

Comparative study on prosecutorial self-governance in the Council of Europe member states



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General introduction

This study was prepared upon the request of the Council of Europe within the project “Continued support to the criminal justice reforms in Ukraine”, funded by the Danish government, in response to the demands of Ukraine, a country undergoing profound reforms in relation to the judiciary, prosecution and law enforcement services. The European countries chosen offer a variety of organizational arrangements in the prosecution service. Some of the countries share the challenges seen today in Ukraine and a close look at the solutions chosen to overcome them might inform the current reform processes. In these jurisdictions, the self-governing bodies for the prosecutors vary in terms of their profiles and leverage vis-à-vis the prosecution service. While they should not be seen as a solution to all problems in the prosecution system, the councils in Albania, the Netherlands, Romania and Serbia try to strike a balance between the need to ensure autonomy and accountability of the prosecution while at the same time acting as a buffer between the prosecutors and the political elite. Indeed avoiding misuse of the prosecution service for political purposes has been at the heart of introducing self-governing bodies to dissipate the power of the Ministers of Justice or of Prosecutors General (who often are appointed following through a process that involves high-level politicians, as well as professionals).

The various models of prosecution service presented below have common features as well as specificities. The challenge of a well-directed reform is not to copy-paste a system that works in another country, but rather to adapt the national system to the needs and background of a particular jurisdiction. While in some countries lax rules might generate a beneficial environment where prosecutors act freely, in other countries detailed provisions are the only guarantees against improper political influence.

Traditions and history also play an important role in determining what various stakeholders deem as appropriate – in countries where politicians genuinely promote rule of law there might not necessarily be a need to adopt legislation prohibiting interaction with the prosecution service. On the contrary, some degree of interaction might even prove beneficial in promoting the overall policy of crime prevention. On the other hand, in countries that have had a history of politically motivated prosecutions, in particular those that had a totalitarian experience in their past, a clear delimitation between prosecutors, intelligence services and politicians are needed.

Prosecutorial self-governance bodies may act as a buffer between these different stakeholders. Imperfect as they might be, they undertake more and more tasks recently, in particular with regard to the human resources aspects of the prosecution service. All is done with the goal of ensuring autonomy of prosecutors in carrying out their functions so that they do not feel undue pressure and as a result generate cases that are professionally built.

Ukraine has embarked in a grand scale process of reforms that includes a fresh approach to the public prosecution service. The new legislation relevant in this field has been adopted in 2014 and has entered in full effect in 2017. As this new legislation provided for the set-up of a Council of Public Prosecutors and the Qualification and Disciplinary Commission of Prosecutors the present study was prepared with a view of informing public policy decisions by presenting the relevant practice of other four countries (Albania, the Netherlands, Romania and Serbia).

Methodology

This study is the result of desk research of national and international standards, legislation and policy documents. The jurisdictions were chosen also based on the availability of data to the experts on the topics to be addressed:

- ▶ institutional arrangements of the prosecution service;
- ▶ status and functions of the prosecutors;
- ▶ selection and appointment of prosecutors;
- ▶ evaluation and promotion of prosecutors;
- ▶ disciplinary liability and procedural for prosecutors;
- ▶ capacity building and training.

The countries chosen for this study represent a fair balance between the different approaches to the organization and functioning of the Prosecution Service. Therefore, countries were chosen which have self-governing bodies within an independent Prosecution Service as well as countries where the Prosecution is under the political responsibility of the executive. In this way a more complete picture of different systems is given. The self-governance bodies usually act in the area of human resource management – appointment, promotion, discipline and disciplinary sanctions – offering the needed safety belt against undue political influence. In the six areas covered by this study we explore the mechanisms used by the four jurisdictions chosen to achieve this goal.

International standards on prosecutorial self-governance

Setting up self-governance bodies for the prosecution service is a trend visible in many jurisdictions. However, there is no general standard or requirement to have such a self-governance body. In a Venice Commission report – the report on European standards as regards the independence of the judicial system: part II – the prosecution service¹ – the experts explore the relevance of self-governance bodies from the perspective of the higher goal of judicial independence. Indeed, when it comes to criminal justice the autonomy of prosecutors in conducting their investigations is paramount – independent judges only adjudicate the cases that are presented to them by prosecutors.

This idea is also included in the Opinion number 9/2014² of the Consultative Council of European Prosecutors, which states that:

- ▶ *“It is essential to ensure the independence and effective autonomy of prosecutors and to establish proper safeguards. They have a duty to act fairly, impartially and objectively. In criminal matters, prosecutors must also take into account the serious consequences of a trial for the individual, even one that results in an acquittal. They should also seek to contribute that the justice system operates as expeditiously and efficiently as possible and assist the courts in reaching just verdict”.*
- ▶ *“Striving for impartiality, which in one form or another must govern the recruitment and career prospects of public prosecutors, may result in arrangements for a competitive system of entry to the profession and the establishment of High Councils either for the whole judiciary, or just for prosecutors”*

1. <https://rm.coe.int/1680700a60>

2. <https://rm.coe.int/168074738b>

The issue of independence is correlated also with the functions of prosecutors:

- ▶ *“Prosecutors play an essential role for the rule of law and the proper functioning of criminal justice systems. Prosecutors decide whether or not to initiate or continue a prosecution, conduct the prosecution before an independent and impartial court established by law and decide whether or not to appeal decisions by that court.”*
- ▶ *“The independence of prosecutors is not a prerogative or privilege conferred in the interest of the prosecutors, but a guarantee in the interest of a fair, impartial and effective justice that protects both public and private interests of the persons concerned.”*
- ▶ *“Independence of prosecutors – which is essential for the rule of law - must be guaranteed by law, at the highest possible level, in a manner similar to that of judges. In countries where the public prosecution is independent of the government, the state must take effective measures to guarantee that the nature and the scope of this independence are established by law. In countries where the public prosecution is part of or subordinate to the government, or enjoys a different status than the one described above, the state must ensure that the nature and the scope of the latter’s powers with respect to the public prosecution is also established by law, and that the government exercises its powers in a transparent way and in accordance with international treaties, national legislation and general principles of law”*

In some countries the self-governing body for prosecutors operates under the same umbrella as the self-governing body for judges – usually they are sections of the council for the judiciary. In other countries, however the prosecutorial council and the council for judges are two separate entities. Irrespective of the particular organizational details, in an attempt to avoid the transformation of these bodies into “syndicates” of the respective professions, they also include representatives of the civil society, academia or lawyers. The Venice Commission suggests that prosecutors from all levels of jurisdiction are represented in the self-governance body, so that the variety of views present in the entire service is voiced. It is also recommended that when non-prosecutors – civil society representatives, lawyers or academia - are voted in by the Parliament, this decision should be taken by a qualified majority. In essence, the balanced composition of Prosecutorial Councils ensures democratic legitimacy and allows them to act as a filter against undue political influence over the prosecution service, in particular with regard to appointments, promotions and discipline.

Country chapters

Albania

Albania underwent a deep reform in the Justice Sector in 2016. First of all, the reform concerned Constitutional amendments which led to the establishment of new Justice Institutions. The overall aim of the Constitutional amendments and the establishment of new institutions was the increase of the efficiency in the Justice Sector, the safeguarding of an independent and impartial Justice Apparatus and fight against corruption and organized crime. The Constitutional Amendments were accompanied with the necessary amendments to the organic laws. Moreover, new legislation was adopted, especially with regard to the new institutions created. The Prosecution Service was one of the sectors, which underwent drastic changes in terms of organization, functioning, status and competencies. The section on Albania provides for an overview of these thematic areas after the reform of 2016. It should be noted that the legislation in force at the moment of this report has not produced concrete effects since the institutions related to the functioning of the reformed Prosecution Service are in the process of being established. Therefore, the overview presented below is based solely on the legislation.

