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EUROPEAN COMMISSION FOR THE EFFICIENCY OF JUSTICE
(CEPEJ)

EXPLANATORY NOTE

FOR THE TIME MANAGEMENT CHECKLIST

FOR PUBLIC PROSECUTION SERVICES

Document adopted by the CEPEJ at its 43rd plenary meeting[1]

(Strasbourg, 3 – 4 December 2024)

I. INTRODUCTION

This Explanatory Note accompanies the questions in the Time Management Checklist for public prosecution services (hereinafter: the Checklist).[2] It aims to assist the public prosecution services in clarifying the purpose of each question, explain the concepts behind the questions and provides definitions for the terms used. The Checklist should therefore be read together with this Explanatory Note.

The Checklist is aimed mainly at prosecutors and representatives of public prosecution services, including prosecutorial staff in charge of internal administration and case management. However, it is also addressed more broadly to all those responsible for the administration of justice, including ministries of justice, as well as research institutions, that analyse and monitor the functioning of justice systems.

The Checklist is intended to help the public prosecution services to collect appropriate information and analyse relevant aspects of the duration of criminal proceedings in which they intervene. Based on the collected information and outcomes of the analysis, its purpose is to support public prosecution services to act more efficiently and effectively, namely by implementing measures to resolve criminal cases without undue delays, set feasible timeframes, ensure effectiveness of their intervention and provide, to the extent possible, transparency and predictability to participants in criminal proceedings in which they participate.

The Checklist should enable monitoring by the prosecution services/prosecutors of the proceedings in which they intervene at two levels: i) the overall duration of the criminal proceedings from filing of the initial act to the final decision (and, if enforcement is required, until the enforcement of decisions when this is of the duty of the prosecution service or the State); and ii) the duration of individual stages of the criminal proceedings, including the ones conducted or supervised by the prosecution service (for instance, the preliminary investigations). In order to enable easier data collection and analysis, the Checklist also contains general questions related to the use of information and communication technologies (ICT) in public prosecution services, as well as their interaction with other communication systems (for instance of the police and other law enforcement agencies, or courts).

Consequently, the Checklist may assist in evaluating and reassessing the functioning of the public prosecution services with respect to their efficiency, namely as to the reasonable duration of the prosecution services' intervention in criminal proceedings, thus allowing for the increase of the quality of such intervention. The "no" replies on certain questions, for instance, could help identify the areas for improvement and can be used for planning of future projects for better organisational management and prosecution services reforms aimed at improving the overall situation in the respective justice system in which they are integrated.

The Checklist, although conceived primarily for use in criminal proceedings, may be *mutatis mutandis* used for other judicial proceedings in which, according to the relevant domestic legal system, the prosecution may intervene (civil, administrative, labour, fiscal, etc.)

[2] In the present Explanatory Note, the notion of public prosecution service (Ministère public) or prosecution service will be used indifferently referring to the same reality, the prosecution.

II. COMMENTS BY QUESTIONS

HOW TO ENTER INFORMATION

"YES/NO" - Where the answer to the question is obvious, please, enter **"YES/NO"**. If the answer with "**YES/NO"** requires additional elaboration, please use the **"Comment"** field.

"NA" (Information is not available) – If the concept/category referred to in the question exists in your prosecutorial system, but you do not know the answer, please use "NA".

"NAP" (Information is not applicable) – Where the question is not relevant to your prosecutorial system, please use **"NAP"** as the answer.

NOTE: The answers **"NA" and "NAP"** are different from each other, therefore, please observe the rules above.

INDICATOR ONE: EVALUATING THE TOTAL DURATION OF THE PRELIMINARY INVESTIGATION AND THE SANCTION AND SETTLEMENT PROCEDURES UNDER THE SUPERVISION OF THE PROSECUTOR

Proper time management requires not only the ability to assess the duration of the different stages of the proceedings, but also the total duration of these proceedings from their initiation to the final decision and, if applicable, to the enforcement of decisions.

Question 1.a. – Does the prosecutor/prosecution service track the duration of the case from the opening of an investigation, through the different case events, until the end of the intervention of the prosecution in the judicial proceedings (e.g. judgment, execution of the judgment, execution of an alternative to prosecution, etc.)?

At the court level, case duration may be calculated by duration of proceedings at the particular court instance (first instance, second, third…) or as a "total case duration", which includes duration of the court proceedings at all instances, from the initial act to the final court decision, which in the case of a criminal case may mean the execution of a criminal sanction. As one of the most important types of information for the parties, total duration of case is a significant parameter of court effectiveness.

The judicial authorities are therefore expected to collect data on the total duration of proceedings from their start to the enforcement of decisions. Article 6 of the European Convention on Human Rights (ECHR) protects the implementation of final, binding decisions. The right to execution of such decisions, given by any court, is an integral part of the "right to a court". An unreasonably long delay in enforcement of a binding judgment may therefore breach the ECHR[3].

