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

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

**QUESTIONNAIRE**

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

## I. INTRODUCTION

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

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

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

In order to facilitate the preparation of an opinion for the attention of the Committee of Ministers on this topic, the Bureau of the CCPE submits the questionnaire below. The first part of the questionnaire (questions 1 to 4) reproduces the one prepared to the Budapest Conference and no answer is therefore requested unless your delegation has not submitted an answer already<sup>2</sup> or, having done so, there is a need for clarification of relevant modifications introduced in answers previously given. All CCPE delegations are requested to answer the second part of the questionnaire (questions 5-8).

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

### PART I

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

**The Prosecution service in the Republic of San Marino is composed of the *Procuratore del Fisco* and the *Pro-Fiscale* who are prosecuting magistrates. Under the current system, the *Procuratore del Fisco* and the *Pro-Fiscale* support the charges against the defendant in criminal proceedings. However, it must be noted that their appointment and functions are being reconsidered in the context of the reform of the Code of Criminal Procedure, according to which, the *Procuratore del Fisco* and the *Pro-Fiscale* will become real and proper Public Prosecutors according to the accusatory model. Having said that, there are some specific competencies of the *Procuratore del Fisco* outside the field of criminal justice.**

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

**The Competencies of the *Procuratore del Fisco* outside the field of criminal justice regard civil and social law**

- b. Please indicate the background explaining their existence.

**Under San Marino judicial system, the *Procuratore del Fisco* is the guarantor of the proper enforcement of law and the defender of the public interest, that is the global interest of the community. Besides in the field of criminal justice, the *Procuratore del Fisco* exercises his advisory ex officio power in the following situations and contexts: according to articles 16, 23 and 28 of Law on disqualification and**

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<sup>1</sup> See website: [www.coe.int/ccpe](http://www.coe.int/ccpe)

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

interdiction of 27 April 1911, he examines the statement of interdiction and/or disqualification of people and also the annulment of these conditions. Under article 17, comma 4 of Law No. 49 of 22 May 1986, in the case of marriage publications he must verify if there are any obstacles to marriage which are related to the disqualification or interdiction of the couple or, in general, if there are any other obstacles to marriage under law provisions. Furthermore, the *Procuratore del Fisco* can appeal against any judicial provisional measure adopted, as it is envisaged in article 5, comma 4 of Law No. 83 of 20 July 1999 concerning Inter-Country adoption. The *Procuratore del Fisco* is also responsible for constitutional legitimacy of laws and provisions before the Guarantors' Panel for the constitutionality of rules, according to articles 11 and 13 of Law No. 55 of 25 April 2003. These articles take into consideration the cases related to constitutional legitimacy of provisions and laws within a pending trial.

- 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 exercising these competencies, the *Procuratore del Fisco* plays advisory and ex officio role. He doesn't have any decision-making role. In some cases, like for instance when he shall verify the disqualification or interdiction under Law No. 1911, he plays a supervisory role in protecting the social interest of people.**

- 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 *Procuratore del Fisco* doesn't have any decision-making power.**

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.

**There are no statistics or data available on these competencies but according to the *Procuratore del Fisco* Office there are few cases per year, mostly related to the issue of disqualification and/or interdiction.**

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

**As said in the part I point 1, the appointment and functions of the *Procuratore del Fisco* and the *Pro-fiscale* will be reconsidered in the context of the reform of the Code of Criminal Procedure, but for the time being no reforms are envisaged with regard to the competencies that the *Procuratore del Fisco* exercise outside the field of criminal justice.**

## PART II

5. Does the public prosecution service have a separate internal organisation when it acts outside the field of criminal justice? Please specify.

**No, there is not a separate internal organisation.**

6. Which powers does the public prosecution service enjoy when acting outside the field of criminal justice?

- a. Is it vested with a specific authority or does it enjoy the same powers as the other party(ies) to the trial?
- b. Are there specific rules governing the exercise of these functions? What is the basis of such rules (the law, custom or practice)?
- c. Does it enjoy other rights and duties ? Please specify.

7. Regarding the role of the public prosecution service outside the field of criminal justice:

- a. has the European Court of Human Rights taken decisions or handed down judgements on that matter in respect of your country? If so, please indicate the number of the application and the date of the decision or judgement.

**No decisions have been taken by the European Court of Human Rights on this matter.**

- b. in your country, has the constitutional court or another court with the authority to rule on the constitutionality of laws, taken decisions or handed down judgements on the compatibility of such a role with the constitution or the basic law? If so, please indicate the references of such decisions and their main thrust.

**No, it has never happened**

8. Amongst the competences of the public prosecution service acting outside the system of criminal justice which are, in your view, the most important for the reinforcement of rule of law and protection of human rights?

**According to the historical role of the *Procuratore del Fisco* and the social and judicial implication of his decisions one of the most important role he plays for the reinforcement of rule of law and protection of human rights is the power exercised in verifying constitutional legitimacy of law provisions within a pending trial and also the examination of statements of interdiction and/or disqualification of residents and citizens.**