Institutional arrangements of the Prosecution Service

The following represents the organization structure of the prosecution system after the reform of 2016:³

3. For additional information on this section see:
 - Law No. 97/2016 “On Organization and Functioning of Prosecutor in the Republic of Albania”.
 - Law No. 95/2016 “On Organization and Functioning of Institutions Fighting Corruption and Organized Crime”.
 - Law No. 115/2016 “On Governance Institutions in the Justice System”, art. 101-192.
 - Constitution of the Republic of Albania

Prosecutor General

It continues to be on top of the hierarchy of the Prosecution Service as far as the ordinary criminal investigation is concerned. However, the Prosecutor General has lost his powers over the career and discipline of prosecutors. He is now rather a manager of the service. To a certain degree, the managerial duties are shared with the High Prosecutorial Council. The Prosecutor General has also no influence anymore on a particular case. He can give general directives regarding the functioning and the organization of the Service, but this power does not extend over the core of an on-going case. Prosecutors working at the GPO still represent the Prosecution office in cases before the Supreme Court and the Constitutional Court.

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High Prosecutorial Council

The Prosecutorial Council, which existed prior to the reform, has undergone drastic changes in terms of composition, competences, organization and functioning. The changes are reflected already in the new name. Now it is called High Prosecutorial Council and it is a decision-making, self-governing body. The Council is a collegial body composed of eleven members who serve on a full-time basis. Six members are prosecutors of all levels of the Prosecution Service. The other five members are lawyers who are not prosecutors, but who have a prominent career as an advocate, professor or civil society activist. The new legislation contains a very detailed account of the criteria and way of appointment of members of the High Prosecutorial Council. The council is not yet established since the six members coming from the prosecutorial ranks need to go first through the transitory re-evaluation process, the so-called "Vetting Process", which has already started. The members coming outside the prosecutorial ranks are already elected. The members of the council have the status of a magistrate for the duration of their term, which is five years without the right to be re-elected. The Chairperson and the Deputy Chairperson are elected among the non-prosecutor members in the first meeting of the Council. The Council is responsible for the following:

- ▶ Drafting, approval and implementation of strategic planning for the Prosecution Service in cooperation with the Minister of Justice;
- ▶ Reporting to the Parliament not less than once a year on the situation in the sector;

- ▶ Adopting the standards of ethics and rules of conduct for prosecutors and observing the compliance with them;
- ▶ Proposing to the Parliament the candidates for positions of the Prosecutor General in accordance with the Constitution and the Law “On the Status of Judges and Prosecutors in the Republic of Albania”;
- ▶ Appointment, assignment in position, transfer, promotion, secondment and reappointment, ethical and professional performance evaluation, imposition of disciplinary measures and suspension for all prosecutors;
- ▶ Expressing opinions and making propositions regarding amendments to the legislation that may affect the work of the prosecution service and any other matter that is within the responsibility of the Council.

Special Prosecution Office

This is a new constitutional institution established with the reform. It exercises criminal prosecution and represent the state before the Anti-Corruption and Organised Crime Court of First Instance, Anti-Corruption and Organised Crime Court of Appeal and the Supreme Court. The Special Prosecution Office carries out its functions independently through only those prosecutors who are appointed by the High Prosecutorial Council. The Chief Special Prosecutor is appointed in accordance with the relevant Constitutional provisions and is not subordinated to the General Prosecutor. He is also a managerial role and cannot interfere into the substance of a particular case. He has competences according to the special legislation that foresees a separation from Prosecutor General. It possesses exclusive competences on the investigations and the fight against corruptions and organized crime;

National Bureau for Investigation

This is also a new institution established with the reform. The Bureau is a specialised section of the Judicial Police, which operates only with at the direction of the Special Prosecution Office.

Prosecution offices to Appellate Courts of general jurisdiction

These offices exercise their competences according to the distribution of jurisdiction in the CCP. Their jurisdiction is extended to the whole territory of the country where the jurisdiction of the respective Appellate Court operates. Prosecutors of these offices represent the Prosecution Service in cases before

the Appellate Court. Hierarchically, prosecutors of the offices to Appellate stand higher than the prosecutors of the offices to the Courts of First Instance as discussed in the following paragraph. It should be noted here that prosecutors of higher posts are also entitled to exercise the competences belonging to prosecutors of lower offices. The reform of 2016 did not have an important impact on the prosecution offices to the Appellate Courts as far as their institutional arrangements are concerned.

Prosecution offices to the Courts of First Instance of general jurisdiction

These offices exercise their competences according to the distribution of jurisdiction in the CCP. Their jurisdiction is extended to the whole territory of the country where the jurisdiction of the respective Court of First Instance operates. Prosecutors of this office are responsible for the initial investigations. They represent the Prosecution Service in cases before the First Instance Court. The reform of 2016 did not have an important impact on the prosecution offices to the First Instance Courts as far as their institutional arrangements are concerned.

Judicial police

Enjoys the same responsible for the operational part of the investigation. It is related to the Prosecution Service and National Bureau for Investigation;

Interaction with other institutions

The Prosecution Service maintains relations with other institutions also after the reform. The inspection powers of the Minister of Justice and his possibility to propose disciplinary measures are not present anymore after the reform. Nevertheless, the Minister still maintains the possibility to present each year to the Prosecutor General the priorities of the Government regarding criminal justice. Collaboration with Ministry of Justice extends as well to the budgeting and strategic planning of the Prosecution Service. The relation with Parliament concerns the appointment of Prosecutor General and the Chief Special Prosecutor. These two are also obliged by law to report to the Parliament with respect to the situation of criminality in Albania.

Status and functioning of prosecutors

The prosecutor status and its functioning before the reform of 2016 reflects the following features:⁴

Status of Magistrates

The prosecutors maintained the status of magistrates also after the reform. Their status is regulated by a special law "*On the Status of Judges and Prosecutors*" and has drastically improved, including financial treatment and other rights and privileges. The legislation provides in detail for the financial treatment of prosecutors according to their hierarchic status, seniority, professional capability, financial rights to supplementary pensions, etc. A right to a bank loan for residency purposes, initially invested by the State, is also guaranteed in this law. Protection of life, family and property is guarantee even after prosecutor's retirement in special cases. Prosecutors are entitled to an indemnification by the State should a damage occur to their life, health, property or family.

Functions of the prosecutor

The operational functioning of the prosecutor is still regulated by the new article 24 CCP. This includes again the power to prosecute, investigate, representation in court and execution of criminal courts decisions.