At the **prosecutorial level**, case duration may be calculated based on the duration of the different stages of prosecutorial intervention, such as at the investigation phase, even if conducted by law enforcement agencies, trial phase and execution of the sentences. Different prosecutors may act in different stages of intervention of the prosecution within the same

[3] Guide on Article 6 of the European Convention on Human Rights: Right to a fair trial (civil limb), updated on 31 August 2022.

criminal file. In this case, it would be advisable for all intervening prosecutors to be able to follow the development of the criminal proceedings until their conclusion, namely through access to a centralized case management system.

The assignment of a unique case number to a criminal file is essential to allow for tracking criminal cases from start to finish within the prosecution service and the courts. They may be assigned by the prosecution service, the courts or even other bodies (for instance, law enforcement agencies) depending on the legal system of the State (see also 1.c.).

Question 1.b. – Does the prosecutor/prosecution service track the duration of the case from the opening of an investigation until the end of the prosecution, even if a case is transferred to another prosecutor with different material or territorial jurisdiction?

Case duration should be tracked through the entire proceedings, including in situations where the initial criminal case continues under a different jurisdiction. When the case is continued, the initial unique case number should be kept as a reference, even when a different case number is given in appeal jurisdictions, since for the parties involved in the case, that will be a continuation of the same criminal file.

In case-tracking, the courts should also take into consideration the period preceding court proceedings. For this purpose, the prosecution should register the starting point of cases (e.g. the date of a preliminary application to, or intervention of, an administrative or law enforcement authority). The registration of a starting point of a criminal case is important for measuring the total length of court proceedings and should be part of the court system of prioritisation of cases helping to prevent their unreasonable length. Thus, it would be recommendable for the prosecution to enter the starting points for cases in the newly opened case files in the case management systems at their disposal.

Question 1.c. – Does the prosecutor assign a unique case number form the initial act (case filed with the prosecutor for the first time) to the final court decision, including enforcement procedures?

A “unique case number” is the number assigned to the case when that type of dispute or legal situation appears for the first time. The assignment of a unique case number is essential to allow for tracking cases from the beginning to the end of proceedings within the prosecution service, law enforcement agencies and later the courts.

The case number should remain the same until the final resolution of the case (including the enforcement procedure). The “unique case number” should be kept even if the case is handled by different prosecutors and subsequently by courts at a different court instance or jurisdiction (eventually with the definition of a new case number for the appeal phase, while keeping the initial unique case number for cross referencing) particularly if, on the account of a legal remedy, a higher court decides to strike the decision and return the case for retrial. The case number may not be always assigned by the prosecutor as it can be assigned by the law enforcement agencies, the courts or other bodies depending on the legal system of the State.

Question 1.d. – Is the original date of filing of the case still used for calculating the duration of the proceedings, when cases are merged or separated?

Legal proceedings can go in different ways, depending on procedural circumstances or judge’s and prosecutor’s decisions and/or parties’ availabilities. Therefore, it is important to understand from which date the case duration is calculated, particularly if the case is merged with another case or separated (split) into two or more different cases. Even when the case is

merged or separated (split), case duration remains an important piece of information for the prosecution, the parties, as well as for the adjudicating judge.

The initial date of filing of the case, either by law enforcement or other agencies, the prosecutor or the courts, should be used for beginning calculating the duration of the proceedings. In cases where criminal files are split, the initial date for the new case will be the date of the decision to open such new case, while keeping the initial date for the initial case. In cases of file merging, the initial date will be the one relating to the oldest case. Therefore, it is important to ensure the interconnection of case management systems of all the actors involved in a particular case, meaning systems run by law enforcement agencies, the prosecution service or the courts. The interconnection of information and communication systems provides for a permanent flow of data from one actor to another, ensuring information referring to the same case is kept updated, such quality being essential in criminal proceedings.

INDICATOR TWO: ELABORATING CASE CATEGORIES AND CASE WEIGHTING FOR DURATION OF PROCEEDINGS

Realistic and appropriate planning of the timeframes and the total duration of proceedings requires that cases be grouped in case categories.

Question 2.a. - Is there a categorisation of cases according to the nature of the legal dispute? If yes, which categories are used?

Categorisation of cases regarding their difference in legal matters should exist in the public prosecution services, according to the respective legal system. Basis for this type of categorisation is the difference in the "nature" of the legal dispute: administrative, civil, criminal, litigious and non-litigious. These categories can be further split into other case types, such as labour, family, etc. In criminal cases, categories may reflect the different types of offences.

Question 2.b. – Is there a categorisation of cases according to their complexity? If yes, how is the degree of complexity defined?

Categorisation of cases according to their complexity should be understood as any type of categorisation that divides cases into different groups on the basis of the amount of time required for adjudicating a case. These groups may entail a different amount of prosecutorial time required for adjudicating a case, due to its foreseen gravity or complexity, such as: standard/medium/complex/extremely complex or any similar categorisation**.**

Please see also infra question 2.d.

Question 2.c. – Is there a categorisation of cases according to their estimated duration? Which criteria are used for defining such duration?

