again partly via the Higher Regional Courts, and the penal institutions. The budgets of other law enforcement agencies (e.g. the police) are run separately.

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

There are State Schools for Judicial Officers (Rechtspfleger) where specific training is provided in a three-year course. However, this training is comprehensive; the alumni will equally be deployed in courts.

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?

The Ministry of Justice is free to use the means provided to it according to the needs of the system as long as it stays within the respective budget line. In some Länder, this competence is – to a certain extent – delegated to the Prosecutors General.

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

As illustrated, the Prosecutor General is not involved in the administration of budget. However, in some states, there are (permanent) task forces established at the Prose-

cutors General Office to bolster up local offices when help is needed or specialised units that take over certain investigations.

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?

Investigations do not depend on a prior allocation of means. Necessary investigations will be ordered by the prosecutor in charge. If they create costs they will be handled when the bill comes in. There is no limit as to this part of the budget, the figures in the annual budget are just quite accurate expectations as to how much cost is to be expected to be incurred considering past years and criminal statistics.

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 investigations in normal cases?

Only rarely, there may be a shortage of technical equipment. Some investigative techniques such as named above require specialists to carry them out. There may be a shortage of these specialists that might slow down the investigation, e.g. if several terabyte of data need to be interpreted by police forces. However, this is not a question of money but of finding the right person to do it in time. For the vast number of cases resources prove to be sufficient.

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

There is no financial supervision during ongoing investigations. Prosecutors are expected to handle budgetary issues with a sense of proportion and not to order futile measures.

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

Since many investigations are handled by the police they incur costs, too. Generally, the costs will first be covered by the respective agency that places the order. At a later stage, they will all be added up as costs of the investigation and finally be borne by the Ministry of Justice under the respective budgetary title. In case of a conviction they will be charged to the convict.

22. Is it possible for prosecutors to specialise in certain types of crimes? If so, what kind of effect has this on the results of the prosecution services?

The direction of the question is not clear. If it aims at whether there is a financial competition as to overall cost efficiency among prosecution offices, there is no such thing in Germany. Instead, comparisons will only be drawn within a certain category of delicts and only for the purpose to identify best practices as to efficiency. Thus, specialisation – which is to a certain extent required by the administration – would not be a draw-back for a specific prosecution office, but is usually seen as an opportunity for distinction.

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?

The principle of legality as explained above (see questions 2, 12) will not allow for prioritising certain areas of investigation and putting others at hold. Yet, the police forces may set priorities to certain extents for example as a reaction to a newly developed drug market in town which would in consequence lead to a large number of cases reported and dealt with by the prosecution office. This, however, is not steered by prosecutors as in ordinary investigations theirs is rather the role to control the investigation lead by the police than to trigger investigations.

In some states, special programs (e.g. the fight against corruption) are run and financed separately from the ordinary budget.

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?

It depends on what is to be understood by results. It is expected that investigations are conducted without delay and reports have to be made to the superior office if they last for more than one year. Besides, each prosecutor's statistics are looked at by the head of his division as to how many investigations he is conducting in parallel, how many he started and how many he closed in whatever way per month. There is a certain expectation that he would meet the average standard taking into account the type of crime he is investigating.

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?

The one guiding objective is to comply with the principle of legality, i. e. to investigate any crime in due course. Any other objective would be contrary to law.

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

Not applicable.

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

Not applicable.

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

There was a nation-wide data collection for a period of 6 months during which a statistically relevant number of prosecutors had to note precisely how much time they spent on doing what. As a result, each group of cases was allocated an average time period necessary to conduct an investigation. External experts supervised the process to assure accurate results and statistic validity. On the basis of these average working times together with the number of cases per year it is possible to retrospectively calculate how much prosecutors are needed to handle the overall workload within the whole state as well as the workload in the respective prosecution offices. Personnel is allocated on the assumption that next year's case numbers would not differ too much from those of the previous year. Since infrastructure such as offices and IT-equipment depends on the number of prosecutors needed in the individual of-

fice, these resources will be allocated accordingly. As to investigations they will never depend on a budget provided beforehand but will be paid according to needs, see question 18.

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

Not applicable.

31. Who are the parties of the negotiations?

Not applicable.

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 result of these strategies.

The data based system of assessing personnel as described in no. 28 is used for the whole judicial system. This leads to reliable figures telling in a comprehensible way how much an efficient law enforcement system will cost. As a result, the Ministry of Justice, who is in charge of negotiating the budget for the whole judicial system with the Ministry of Finance and parliament, usually is in a good position, especially since the 'judicial budget' is usually not really high compared to e.g. the budget spent on social welfare.

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

Not applicable.

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

The introduction of the data based system of assessing personnel (see question 28) has lead at least to a halt in earlier plans to cut the budget if not – as in some states – in an increase in personnel and thus in budget.

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

The above mentioned system was introduced with the aid of management consultants. Yet, there is a limit to enhance the efficiency of the judicial system with methods of corporate governance since many of the tasks are prescribed by law and could not be avoided, as cost-intensive as they may be.

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

Internal audit recommendations will not interfere with the cost of investigation and will respect the basic allocation of personnel according to the system described above. Starting from that, they provide valuable information as to how to do better and help to uphold the necessary sensitivity that it is public money that is being spent.

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

There is no such evaluation.