Hierarchical functioning

The Prosecution Service still remains a centralized organization. The hierarchy remains the same as the old system. However, the centralization concerns the management structure rather than the operational functioning. The new law "*On the Organization and Functioning of the Prosecution Service*" guarantees the procedural independence and autonomy of the prosecutor. The prosecutor of the case is bound by general instructions of the higher prosecutor, including the General Prosecutor or the Chief Special Prosecutor, but the prosecutor

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4. For additional information see:
- Law No. 96/2016, dated 06/10/2016 "*On Judges and Prosecutors Status in the Republic of Albania*", art. 11-17, 20-22, 44.
 - Law No. 97/2016, dated 06/10/2016 "*On Organization and Functioning of Prosecutor in the Republic of Albania*", art. 6, 7, 45-49.
 - The Albanian Code of Criminal Procedure, art. 24.
 - Constitution of the Republic of Albania

of the case has the possibility to challenge the instructions before the High Prosecutorial Council. In any case, instructions given for a specific case have to be in written and motivated, but they are not binding to the prosecutor of the case. In addition, the competences of the higher prosecutor to replace a prosecutor from an on-going case are very limited and clearly stated in the law. Replacement of prosecutors should in any case be in written and motivated. The prosecutor of the case has the possibility to challenge the decision of replacement to the High Prosecutorial Council.

Selection and appointment of prosecutors

After the reform, the selection and appointment of prosecutors has totally changed as follows:⁵

Appointment of the General Prosecutor

The new Constitutional provisions on the Prosecutor General provide for the procedure of his appointment. The Prosecutor General is appointed by the Parliament, with a qualified majority voting procedure, among three candidates proposed by the High Prosecutorial Council. The Constitution provides for an 'unblocking' procedure when the Parliament fails to vote the Prosecutor General within thirty calendar days. In such a case, the candidate ranked as first in the list of three candidates proposed by the High Prosecutorial Council is appointed automatically as Prosecutor General. The candidate Prosecutor General must fulfil certain criteria regarding professionalism and integrity. He or she should be a graduate from the School of Magistrates and must have not held a political function in the last ten years. Further detailed rules on the evaluation of the criteria for appointment and background checking are provided for in the special legislation. The Prosecutor General is appointed for a non-renewable term of seven years.

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5. For additional information see:
- Law No. 95/2016, dated 06/10/2016 "On Organization and Functioning of Institutions Fighting Corruption and Organized Crime", art. 4, 11, 12, 13.
 - Law No. 96/2016, dated 06/10/2016 "On Judges and Prosecutors Status in the Republic of Albania", art. 28, 32, 35, 36.
 - Law No. 97/2016, dated 06/10/2016 "On Organization and Functioning of Prosecutor in the Republic of Albania", art. 22-28, 31-33, 35.

Appointment of the Chief Special Prosecutor

The appointment of the Chief Special Prosecutor differs from that of the Prosecutor General. He or she is appointed directly by the High Prosecutorial Council for a non-renewable term of three years among the prosecutors of the Special Prosecution Office.

Recruitment of candidates and appointment for the first time as prosecutor

The recruitment is regulated in detail based on broader criteria than the old law. The recruitment goes again through the School of Magistrates. Graduation from the School with a minimum score of 70% means eligibility for appointment. The appointment is done by the High Prosecutorial Council in accordance with a detailed procedure laid down in the law. A constitutional standard is set for prosecutors appointed for the first time regarding the check of their assets prior to the entrance into the profession. The check is performed by the High Prosecutorial Council. Prosecutors of the Special Prosecution Office are appointed for the first time through the promotion procedure. It means that they should have certain seniority. Moreover, prosecutors of the Special Prosecution Office are subject to thorough background and security checks prior to their appointment and during the exercise of their duties.

Selection and Appointment of the Chiefs of Offices

This process is based on the same criteria and procedures as those provided for all other prosecutors and is now carried out by the High Prosecutorial Council, limiting the former competences General Prosecutor had in the old system.

Evaluation and promotion of prosecutors

The evaluation and promotion of prosecutors has changed drastically by limiting the competences General Prosecutor had prior to the reform of 2016. Most of those competences are now transferred to the High Prosecutorial Council:⁶

6. For additional information see Law No. 96/2016, dated 06/10/2016 "On Judges and Prosecutors Status in Republic of Albania", art. 28-99, 170, 171, 173-176, 179-1181, 192-196.

Evaluation

After the justice reform, the law foresees very detailed and elaborated criteria regarding the evaluation procedure. The process of the evaluation includes:

- ▶ Professional capacities with respect to the knowledge of the law, which is measured through how prosecutors investigate, collect evidence, understand, interpret and analyse the law, etc. The professional evaluation does not concern the contents and substantive aspects of the case;
- ▶ Managerial capacities as regards their ability to cope with the work load, to manage the files, respect statutory deadlines, the time dedicated to each case, etc.;
- ▶ Ethics, integrity and impartiality in their work based on different sources of information, including (lack of) complaints, disciplinary measures, opinions of superiors, etc.;
- ▶ Personal values and professional engagement related to communication skills, collaboration with colleges, readiness and availability to be engaged with other activities. The law provides specific rules on how these kinds of skills are measured. In particular, the readiness and availability get engaged with other activities concerns among other professional continuous training.

The Chief of Prosecutorial Offices is evaluated also for their management and organisational skills with regard to the administrative and normal operation of the office they represent and lead. The Chiefs are also evaluated for their communications skills with the High Prosecutorial Council, the High Inspectorate of Justice, Ministry of Justice, the High State Audit, any other supervisory or auditing body and their communication with public as well.

The evaluation procedures do not aim at interfering with the prosecutor's independence. On the contrary, the evaluation is supposed to be based on the prosecutors' merits, to be effective and fast, to be legal and confidential. The sources for evaluation include the prosecutor's personal file, statistical data, materials and decisions selected by the prosecutor, Chief's opinion, information provided by the School of Magistrates, the High Inspectorate of Declaration and Control of Assets and Conflict of Interest, complaints from third parties etc.

The frequency of evaluations varies from once in every 3 years to once in 5 years, depending on the prosecutors' time in duty and the position they hold. The evaluation procedure is followed up by the High Prosecutorial Council

according to a pre-determined and approved schedule, which identifies the list of the prosecutors who will undergo the evaluation procedure at a given calendar year. The prosecutor, who is notified about his upcoming evaluation, makes a self-ethical and professional evaluation of his work, according to the criteria stipulated in the law and directives and forms provided by the High Prosecutorial Council. The self-evaluation form is based on and accompanied with evidence selected by the prosecutor himself, such as acts prepared by the prosecutor, training outside the School of Magistrates, etc. The self-evaluation is then addressed to the Chief of the Prosecutorial Office, who also provides his opinion according to the standards set by the High Prosecutorial Council and the criteria stipulated in the law. The Chief's opinion is made available to the prosecutor who is entitled to be heard in a meeting held with the Chief of the office. The meeting is recorded in minutes. The final opinion of the Chief reflects as well the opposing arguments of the prosecutor, if any, and is addressed to the High Prosecutorial Council. The Council follows up a detailed procedure. The respective prosecutor is notified about the respective officials of the Council who have been assigned to perform his/her evaluation. The prosecutor is entitled to have access to the evaluation file. The High Prosecutorial Council prepares a draft report of evaluation. This report is made available again to the prosecutor who in turn can object it and present new evidence. The prosecutor is as well entitled to be heard in a hearing session held by the Council. At the end of the process, the High Prosecutorial Council approves the draft report of evaluation, revises it accordingly or requests the person in charge of the prosecutor's evaluation to compile a new draft report of evaluation. In any case, the decision of the Council is motivated. The prosecutor may challenge the decision of the High Prosecutorial Council to the Supreme Court only with regard to the proper implementation of the law and thus not the merits.

Role of the High Inspectorate of Justice (self-governing body)

High Inspectorate of Justice together with the High Prosecutorial Council is part of the prosecutor evaluation process. As already explained above, the High Prosecutorial Council is the final decision-making body. One of the authorities that report to the Council during the evaluation process of prosecutors is the High Inspectorate of Justice mainly with respect to information on third parties complaints against the prosecutors.