Categorisation of cases regarding their duration might be based on different pre-defined criteria and serves as a tool to better organise the intervention of the prosecution service in court procedures. Also, it helps prosecutors, judges and court users to properly calculate deadlines and the estimated duration of actions before the courts. Please indicate which criteria are used by the prosecution service for defining the estimated duration of a case.

Question 2.d. – Does the public prosecution service use any form of case-weighting to evaluate the complexity of cases?

Case-weighting is a scoring system to assess the degree of complexity of case types based on the understanding that one case type may differ from another case type in the amount of judicial time required for its processing. Case-weighting is designed to help identifying the needs, in terms of human and material resources, of the prosecutorial system. It can be used to determine the number of prosecutors and prosecutorial staff needed, allocate cases among them, support funding and budgetary requests and set productivity quotas. For more information on case-weighting, please consult the ***CEPEJ Report on case-weighting in public prosecution services (December 2023)*** that provides information on case-weighting systems used in public prosecution services in Europe and beyond together with their comparative analysis and key guiding principles.

Question 2.e. – Does the public prosecution service use information and communication technology (ICT) to implement the case-weighting methodology? If such ICT tools exist, whether at a central, regional or local level, are they interconnected or even centralized?

If the answer to 2.c. and d. is "yes", please indicate whether you use any ICT tools to implement the case-weighting methodology. Case weighting relies on accurate and reliable statistical data on caseload and quality record keeping. It is also possible to implement a case-weighting methodology manually, however, this approach is not as reliable and efficient as the electronic one. Case-weighting is generally used for allocating human and financial resources, assigning or reassigning cases or revising territorial jurisdictions.

Question 2.f. - If such ICT tools exist, whether at a central, regional or local level, are they interconnected or even centralized?

If the answer is yes and such ICT tools exist, whether at a central, regional or local level, it is advisable that they are interconnected or even centralized.

INDICATOR THREE: MONITORING PRELIMINARY INVESTIGATION PROCEDURES AND TRIAL PHASE

Proper time management needs to take into account the duration of each singular stage of the judicial proceedings. For this purpose, the duration of the various stages of the proceedings in which the prosecution intervenes should be tracked and analysed.

Question 3.a. – Does the prosecutor have the competence to decide whether or not to prosecute?

It depends on the legal system of the country whether the prosecutor is bound to prosecute or has discretion on whether to prosecute. When a prosecutor has the competence to prosecute, there are several aspects that contribute to shortening up the length of criminal proceedings, such as early case assessment, efficient case preparation, communication with the parties and the effective use of alternatives to prosecution.

Question 3.b. – Does the prosecutor have the competence to use alternatives to prosecution? Which ones are available?

In some countries, the prosecutor has also a possibility to use alternatives to prosecution aiming to accelerate and conclude the proceedings and thus reduce the caseload.

Question 3.c. (1. / 2. / 3. / 4. / 5.) – Does the prosecutor collect data on the different procedural steps both at the preliminary investigation stage and during the trial phase?

The Checklist contains the list of the case events that usually occur in preliminary investigation procedures as well as during the trial phase, such as: the date of opening of preliminary investigations, of the request and receipt of expert reports or of decisions of other authorities which condition the development of the criminal proceedings (e.g. decisions by other domestic courts, answers to requests of international co-operation involving foreign or international judicial or law enforcement bodies), of the opening of a formal criminal investigation, duration of police custody and security measures.

These case events may not be necessarily performed by the prosecutor but, in some countries and instances, by law enforcement agencies. When this occurs, law enforcement agencies may act under the supervision of the prosecution or independently. Please indicate in the comment field what the situation is in your country and whether there is any other information about the duration of court proceedings or of the intervention of the prosecution that you collect, which was not included in this question.

Question 3.d. – Do you organise meetings with the services responsible for investigation, other relevant agencies and/or the investigation judge? If yes, in which circumstances, in relation to what categories of cases and how frequently?

Meetings between the prosecutors, the services responsible for investigations and/or the investigative judge can be an important means to improve effectiveness and accelerate the proceedings. It allows namely to discuss the best strategy and available ways to proceed with the case. However, the need for such meetings depends on the complexity of a case, its sensitivity, the need to maintain the confidentiality of the actions to undertake, the specific degree of intervention of the prosecution or law enforcement agencies, as well as the need for a close mentoring or monitoring of the intervention of such law enforcement agencies.

Question 3.e. - Does the prosecutor always represent their case in the court? If not, does this affect the length of the proceedings?

There may be situations where the prosecutor does not represent their case in the court. If that is the case, this may affect the length or duration of the criminal proceedings and not be attributable to the prosecution.

Question 3.f. – Does the prosecutor use these data to calculate the duration of the various procedural steps for most categories of cases?

The collection of information on the duration (in days, weeks, months, years) of the various stages of the proceedings (listed in the question 3.c.) in most types of cases may be significant for the monitoring of deadlines set by laws or procedural rules. It also secures procedural discipline and prevents unnecessary delays, to the benefit of parties and the overall functioning of the judicial system. It also helps prosecutors to manage each particular case in accordance with the procedural rules and internal guidelines and standards. This can be achieved using a performant case management system, namely an electronic one. If these data are not collected for the majority of case types, please select “no” and explain in the comment field what types of cases are included/excluded.

Question 3.g. – Date of the hearings of the parties and other participants to the proceedings (e.g. victims and witnesses). Is such date collected even in very complex cases involving the intervention of many individuals?

Information on the date of the hearings of the parties and other participants to the proceedings (for instance, victims, witnesses) may be an important tool to ensure adequate monitoring of how the proceedings unfold. However, in very complex cases involving the intervention of a large number of individuals, it may be difficult to achieve the collection of such data in spite of the fact that such data provide relevant information to the prosecutor and the prosecution service.

Question 3.h. – Are the data on the duration of the various procedural steps available to the parties of proceedings and/or their representatives? Information about procedural steps and their duration may serve as a very useful tool to participants of proceedings. It may help them to plan and monitor particular case proceedings in terms of duration, deadlines and costs. It is also significant for the transparency of prosecution services' and courts' operations and thus may improve the public image of justice.

Question 3.i. – Are the data on the duration of the various procedural steps available to the public?

Information about procedural steps in which the prosecution intervenes and their duration may also be of relevance to the public and broader legal community for various purposes, namely to assess the way the prosecutorial and judicial system is functioning. It is also significant for the transparency and accountability of prosecutorial activity, thus helping to improve the public image of the prosecution services (see also 3.g.).

This may entail providing information on a specific case or providing information on the performance of prosecution services more generally (for instance, through an annual report).

Question 3.j. – Is information related to procedural steps used by the prosecutor/prosecution service for planning purposes in order to identify and prevent undue delays, accelerate proceedings, and improve their effectiveness?

One of the main reasons for collecting information related to the duration of case events and the overall proceedings is planning and management. This is of particular importance to strategically define performance goals for the prosecution service, manage the different phases of the procedure and to ensure decisions within a reasonable time. Collected information may therefore assist prosecutors to better plan the time needed for certain procedural steps, avoid delays and improve their personal interventions and calendars. However, it is also important for the participants of proceedings, as it allows them to prepare for the cases in a timely fashion.

Question 3.k. – Is there an estimate of expected or maximum time, defined by law, procedural rules, by-laws or internal guidelines for the prosecution, that is needed to accomplish particular procedural steps?

An estimate of the expected or maximum time that is needed to accomplish particular procedural steps should be understood as a way to define the proper duration of particular procedural steps (such as opening of preliminary investigations, hearings of the parties, opening of formal criminal investigations, etc.) as set by procedural laws and rules, by-laws or internal guidelines for the prosecution, aimed namely at regulating the actions of the prosecutor during the criminal proceedings.

INDICATOR FOUR: MONITORING SANCTION AND SETTLEMENT PROCEDURES

Proper time management requires the duration of each stage of the proceedings to be taken into account. The involvement of the judge in the various stages of proceedings should be taken into account by the prosecution service in the monitoring of proceedings.

Question 4.a.1. and 2. – Is there a guilty plea procedure? If so, does this procedure involve a judge and within what time limit? If no guilty plea exists in your legal system, what are the possible consequences of a confession by the defendant?

In some judicial systems, the prosecution or the courts may have a guilty plea procedure at their disposal. If so, please explain whether such procedure requires the involvement of a judge or just the prosecutor and whether there is a time limit for its use.

If no guilty plea exists in your legal system, does the confession by the defendant entail the suspension of the criminal proceedings? Is this suspension taken into account in the calculation of the total length of the procedure?

Question 4.b.1. and 2. – Does the prosecutor have the competence to conclude a legal settlement? If so, does this procedure involve a judge, for which purpose, and within what timeframe?

In some judicial systems, the prosecution may have the competence to conclude a legal settlement. If so, please explain whether such procedure requires the involvement of a judge or just the prosecutor, what is the purpose of the intervention of the judge and whether there is a time limit for its use.

Question 4.c.1., 2., 3.,4. – Are there alternative procedures to prosecution? If so, which alternative procedures to prosecution are available? Are they entrusted to bodies/staff subordinated to prosecution authorities ("délégués du procureur")? Does this procedure involve a judge, for which purpose and within what time limit? Is the victim entitled to bring the case before a prosecutorial office or court when a prosecutor refuses to pursue the case? In which circumstances?

In some judicial systems, the prosecution may have the competence to offer defendants alternative procedures to prosecution. If so, please explain which alternative procedures may be available and which bodies are entrusted with their enforcement. Please explain further whether the use of such procedures require the involvement of a judge or just the prosecutor and whether there is a time limit for their use.

Please, also explain whether and how a victim can bring a case before a prosecutorial office or court when a prosecutor refuses to pursue the case.

Question 4.d. - Does the prosecutor's office receive a notification when a judgment becomes final? If so, when?

This information is essential to define the end of the criminal proceedings and therefore relevant to the prosecutor/prosecution service, particularly if they are involved in monitoring the enforcement of the sentence and the execution of the criminal sanctions imposed.