Transfer to another region/office

Transfer implies the temporary or permanent placement of a prosecutor to another region/office in the same level of position. The transfer is made only in cases of a temporary or permanent vacancy. The law provides specific rules of priority on how a temporary or permanent vacancy is filled. Should the transfer be temporary then the prosecutor returns back to his previous position once the transfer period elapses. The temporary transfer cannot last for more than 1 year and it may take place only if the specific vacancy cannot be filled by a prosecutor who is part of the delegation scheme and after the Chief of the Prosecutorial Office where the respective prosecutor pursues his/her duties has provided an opinion to the matter. The new legal framework provides the delegation scheme as a special form of transfer, which implies the secondment of prosecutors who meet the statutory criteria to any prosecutorial office in need for a prosecutor, at the same or another level of position, including the Special Prosecutor. Any prosecutor may apply to be part of the delegation scheme and in such case, he provides a written consent to be appointed in any prosecutorial office. The prosecutor cannot though serve for more than 5 years in the delegation scheme. While a delegated scheme prosecutor waits for his or her appointment to any prosecutorial office, he or she serves at the administration office of the High Prosecutorial Council.

Transfer cannot take place without the consent of the prosecutor, unless it is specifically provided by the law for reasons such as implementing a disciplinary measure, disestablishment of the prosecutor position and other organizational needs. In case of transfer without prior consent, the prosecutor is entitled to challenge the decision at the court, but this does not suspend the transfer. Transfer or assignment to a lower position without prior consent of the prosecutor is not allowed, save the specific cases provided by the law (such as disciplinary measures).

Transfers to free parallel positions are organized by the High Prosecutorial Council every 3 months. The High Prosecutorial Council invites the candidates who meet the statutory criteria to participate in the parallel transfer procedure. The criteria include the requirement of having at least 1 year of experience in the same field as that of the free position and not having any valid disciplinary measure against them. The High Prosecutorial Council ranks the competing candidates following all statutory criteria and taking into account the candidates' evaluation, experience, seniority and the ranking list of graduates by the School of Magistrates or the professional evaluation of a former prosecutor who is reappointed. The High Prosecutorial Council defines

detailed rules on the selection and scoring criteria for filling a free position. The High Prosecutorial Council may also select from the delegation scheme the appropriate prosecutor and appoints him or her to any prosecutorial office that is in need, after having reviewed and assessed the request of the respective Chief of the prosecutorial office. Temporary transfers for complex cases to the Special Prosecutor Office are made upon a request of the Chief of the Special Prosecutor Office to the Chief of the Prosecutorial Office of the First Instance Court. In such case, the High Prosecutorial Council provides its opinion, which is not mandatory to the Chief of Special Prosecutor.

Promotion

Promotion implies the appointment or secondment of a prosecutor to a higher-level position, to the Special Prosecutor (in case the prosecutor is not already part of this body), or to the position of Chief of Prosecutorial Office or to the General Prosecution Office. The rule is that promotion takes place only if the vacancy cannot be filled through parallel transfers.

The High Prosecutorial Council invites all eligible candidates to take part to the promotion procedure, save for the position of the Chief of Special Prosecutor, which is addressed only to prosecutors of the Special Prosecution Office. The High Prosecutorial Council follows a strict selection procedure. Apart from the statutory criteria, the High Prosecutorial Council checks the prosecutor's assets and integrity and the existence of any valid disciplinary measure. Only the candidates who pass successfully this phase may proceed further to the promotion procedure. At the end, the High Prosecutorial Council ranks the prosecutors according to a scoring system taking into account their previous evaluation, professional experience and seniority. The High Prosecutorial Council promotes the prosecutor with the highest score. The decision of the High Prosecutorial Council may be challenged before the competent court, save the decision on promotions to the Special Prosecutor, which is final. The High Prosecutorial Council issues detailed rules on the selection and scoring criteria for the promoting procedure.

Secondment

Secondment implies the placement of a prosecutor to a non-prosecutorial position in an institution within the justice system, such as General Prosecutor Office, High Prosecutorial Council, Ministry of Justice, etc. Secondment occurs only upon consent of the prosecutor, save the newly graduated prosecutors. Secondment cannot last for more than 5 years, unless the law provides

otherwise. The High Prosecutorial Council may terminate the period of secondment prior to this period with a motivated decision and upon request of the seconded prosecutor and after having received the opinion of the respective institution. If the prosecutor has completed the entire period of secondment, the High Prosecutorial Council gives to the prosecutor priority in the parallel transfer or promotion procedures. After termination of the secondment period, the prosecutor is entitled to return to his/her previous position, save otherwise provided by the law. The secondment period is valid as work experience in the prosecution office of the First Instance Court, save otherwise provided by the law. During the secondment period, the ethical and professional evaluation of the prosecutor is performed by the institution in which the prosecutor is assigned, according to the procedures applied for other members of the same institution. The disciplinary responsibility of the seconded prosecutor is as well the same as for the other members of respective institution. The disciplinary proceedings are followed up by the institution and in case of prosecutor's dismissal from his seconded position the prosecutor is entitled to address the case to the High Prosecutorial Council. The High Prosecutorial Council is notified by the institution, which imposed the disciplinary measure to the seconded prosecutor even if he does not refer the case to the Council himself. The prosecutor may challenge the decision of the institution before the competent court and in this case, the execution of the disciplinary measure is suspended.

In general, any of the institution within the justice system as specified by the law may ask the High Prosecutorial Council the secondment of a prosecutor according to its needs, for a defined period that cannot be longer than 5 years. The High Prosecutorial Council assesses the needs of the institution and invites the candidates for these positions. The Council accepts those candidatures that meet the specific requirements of the positions and prepares an opinion for each one of the candidates and assesses if the secondment of the prosecutor is in compliance with the interest of the prosecutorial office where the candidate exercises his/her duties. The High Prosecutorial Council sends to the requesting institution a list those candidates who are found to be eligible for the respective position. The institution on the other hand, evaluates all applications and requests the Council the secondment of the selected candidate for a definite period to the respective position. The High Prosecutorial Council decides on the secondment of prosecutor.

Suspension

The prosecutor's suspension is part of the disciplinary measures decided by the High Prosecutorial Council in cases provided specifically by the law such as being under arrest, under criminal investigation, etc. There are also other cases of suspension provided by the law, such as the existence of physical or mental conditions of the prosecutor that make him/her unsuitable to pursue his/her duties. The High Prosecutorial Council also evaluates these cases.

Resignation and Dismissal

The prosecutor's magistrate status terminates in several specific cases stipulated by the law such as:

- ▶ voluntary resignation which presented to the High Prosecutorial Council;
- ▶ any of the conditions as provided by the law and which makes the prosecutor not eligible for the position, is proved to exist. In such case the High Prosecutorial Council announces the termination of the prosecutor's status;
- ▶ reach of age of retirement;
- ▶ dismissal due to disciplinary sanction in accordance with the law;
- ▶ physical or mental incapacity to pursue his duties.

As indicated above the resignation and dismissal procedure of prosecutors are now reviewed exclusively by the High Prosecutorial Council. ,

'Vetting' process

As already discussed above in more detail, the reform brought the novelty of an extraordinary temporary process of evaluation regarding assets, integrity and professionalism, the so-called "Vetting". All prosecutors in duty will be submitted to this process. The new appointed prosecutors will also undergo a special procedure to check their assets prior to their appointment.