Question 4.e. - Do the prosecutor's offices receive information from the court (or other entities, such as the probation service) regarding the enforcement of criminal sanctions or alternative sentences?

If the prosecutor is involved in monitoring the execution of criminal sanctions, this information is also very relevant for the monitoring of the length of criminal proceedings.

INDICATOR FIVE: ESTABLISHING TIMEFRAMES / STANDARDS FOR THE DURATION OF PRELIMINARY INVESTIGATIONS AND SANCTION AND SETTLEMENT PROCEDURES

For the purposes of planning, transparency, predictability and evaluation of the duration of judicial proceedings, timeframes / standards are to be established and communicated to users of public prosecutors' services.

Question 5.a. – Are there any national framework timeframes/standards established by law, procedural rules or internal guidelines of the prosecution that define the duration of preliminary investigations and other case events?

The timeframe is an established period of time within which cases are expected to be resolved. The timeframe can also apply to specific case events (for example, preliminary investigations should be concluded in an estimated number of months, according to their complexity). Timeframes should not be confused with procedural deadlines or time limits, which apply to individual cases and define the timeframe in which such cases need to have been finished (for instance, for statute of limitation purposes). In some judicial systems, timeframes or standards for duration of court proceedings exist in order to ensure predictability for parties involved in court proceedings. Also, these measurements are valuable for judges and prosecutors, so they can create and implement a personal case management plan and try to adjudicate each case within the established standards and guidelines, towards the implementation of the overall right to trial within reasonable time under Article 6 of the European Convention on Human Rights (ECHR).

Question 5.b. – Do they cover all categories/stages in criminal proceedings, including the enforcement of decisions and sanction and/or settlement procedures?

The timeframe is an established period of time within which criminal cases are expected to be resolved (for example, in a particular country, you may want to establish as a goal that less complex criminal cases should be resolved in less than 1 year). Timeframes should not be confused with procedural deadlines or time limits, which apply to individual cases and define the timeframe in which such cases need to have been finished (for instance, for statute of limitation purposes). In some judicial systems, timeframes or standards for duration of court proceedings exist in order to ensure predictability for parties involved in court proceedings. Also, these measurements are valuable for judges and prosecutors, so they can create and implement a personal case management plan and try to adjudicate each case within the established standards and guidelines, towards the implementation of the overall right to trial within reasonable time under Article 6 of the European Convention on Human Rights (ECHR).

If the answer to this question is "no" because timeframes/standards do not cover all categories/case events, please indicate in the comment field for which categories/case events those timeframes and standards are applicable, if any.

Question 5.c. – Is there a mechanism in place for the prosecutor/prosecution service to monitor the duration of preliminary investigations and criminal proceedings?

If standards for the duration of preliminary investigations and criminal proceedings exist, what tools do the prosecutors use to monitor such duration? It can be the use of an existing electronic case management system, the reports on duration and compliance with the standards or internal guidelines defined by the prosecutorial administration, or any other similar tool. It is highly advisable that, wherever possible, such a mechanism should be part of a centralized case management system, either of the prosecution services or the courts or both.

Question 5.d. – Is there an estimate of the time needed by the investigative authorities to process a case (time employed by investigators/judicial staff/other staff) for each type of case?

An estimate of time necessary for the investigation of a criminal case should be understood as any kind of predictability or calculation of the time needed for the conclusion of such investigation. This information aims to help the prosecutors and parties/participants involved in cases to estimate the overall duration of the criminal proceedings. Such estimate may result from the law, and/or from a decision of the prosecutor in charge of the case. In countries where the police is responsible for the investigation, it will be for the police itself to decide on an estimated time needed for investigation although this may require alignment with the prosecution.

Question 5.f. Is there a mechanism in place for the prosecutor/prosecution service to monitor the execution and duration of sanction and settlement procedures?

If standards for t monitoring the execution and duration of sanction and settlement procedures exist, what tools do the prosecutors use to monitor such duration? It can be the use of an existing electronic case management system, the reports on duration and compliance with the standards or internal guidelines defined by the prosecutorial administration, or any other similar tool. It is highly advisable that, wherever possible, a mechanism to monitor the execution and duration of sanction and settlement procedures should be part of a centralized case management system, either of the prosecution services or the courts or both.

Predictability of the length of proceedings

Question 5.g. – Are users and the general public informed of the expected duration of criminal proceedings?

This question concerns any mechanism for the users to get information about the predictable duration of proceedings, such as regulations and internal guidelines defined by the prosecution service that envisage timeframes and mechanisms for communication by the prosecution service with the general public, communication with other users, etc.

Question 5.h. – Does the prosecution service provide the public with data on the type and duration of their intervention in criminal proceedings?

The information on the type and duration of the intervention of the prosecution in criminal proceedings, namely in sensitive cases, can be made available to the general public, for example on a monthly, semi-annual or annual basis or whenever is deemed relevant and necessary. In some systems, this information is available, namely online, in annual reports of the public prosecution services, which provide information on the average duration of the intervention of prosecution services and their results. Any such information should not, however, hamper ongoing criminal investigations and put at risk participants of proceedings (e.g. victims and witnesses).

Question 5.i. – Does the prosecution service use any organisational or innovative methods to expedite case handling (e.g. making use of experts from various fields or establishing specialised departments)?

As case-management systems become more and more complex, prosecution services may need to resort to external expertise, for instance information and organisational experts, to help them finding the most effective and trusted solutions for the management of cases and of large amount of information. Or they may prefer to set up specific departments within the prosecution service to deal with specific issues and new challenges.

INDICATOR SIX: DIAGNOSING DELAYS AND MITIGATING CONSEQUENCES

While monitoring the duration of procedures, public prosecution services must have mechanisms and dashboards for prompt identification of excessive durations (delays) and backlogs. These tools help the public prosecution services to immediately alert responsible persons and offices to act accordingly and remedy the situation, preventing further delays. Moreover, proper communication may significantly improve the efficiency of judicial proceedings and reduce their duration and costs, to the benefit of users, judges, prosecutors and law enforcement agencies, contributing to a proper and better administration of justice.

Question 6.a. – Can delays be clearly determined by the person or department responsible for the intervention in the procedure?

This question concerns monitoring the duration of proceedings and the tool(s) used to identify excessive delays. The monitoring of proceedings can be done centrally, regionally and/or locally. Depending on the system, it can be done by different bodies or persons (for instance, in the case of the prosecution, by a higher prosecutor supervising the work of the participating prosecutor, an inspector for the prosecution, the Higher Council for the Prosecution where it exists, the Prosecutor General). This is often done with the help of dashboards which are considered a useful tool not only for the courts, court managers and justice professionals but also for prosecution services and prosecutors for monitoring and analysing the length of case events as well as of the proceedings themselves and evaluate the performance of prosecution offices and/or prosecutors. For more information on court dashboards, please consult the ***CEPEJ Handbook on court dashboards (June 2021*)** that provides practical recommendations on how to set up dashboards consolidating court data.

Please indicate in the comment field: which mechanism(s) exist(s) in prosecution services and your judicial system and who the responsible persons or offices are for the identification of lateness of prosecution interventions or court proceedings. You may also make a broader comment about the practice in your respective judicial system.

Question 6.b. – Does the prosecutor use electronic automatic notifications for deadlines and timeframes?

The calculation of the time between case events, or the duration of particular phases of the case, may be monitored through electronic tools used in the prosecution services. Notifications and signals may be programmed and set in existing electronic case management systems to automatically “flag” the correct date for specific phases or case events and/or their potential lateness in a timely manner. The purpose of these notifications is to prevent delays in proceedings and to help prosecutors and administration within the prosecution services to comply with the deadlines and timeframes set in the laws, regulations or prosecutorial and judicial decisions. Proper and regular data entry is a key condition to accurately track time. Notifications are useful tools for prosecutors and their timely use make the prosecution services more effective.

Question 6.c. – Are there any measures available to the prosecutor to mitigate the impact of situations in which significant delays occur?

This question concerns mainly accountability and proper management in situations when an undue duration of proceedings (delay) has been diagnosed. Various approaches are possible to reply to this question depending on the level of control by the prosecution services over prosecutors and different bodies/agencies, such as law enforcement bodies, judicial experts, specialists in forensic medicine, etc.).

Question 6.d. – Are there mechanisms available for the parties to complain during the proceedings regarding unreasonable lengthy durations of certain procedural steps of the responsibility either of prosecutors or judges?

This question is related to a possibility of court users/parties to react if they notice undue delays for the intervention of the prosecution or unreasonably long durations of court proceedings. The "mechanisms" for reaction might be based in laws, by-laws or any other regulation related to functions of public prosecution services and they are usually granted to users/parties in the form of a complaint or appeal to a higher instance. These could be higher court instances, for example in cases of complaints against investigative judges, or a hierarchical mechanism established within the public prosecution service itself (for instance, complaint before a higher prosecutor, the Prosecutor General or the Higher Council for the Prosecution, where it exists). Whatever appeal mechanism is set up, it is important that is easily accessible and effective.

Question 6.e. – Does a responsible person or office have a duty to inform the prosecutor, competent authority or office of undue delays of the proceedings?

This question concerns the obligation of the responsible person/office to inform the competent prosecutorial authorities of undue delays in prosecution interventions and court proceedings. As with the previous question (6.a.), this can be done at a centralised level, at different prosecutorial hierarchical instances or locally in each individual prosecution office. Notifications may be used as an "early warning" signal for deadlines, at the level of a particular prosecutor.

Question 6.f. – Can the responsible person take steps to mitigate current delays or prevent future ones and speed up the proceedings?

When certain delays have been noticed, the competences of the responsible person/prosecution offices are crucial to address them. It is important to have an established proper system for a "response" to those situations, in order to resolve the problems in due time. The appointment of the responsible person may reside in the law, bi-laws, regulations or even internal procedures of the prosecution service. Also, it is crucial to understand whether it occurred on an "ad hoc" basis or is a systematic problem which needs a holistic and systemic solution, to prevent similar such situations in the future.