Disciplinary liability

The disciplinary regime for prosecutors has undergone some drastic changes as well with the reform of 2016. The disciplinary proceedings and liability of prosecutors after the reform displays the following traits:⁷

Law on Status of Judges and Prosecutors regulates the disciplinary liability and proceedings for prosecutors in Part V. The procedure is very much elaborated as compared to that before the justice reform of 2016.

Reasons for liability and sanctions

Law on Status of Judges and Prosecutors provided originally that certain violations related to the prosecutor's activity and functions, which could give rise to disciplinary proceedings against the prosecutor. However, Constitutional Court of Albania found them to be incompatible with the Albanian Constitution and therefore abrogated them.⁸ Therefore, a legal gap exists as to what should be considered as violation, which can give rise to disciplinary proceedings against the prosecutors. It is up to the Albanian legislator to fill this gap. The remaining articles of the Law on Status of Judges and Prosecutors, mainly those concerning the disciplinary measures, provide enough hints as to what can be considered a violation which gives rise to disciplinary measures. They relate to ethical and professional standards, professional proficiency of prosecutors, recidivism, commitment of criminal offences, etc. These kinds of violations still remain to be further elaborated though by the Parliament. Any disciplinary violation is valid for 5 years. This term can be extended to 1 year if the prosecutor commits another similar violation within this period of time. Upon the elapse of the 5 years, neither the High Inspectorate of Justice nor the High Prosecutorial Council can proceed, unless the violation concerns a criminal offence, whose time limits are calculated according to the Penal Code.

The disciplinary measures vary from a confidential note, to a public note, temporarily reduction of salary, transfer to a lower position, suspension and dismissal. Complementary disciplinary measures are also foreseen such as mandatory professional training of the prosecutor and the dismissal from the position of the Chief of Office. Disciplinary measures are taken in proportion

7. For additional information see Law No. 96/2016, dated 06/10/2016 "On Judges and Prosecutors Status in the Republic of Albania", art. 100-159.

8. Constitutional Court of Albania Decision No. 34, dated 10/04/2017.

with the gravity of the violation, the existence of concessional or aggravating circumstance and may, but not necessarily, follow a hierarchic order.

Procedure and guarantees

The disciplinary process as foreseen by the new law is regulated in much more detail than the one before the reform. Accordingly, the law regulates now two phases of the process: (i) The investigation phase, which is followed up by and is under the competence of the High Inspectorate of Justice (hereinafter referred to as the Inspectorate) and; (ii) The hearing phase, which is followed up by and is under the competence of the High Prosecutorial Council (hereinafter referred to as the Council).

(i) *The investigation phase.* The Inspectorate proceeds either upon a complaint received by third parties, or on its own initiative when has received sufficient data that gives rise to reasonable suspicion that a violation has been committed. In case of a complaint, Inspectorate decides within 3 months upon receipt of the compliant, whether to archive the complaint or to initiate a disciplinary investigation about the alleged violation. The decision to initiate an investigation is made available to the complainant, the prosecutor and the High Prosecutorial Council as well. Both complainant and prosecutor are given a period of 3 weeks upon the Inspectorate's decision to submit their arguments and supporting evidences. Afterwards, the Inspectorate has a period of 6 months to conclude the investigation. This period may be extended for a period of not more than 3 months if the case appears to be complex. At the end of this period, the Inspectorate must decide whether it will start the disciplinary proceeding by addressing a relevant investigation report to the Council, or close the investigation. The Inspectorate closes the investigation if the claims of complainant are proved to be unfounded or for other reasons provided in the law. The Inspectorate may however reopen a closed investigation if new evidence comes into to the surface on the condition that the validity deadline of the violation has not expired. The decision to close the investigations is made available to the complainant, prosecutor and to the High Prosecutorial Council.

The new Law on Status of Judges and Prosecutors provides for the first time the right of the Inspectorate and prosecutor to conclude a mutual agreement in which they settle and confirm the disciplinary violation attributed to the prosecutor and the relevant disciplinary measure to be taken. This agreement is subject of approval by the Council.

Both the deadline of the violation validity of 5 years and the deadlines within which the Inspectorate may operate during the investigation phase can be seen as additional guarantees to the rights of prosecutor under investigation and to the efficiency of the investigation itself. If the Inspectorate violates these deadlines, the prosecutor may challenge the validity of the investigation before the Council.

During the investigation phase, the prosecutor is guaranteed the right to access the investigation file, the right to be informed about archiving of a complaint, the commencement or closure of investigation, to be informed about the change of the investigation object, to have a legal representative, to submit written explanation, etc. Detailed rules apply also with regard to the questioning of the prosecutor under investigation as well as the questioning of witnesses or persons who may have information regarding the object of investigation.

(ii) *The hearing phase.* Once the investigation is finalized, the Inspectorate may decide to start the disciplinary proceeding by submitting the case to the Council. The Council organizes the hearing and invites the Inspectorate and prosecutor to take part and submit their claims. In the end of the hearing(s) the High Prosecutorial Council decides whether to refuse or accept the request of the Inspectorate regarding the imposition of a disciplinary measure to the prosecutor. When disciplinary measures are imposed, the Council considers the consequences and effects of the violation, professional and criminal data of the prosecutor, the prosecutor's attitude, supporting circumstances, etc. Both parties enjoy the right to challenge the decision of the Council before the competent court.

During the hearing phase the prosecutor, it is also guaranteed the right to access the file, the right of being represented, the right to submit written arguments, the right to participate in the hearing processes, to summon witnesses, to submit evidences, to be notified about any decision of the Council and to be compensated about the process expenses in case no measure is imposed on him.

Capacity building and training

The professional capability and education takes another dimension after the justice reform. They are now mandatory as part of the evaluation process of the prosecutor:⁹

a) The Law on Status of Judges and Prosecutors makes the continuous professional training of prosecutors a mandatory condition for their evaluation and career progress. The professional training certificates are now part of the prosecutor personal file. The law provides as well measurement standards regarding the quality of continuous training of prosecutors. The High Prosecutorial Council is foreseen to collaborate with the School of Magistrates in defining the training programs and curricula. As it was mentioned above, the new law stipulates that the High Prosecutorial Council may impose mandatory participation of prosecutors into professional trainings as a complementary disciplinary measure to correct and avoid further similar violations by the same prosecutor.

b) The Law on the School of Magistrates (new) regulates in Part VI the modalities of continuous training. This law is streamlines the obligation of the School of Magistrate to provide continuous professional trainings for magistrates with the obligations for continuous professional trainings provided for in the Law on Status of Judges and Prosecutors. So, now both laws are coherent and follow the same line in this regard.

The Netherlands

The Netherlands presents a different organisational structure of the prosecution service than in Albania as described above. One common feature with Albania is the hierarchical organisation of the service. The status of the prosecutors also differs and the involvement of the executive in the functioning and organisation of the service is more prominent. Despite these special features, the prosecution service in the Netherlands is characterised by a high degree of efficiency integrity and independence in exercising its duties. What follows is a condensed description of the main features of the system based on the regulatory legal framework.

9. For additional information see:
– Law No. 96/2016, dated 06/10/2016 “On Judges and Prosecutors Status in Republic of Albania”, art. 5, 68, 76, 92, 112, 113.
– Law No. 115/2016 “On Governing Bodies of Legal System”, art. 224.

Institutional arrangements of the prosecution service

This section contains the main features regarding the institutional arrangements of the prosecution service in the Netherlands. To this end, it seeks to summarize the organization of the service, the relation between the different layers of the service and where applicable the relation with other authorities.

The Board of Procurators-General¹⁰

The prosecution service is organised hierarchically. At the top of the hierarchy stands the Board of Procurators-General (hereinafter referred to as BPG), which supervises the implementation of prosecution policies by the prosecution service and proper investigation policies by the police. The BPG is composed of three to five prosecutors-general. At the moment of writing, the BPG consists of three members. A fourth member is expected to be appointed in June 2018.¹¹ The Crown appoints the members of the BPG upon the proposal of the Minister of Justice. One of the members of the BPG is appointed as the Chairperson by the Crown upon the proposal of the Minister of Justice. The appointment is for three years and may be renewed only once. The Chairperson is the highest representative of the prosecution service. The members of the BPG are judicial officials as defined by the Law “*On Judicial Organization*”. Therefore, they need to fulfil at least the minimum criteria for being appointed as a judicial official. However, in practice the members of the BPG are appointed among senior judicial officials. The law foresees also the possibility to have one member of the Board who is not a judicial official. This member may however, not be appointed as the Chairperson of the Board. Each of the members of the Board has a well-defined portfolio. The BPG issues directions (*aanwijzingen*) regarding the tasks and powers of the members of the prosecution office. Directions may concern general matters, such as the administration of criminal justice, matters concerning the criminal policies, supervision of the police etc. At the same time, Directions may also be issued for specific matters, regarding for example the exercise of certain statutory powers such as the use of penal orders. Directions are legally binding for prosecutors and they have the power of law in the sense that citizens may derive

10. For additional information see:

- Law “*On Judicial Organization*” dated 18/04/1827, art. 1b, 125, 129, 130-133.
- Law “*On Legal Status of Judicial Officials*” dated 29/11/1996 (amending the old law), art 1, 2, 5
- Decree “*On Legal Status of Judicial Officials*” dated 21/03/1994, art 2a.

11. <https://www.om.nl/organisatie/procureurs-generaal/>, last accessed on 14/04/2018.

rights from them. The BPG issues also guidelines (*richtlijnen*) concerning the application of sanctions and policies regarding the out court settlement of cases (*transactiebeleid*). Guidelines are also legally binding and citizens may derive rights from them. Instructions (*instructies*) are another category of policy rules issued by the BPG. They differ from the previous two because they are public and are intended for the internal organization and functioning of the Service. Therefore, citizens may not derive rights from them. The decisions of the BPG are taken if there is a quorum of at least three members and with the simple majority of votes. Together with the supporting staff, the BPG forms the National Headquarters of the Prosecution Service (*Parket-generaal*). There are several bodies, comprised of prosecutors of different levels and high-level police officers, which advise the BPG on various matters, such as the serious crimes committee, which advises on the organized crime policy issues.

The Minister of Justice and Security¹²

The Prosecution Service has an atypical relation with the Minister of Justice and Security since it functions under him but it is not an agency of the Ministry of Justice and Security. The Prosecution Service is on the one hand part of the judicial system but on the other hand, it cannot be said that it is an entirely independent body since the Minister of Justice and Security is politically responsible for the policies of the Service. The Minister may be held accountable in the Parliament for his manner and intensity of involvement in shaping the policies of the Prosecution Service. The political accountability of the Minister includes both the prosecution policies at large and individual decisions taken by prosecutors. Therefore, the Minister is actively involved in formulating the prosecution policy at large. To this end, the Minister meets frequently with the BPG, which in its turn is responsible to realize the prosecution policy in accordance with the agreements made with the Minister. The involvement of the Minister in the decision-making process may take place also at the individual level. Accordingly, the Minister may consult an individual prosecutor in a case where the decisions of the prosecutor are likely to have a general impact on the prosecution policy or where the political accountability of the Minister may be at stake. As already mentioned, the final political responsibility regarding the Prosecution Service rests with the Minister at the end of the day. The Law "On Judicial Organization" foresees the power of the Minister of Justice to issue general and specific directions regarding the exercise of tasks and powers by the Prosecution Service. As already mentioned this power may

12. For additional information see Law "On Judicial Organization" dated 18/04/1827, art. 127-129.

go as far as giving directions in individual cases. In the latter scenario, the Minister notifies the Parliament. However, the Minister shall consult the BPG prior to giving the directions (both general and specific). The directions must be reasoned and are issued always in written form. Only in very urgent cases may the direction be given orally. In such cases, the direction must be set in a written form not later than a week from the moment of the oral direction. The ministerial direction is binding for the prosecutors. The direction and the opinion of the BPG are included in the trial case file in order to give the court full information. It is true that the power of the Minister to issue directions is formally unlimited. However, the Minister exercises his power in very rare and limited occasions. In practice, usually the Minister will consult the BPG with the effect of the BPG issuing the directions.

The Prosecution Office at the Supreme Court¹³

There is a prosecution office attached to the Supreme Court. Strictly speaking, this office is not part of the Prosecution Service and it independent with special powers and tasks. The office is comprised of the *procurator-general* and the *advocates-general*. They are appointed for life and are independent judicial officials. The *procurator-general* has specifically the power to prosecute members of the Parliament, Ministers and Deputy Ministers for offences committed in the course of their duties. The prosecution of these high-level officials is initiated through a Royal Decree or a Decision of the Lower House of the Parliament. Further, the *procurator-general* has the power to appeal in cassation in the interest of justice in criminal cases. The *procurator-general* is in general responsible for supervising the courts in the implementation and enforcement of statutory rules. The *advocates-general* advise the Supreme Court in all cases brought before it. They provide a written opinion on the legal questions put before the Court. The Minister of Justice and Security cannot give directions to the *procurator-general* and *advocates-general*.

13. For additional information see:

- Law “*On Judicial Organization*” dated 18/04/1827, art. 113-123.
- Law “*On Legal Status of Judicial Officials*” dated 29/11/1996 (amending the old law), art. 1a.
- Dutch Constitution, art. 117.

Office to the Appellate Courts (Ressortparket)¹⁴

The Prosecution Service in the Appellate Courts is organised as a National Office (*Ressortparket*) with four branches corresponding to the appellate jurisdictions in the country. The national office is led by the National Chief Advocate-General. The four branches are led by four Chief Advocates-General. The prosecutors working at both the National Office and the four branches are advocates-general or deputy advocates-general. These should not be confused with the advocates-general at the Supreme Court. Even though they are called the same, they fulfil totally different tasks and have different powers. The advocates-general at the Prosecution Office to the Appellate Courts are vested with the power to bring and follow up appeals in criminal cases to the Appellate Courts. The National Office to the Appellate Courts plays an important role also in the so-called Article 12 Code of Criminal Proceedings cases. This concerns the complaints brought by interested parties regarding the decision of lower prosecutors not to prosecute. These cases are handled by the Appellate Courts, in closed sessions and the advocate-general brings his opinion regarding the decision of the lower prosecutor not to prosecute. The opinion of the advocate-general does not necessarily need to follow the decision of the lower prosecutor. Another important role played by the National Office to the Appellate Courts is the supervision of conditional release. This service is provided in one of the branches (the Arnhem branch) where all issues regarding conditional release are handled. Furthermore, the Hague branch hosts the so-called Cassation Desk, which filters all the cases which are brought before the Supreme Court.