Question 6.g. – Is it possible to impose sanctions against parties/lawyers/experts who delay proceedings (e.g. admonition, replacement, fines, cost decisions)? Which types of sanctions may be imposed (disciplinary, penal, other) and by whom?

If a prosecutor in the particular case notices unlawful behaviour of parties and/or their legal representatives and deliberate breaches of procedural rules, some systems grant the possibility of imposing sanctions on such party(s) and their representatives in compliance with national laws and regulations. These sanctions should be applied only where participants deliberately neglect their obligations and cause unjustified delays, which are detrimental to the continuation of proceedings. In situations where lawyers breach procedural rules, some systems allow the reporting of such events to the respective BARs or other lawyers' professional associations for potential sanctioning, if appropriate.

Question 6.h. – Are the data on these sanctions collected?

This question concerns the registry, for instance in a database, of information about the sanctions related to the participant's and their representatives' unlawful behaviour and may serve as important information to prosecutors, but also BARs and other professional

organisations participating in proceedings. It may help them to pay attention to such a behaviour in order to avoid undue delays and the deterioration of procedural discipline in the future.

Question 6.i. – Does the prosecutor periodically review all cases and decide on the need to revive or terminate suspended proceedings?

This question is related to an overall approach to, and monitoring of, criminal proceedings, namely those that are prolonged for various reasons. It is crucial for prosecutorial operations to periodically review the status of cases, so that all cases are duly processed and finished. Periodical review may prevent undue prolongation of proceedings, and therefore prevent violation of human rights and the right to a fair trial within reasonable time. Where appropriate, a monitoring system could be established providing for regular meetings with other relevant agencies, such as the police and the investigative judge, to review cases and improve cooperation of relevant bodies in the judicial system.

Question 6.j. – Is there any communication strategy in place which supports internal, external or crisis communication, namely in situations of significant delays in case resolution?

Communication should be part of a general strategy to inform the public on the activity of the prosecution service, whether relating to criminal proceedings, namely sensitive ones, or prosecutorial and judicial activity as a whole. The existence of a communication strategy for the overall public prosecution service, either at a centralized, regional or local level, should ease internal and external communication and envisage proper communication channels and communication methods among different entities. It is important for a communication strategy to define its target audience, identify situations in which each target group needs to receive information, when and by what means, and define the message that the prosecutorial authority wants to convey. Any communication strategy needs to be accompanied by specialised training on how to best communicate with the media and the general public.

Please indicate whether such communication strategy exists in your respective prosecution service and at what level. Please consult the ***CEPEJ Guide on communication with the media and the public for courts and prosecution authorities (December 2018).***

INDICATOR SEVEN: USING INFORMATION AND COMMUNICATION TECHNOLOGIES (ICT) AS A TOOL FOR TIME MANAGEMENT OF JUDICIAL PROCEEDINGS

The prosecutor may best achieve proper time management by the use of ICT for the purpose of monitoring timeframes and procedures, data analysis, court performance and strategic planning.

ICTs as a tool for case registration, monitoring of duration and of backlogs in proceedings

Question 7.a. – Does the prosecution service/prosecutor use an electronic case management system?

This question concerns the use of any type of electronic case management systems (CMS), ranging from the simple (case tracking or case document system for cases registration) to the complex (e-filing, exchange of documents and digitalised procedures). Case management is a system, usually electronic, which enables the processing of cases in a prosecution service,

including features such as case filing, case event scheduling, production of templates for the drafting of documents (e.g. indictments, opinions, requests and decisions), and recording extraction and reporting of case-flow data. An effective case management system should also collect data about backlogs and inform prosecutors and/or prosecutorial staff about delays.

Question 7.b. – Does the prosecutor/prosecution service use electronic communication (e-filing) with courts and the parties to exchange documents?

Electronic filing (or e-filing) refers to technological solutions facilitating access to justice, by establishing a digital channel that enables the interaction and exchange of data and e-documents between prosecution services, courts and users. For further information on external and internal electronic communication, please consult the ***CEPEJ Guidelines on electronic court filing (e-filing) and digitalisation of courts.***

Question 7.c. / Question 7.d. – Does the prosecution service/prosecutor collect data on the duration of the various procedural steps via the electronic case management system? / Does the electronic case management system collect data on pending cases?

Automated/electronic data collection, especially on delays in proceedings may be a significant tool for the timely management of prosecutors' interventions, prevention of excessive delays and proper analysis of reasons for such delays. Moreover, it is even more appropriate to collect information on the exact phase of the proceedings when those delays occur, so that prosecutors and the managers within the prosecution services may properly respond to those situations as they occur.

Question 7.e. – Does the electronic case management system collect data on backlogs? Is this data about backlogs available in electronic form to prosecutors?

In some prosecutorial and judicial systems, the use of an electronic case management system is mandatory for case tracking and management of cases, including the production of necessary reports. In those prosecutorial and judicial systems, the prosecutors may get timely information and notifications from the electronic case management system, which ensures accuracy and saves time for the analysis of case events and deadlines.