Special Prosecutorial Services¹⁵

There are three Special Prosecutorial Services, which operate at a national level. These services are the *National Office (Landelijkparket)*, the *Functional Office (Functioneelparket)* and the *Central Processing Office (Parket Centrale Verwerking Openbaar Ministerie)*. They are specialized in different areas of criminal law. The *National Office* specializes in (inter)national organized crime, such as drug trafficking, trafficking in human beings, money laundering, international work crimes, child pornography, child sex tourism and cybercrime. The *Functional*

14. For additional information see: Law "On Judicial Organization" dated 18/04/1827, art. 138.

See also <https://www.om.nl/organisatie/procureurs-generaal/>, last accessed on 14/04/2018.

15. For additional information see: Law "On Judicial Organization" dated 18/04/1827, art. 137-137b. See also <https://www.om.nl/organisatie/procureurs-generaal/>, last accessed on 14/04/2018.

Office is responsible for the prosecution of complex fraud, environmental and financial/corporate crime. To this end, the Office supervises the investigations carried out by specialized investigative agencies and it has several branches in the country. The *Central Processing Office* handles all the appeals on traffic sanctions imposed by the traffic police. The structure of these specialized offices is the same. They are led by the Chief Prosecutor and consist of prosecutors with the rank of senior prosecutor A, senior prosecutor, substitute prosecutor and candidate prosecutor. These offices are responsible (except from the *Central Processing Office*) for the supervision and leading of the investigations of the abovementioned offences and their prosecution in the Courts of First Instance. The appeals in these cases are followed up by the National Office to the Appellate Courts.

Regional Offices (*Arrodissementsparketten*)¹⁶

There are ten Regional Offices of the Prosecution Service, which correspond to the ten Regional Police Units in the country. They are led by the Chief Prosecutor and consist of prosecutors with the rank of senior prosecutor A, senior prosecutor, substitute prosecutor and candidate prosecutor. The Regional Offices are responsible for leading and supervising the investigation of hundred thousands of criminal cases per year and the prosecution thereof. The offices are responsible for handling all criminal offences, which are not covered by the Specialized Prosecutorial Offices.

Interaction with other institutions

The Prosecution Service interacts on a regular basis with other institutions in exercising its powers and duties. The most active interaction is with the Police, which are subordinated to the Prosecution Service when it comes to the investigation of criminal offences. This subordination is only functional, since administratively speaking and for its other tasks, the Police is subordinated to the Minister of Justice and Security on a national level and the Mayor on a local level. To this end, it is worth mentioning the so-called *triangle discussions* between the Mayor, the Chief Prosecutor of the Regional Office and the Chief of the Regional Police Unit in order to decide on the policies regarding the regional criminal law policies. The Prosecution Service interacts with a variety of other institutions, such as the Tax Authority.

16. For additional information see: Law "On Judicial Organization" dated 18/04/1827, art. 136. See also <https://www.om.nl/organisatie/procureurs-generaal/>, last accessed on 14/04/2018.

Status and functioning of prosecutors

This section focuses on the status of prosecutors as judicial officials, their functioning as prosecutors and the hierarchical functional relation among different ranks and layers of prosecutors.¹⁷

Judicial Officials

Prosecutors of all ranks are judicial officials like judges. In this sense, prosecutors belong to the judiciary. There is however a difference between judges and prosecutors, because, unlike judges, prosecutors are not appointed for life. They retire at the age of 65. Detailed rules apply with regard to their financial treatment, labour conditions, health treatment, recreational time, personal safety etc.

Functions of the prosecutor

The functions of the prosecutors are regulated in the Code of Criminal Proceedings and the Law *"On judicial Organization"*. These statutes determine the jurisdiction of each of the layers of prosecution as described above.

Hierarchical functioning

The Prosecution Service is a highly centralized organization, not only in terms of management but also in terms of the operational functioning of prosecutors. The hierarchy moves downwards from the Board of Procurators General to the Office to the Appellate Courts and Regional Offices as well as Special Prosecutorial Services. Each layer of the organization has also its functional ranks. The Regional Offices and the Special Prosecutorial Services consist of the chief prosecutor, deputy chief prosecutor, prosecutor, deputy prosecutor, prosecutor of single judge hearings, deputy prosecutor of single judge hearings and other officials. The Office to the Appellate Courts consists of the National Chief Advocate General, four chief advocates general, advocates general, deputy advocates general and other officials. The BPG consists of three to five General Procurators and other officials. The Chiefs of respective offices are subordinated to the BPG and there is no hierarchical relation between the Chiefs

17. For additional information see:

- Law *"On Judicial Organization"* dated 18/04/1827, art. 1b and 124-144.
- Law *"On Legal Status of Judicial Officials"* dated 29/11/1996.
- Decree *"On Legal Status of Judicial Officials"* dated 21/03/1994
- Code of Criminal Proceedings, art. 7-10.

of Regional Offices (or Special Prosecutorial Services) and the National Chief Advocate General. The Chiefs of offices can give directions of special or general nature to the prosecutors within their structure. These directions are binding and deviations from them may lead to disciplinary proceedings. Apart from the managerial and functional hierarchy, there is also a ranking hierarchy with regard to seniority. Accordingly there are senior advocates-general, advocates-general, senior prosecutors A, senior prosecutors, substitute prosecutors, and candidate prosecutors (*officier in opleiding*). The functions, duties and powers of prosecutors may be delegated to the higher in rank (both functional and seniority) to the lower with a downward scale. There are limited possibilities of assigning an on-going case to another prosecutor and such a decision can be challenged (to the BPG) from both the prosecutor from whom the case has been taken and the one to whom the case has been reassigned.

Selection and appointment of prosecutors

As already mentioned in the previous section, prosecutors are part of the judiciary. Therefore, their selection and appointment is the same as that of judges. Prosecutors are appointed by the Crown or the Minister of Justice and Security according to their ranks. What follows is a summary of this process.¹⁸

Appointment by the Crown

The Crown upon nomination of Minister of Justice and Security appoints the Procurators General of the BPG, the National Chief Advocate General, the chief advocates general, the senior advocates-general, the advocates-general, the chief prosecutors, the deputy chief prosecutors, the senior prosecutors A, the senior prosecutors, the substitute prosecutors.

Appointment by the Minister of Justice and Security

The deputy advocates general, the deputy prosecutors, the prosecutor of single judge hearings, the deputy prosecutor of single judge hearings and of the candidate prosecutors (*officier in opleiding*) are appointed by the Minister of Justice and Security.

18. For additional information see:

- Law "On Legal Status of Judicial Officials" dated 29/11/1996, art 2 and 5.
- Decree "On Legal Status of Judicial Officials" dated 21/03/1994, art. 2-2i.