Question 7.f. – Is information about the stages of the case available in electronic form to parties (for example, dates of hearings, location of the file)?

Accurate information on stages of cases should be shared among prosecution services, courts and parties to the proceedings in a timely manner. The electronic exchange of this information is important for procedural discipline and timely preparation for upcoming hearings, thus ensuring compliance with procedural deadlines, agreed timeliness in judicial proceedings and provisions of procedural laws. The goal is to exchange information quickly, so that the case can be resolved within agreed timelines. Other participants (such as victims, witnesses, and experts, etc.) may also be given access to the electronic case management system.

ICT as a tool for statistical processing, improvement of efficiency and planning in the area of timeframes

Question 7.g. – Do ICTs enable production of statistical reports? If so, are such reports automatically produced?

This question is related to data collection and reporting about cases through the prompt production of accurate statistical reports. One of the main purposes of introducing ICT solutions is the production of reports containing data relevant for the monitoring of

performance and taking managerial decisions. The production of statistical reports should be automatic and defined by or within the participation of the relevant prosecution service. Useful tools for the prosecution services and prosecutorial staff for producing statistical reports include case management systems and different types of dashboards. For more information on court dashboards, please consult the ***CEPEJ Handbook on court dashboards (June 2021)*** that provides practical recommendations on how to set up dashboards consolidating court data.

Question 7.h. – Are the statistical reports available in electronic form to users?

This question is related to the previous one (7.g.) and concerns the transparency of prosecutorial performance and data availability to users. The statistical reports may be available on a periodic basis (monthly, semi-annually and annually) in the form of the official reports of the prosecution service. Another way to present the relevant data is to develop an interactive map of the network of prosecution services, with statistical information available online, and updated automatically through a direct connection with the case management system. However, the utility of producing statistical reports needs to be assessed on a case-by-case basis in order not to hamper the normal flow of judicial proceedings.

Question 7.i. – Are statistical reports on the duration of proceedings and delays regularly used for case management within the prosecution service?

The use of ICT tools may significantly support prosecutors' personal case management, especially an electronic reporting system providing accurate, up-to-date information. It may include all benefits that those systems may offer, such as notifications, "flagging", early warning signals, reminders and predictions of trends in their cases (for example, the number of cases that may become "old", the deadlines for statute of limitations, etc.). The prosecutors need to be trained from the outset of their careers on the importance and the functioning of these tools.

Question 7.j. – Does the prosecutor use standard electronic templates for the drafting of prosecutorial documents?

Standard electronic templates for the drafting of documents should be developed and used by prosecutors and prosecutorial staff (see the ***Revised SATURN Guidelines for judicial time management***). Various electronic forms and templates help prosecutors to prepare different types of documents (such as indictments, decisions, notifications, requests, etc.). They are usually produced by working groups at a national level composed of experienced prosecutors and made available in CMS or some work processing software. These forms may save prosecutors significant time and also harmonise the different forms in use thus contributing to the coherence of prosecutorial documents.

Question 7.k. – Does the prosecutor use videoconferencing in judicial proceedings?

Videoconferencing is considered one of the tools with the potential to help courts and prosecution services to carry out proceedings more expeditiously and effectively. Videoconferencing is utilised in situations where the presence of the participants and the parties in procedures is not strictly necessary, not possible or may be seriously hampered (e.g. interrogation of witnesses abroad or in other parts of the country, witnesses under protection measures or particularly vulnerable persons as children and handicapped persons, victims of domestic violence or organised crime, etc.). Videoconferencing, if due safeguards and individual rights are respected, saves time, assets and secures compliance with the set deadlines, enabling the continuation and quicker conclusion of proceedings, benefitting both the parties, the courts and the prosecution services. Videoconferencing in judicial proceedings

should however be carried out in compliance with the requirements of the European Court of Human Rights in order not to undermine the right to a fair trial, as enshrined in Article 6 of the European Convention on Human Rights. For more information on videoconferencing, please consult the ***CEPEJ guidelines on videoconferencing in judicial proceedings (June 2021)***.

Question 7.I. – Is Artificial Intelligence (AI) used by the prosecutor/ prosecution service?

The CEPEJ is of the view that the application of Artificial intelligence (AI) in the field of justice can contribute towards the improvement of the efficiency and quality of judicial systems. Examples of AI tools, that could be used in courts and prosecution services, include: advanced case-law search engines; assistance in drafting different documents and decisions (including templates) and case assignment based on an algorithm; (semi)automatic anonymisation of decisions and chatbots to inform or support litigants in their legal proceedings. AI tools must be implemented in a responsible manner, complying with the fundamental rights guaranteed in the European Convention on Human Rights. The ***CEPEJ ethical Charter on the use of artificial intelligence in judicial systems and their environment*** identifies the core principles (December 2021). Structured and reliable information on AI systems and cyberjustice tools can be found in the ***CEPEJ Resource Centre on Cyberjustice and Artificial Intelligence***.