Appointment for the first time

The general criteria to be appointed as a prosecutor are provided in the Law “*On Status of Judicial Officials*”. These are general basic criteria, such as having the Dutch citizenship and holding the Bachelor and Master Degree from a Dutch University. Other, more elaborated criteria are then determined in the vacancy call according to the needs of the Prosecution Service. A substantial experience in criminal law is usually required in order to fulfil the criteria published in the vacancy call. The selection procedure starts with a selection of based on a CV and motivation letter. After that, an online assessment takes place and a pre-selection interview. Those who successfully pass this filter are expected to conduct another assessment (including integrity and psychological tests) and an interview with the National Selection Committee, which is appointed by the BPG. The successful candidate is appointed by the Minister of Justice and Security as a candidate prosecutor (*officier in opleiding*). He follows a tailor made training with the Training and Study Centre for the Judiciary. Depending on the experience of the candidate, the training may last from one and a half to four years. The candidates undergo periodical and a final assessment. A positive final assessment gives the right to the candidate to be appointed as prosecutor in one of the Offices as described above. The appointment is then done either by the Crown, or the Minister in accordance with the grade. Those who have just finished their University studies and wish to develop a career in the Prosecution Service have the possibility to apply for internship positions, which may lead to the position of assistant prosecutor. The latter are also obliged to follow a tailor made initial training at the Training and Study Centre for the Judiciary. Only upon successful completion of the training may someone be appointed to the position of assistant prosecutor and climb up the ranks.

Evaluation and promotion of prosecutors

The evaluation process of prosecutors in the Netherlands is rather flexible and based on wide formulated criteria. The evaluation is not as such a precondition for the promotion of the prosecutor. It is more seen as a tool to improve the performance of the prosecutor in the position where he/she is as well as to address any issues which hamper the his/her normal functioning as a prosecutor. This section seeks to give the highlights of the process of evaluation, promotion and dismissal of prosecutors.¹⁹

19. For additional information see:

- Decree “*On Legal Status of Judicial Officials*” dated 21/03/1994, art. 34f-37.
- Code of Conduct for the Prosecution Service available at <https://www.om.nl/@25023/gedragscode/> (only in Dutch).

Evaluation

The evaluation of prosecutors may take place either through performance appraisals (*functioneringsgesprekken*) or evaluations. Both processes are not regulated to take place according to a predetermined frequency. Either the chief of the respective office or the prosecutor himself may ask the appraisal or the evaluation. The prosecutor has the possibility to express his opinion about the results of the evaluation or performance appraisal. The evaluation is made based on predetermined criteria, which usually are set by internal instructions issued, by the Minister of Justice and Security or the BPG. Moreover, there is a Code of Conduct for the Prosecution Service, which sets out and elaborates five core values for prosecutors. These values are *professionalism*, *environment-oriented*, *integrity*, *openness* and *carefulness*. However, the Code is by no mean binding and it does not produce any legal effects. It is merely an orientation point.

Transfer

Normally transfers do not occur without the request of the prosecutor unless a disciplinary sanction is imposed or reorganization is taking place. The reorganization is regulated in a detailed manner in the Decree "*On Legal Status of Judicial Officials*". The Decree foresees guarantees with respect to those prosecutors, who due to the reorganization, need to be transferred to another position or office. The general principle is that the prosecutor who needs to be transferred is offered a suitable position compared to the one he had before the reorganization. In exceptional cases, the prosecutor may also be transferred to another position because of health reasons.

Promotion

Promotion of prosecutors takes place in accordance with their seniority and experience and any other criteria specified in the vacancy opening. A selection process takes place from the ranks of prosecutors, where the National Selection Committee plays again a prominent role. The Crown or the Minister depending on the rank where the prosecutor is promoted does the final appointment.

Suspension

There are several situations, which can lead to the suspension of a prosecutor. The deprivation of liberty as a result of a criminal sanction, criminal preventive measure or admission to a psychiatric institution is a reason for suspension.

The prosecutor may also be suspended if a criminal prosecution has started against him for a misdemeanour, the intention to impose the disciplinary measure of unconditional dismissal has been communicated, the disciplinary measure of unconditional dismissal is actually imposed or when this is in the interest of the well-functioning of Prosecution Service. The Minister of Justice and Security imposes the suspension after consultation with the direct hierarchical authority of the relevant prosecutor.

Resignation and Dismissal

The prosecutor can resign at any moment. However, the law stipulates that in these cases the prosecutor is dismissed upon his own request. The dismissal however, occurs for reasons well defined in the Decree *“On Legal Status of Judicial Officials”*. These reasons are as follows:

- ▶ a criminal prosecution has started against him for a misdemeanour;
- ▶ a disciplinary measure of unconditional dismissal is imposed;
- ▶ the prosecutor cannot perform his duties because of health reasons;
- ▶ the prosecutor has appointed as Minister or Deputy Minister;
- ▶ the prosecutor cannot perform his duties for reasons other than health;
- ▶ the prosecutor does not fulfil anymore one or more criteria necessary for his appointment;
- ▶ the prosecutor is bankrupt;
- ▶ an imprisonment sanction is imposed on him as a result of a final decision finding him guilty for a misdemeanour;
- ▶ the prosecutor provided false information at the time of his appointment and this information was necessary for the appointment;
- ▶ the prosecutor has reached the age of retirement.

Disciplinary liability

The disciplinary regime for prosecutors is regulated in a rather compact way in the Decree *“On Legal Status of Judicial Officials”*. The reasons for disciplinary liability are formulated in a broad way and the guarantees are minimal. This however does not mean that disciplinary measures are imposed abusively. On the contrary, the way the disciplinary regime is regulated may be said to reflect

the trust that exists in the Dutch legal culture regarding the functioning of the judiciary. The following may be noted with regard to the disciplinary regime.²⁰

Reasons for liability and sanctions

Disciplinary liability arises in cases where the prosecutor does not comply with an obligation imposed on him or he is guilty of dereliction of duty. A typical case where the prosecution does not comply with an obligation imposed on him is concerns those situations when the prosecutor does not follow a general or specific direction given by his superiors. Dereliction of duty is considered the violation of any regulation as well as doing or neglecting what a good judicial official should neglect or do under the same circumstances. The sanctions that can be imposed include v a written reprimand, withholding of vacation days, extra service hours, various combinations of salary withholding, a penalty of a maximum of 22 €, transfer to another office, suspension with or without remuneration and dismissal.

Procedure and Guarantees

The disciplinary measures may be imposed by the superior functional authority as the case may be or the Minister of Justice and Security. In the latter case, the Minister imposes the measure only after consultation with respective the superior functional authority. In all cases the prosecutor has the right to be heard or to express his position in written form. The position of the prosecutor under disciplinary process is reflected in the minutes of the process. The hearing or the written positions are made before the authority that imposes the sanction.

Capacity building and training

The Training and Study Centre for the Judiciary is responsible for the training of judicial officials, including prosecutors. The centre offers tailor made initial training for candidate prosecutors (*officier in opleiding*) and assistant prosecutors. The initial training may last less than one year and may not exceed four years. The initial training is mandatory for being appointed as a prosecutor. The Centre offers also continuous trainings programs for already appointed prosecutors. However, the training for this category is not mandatory.

20. For additional information see Decree "On Legal Status of Judicial Officials" dated 21/03/1994, art. 34a-34e.

Institutional arrangements of the prosecution service

In Romania, prosecutors are working within the Public Ministry that has divisions attached to all courts in the country. Hierarchically the Prosecution office attached to the High Court of Cassation and Justice leads all the other prosecution offices in the country. The Public Ministry is headed by the General Prosecutor of Romania helped by two deputy general prosecutors and three advisors. The Prosecutor General manages the budget of the Public Ministry acting as principal credit operator. S/he coordinates the activity of all the prosecution offices in the country and sets their priorities. The General Prosecutor may issue internal orders and decide on matters of competence when this is disputed among various prosecution offices.

At the level of the 15 Courts of Appeal prosecution offices attached to the courts of appeal operate each lead by a General Prosecutor. At the level of each of the 41 Tribunals prosecutors' offices attached to tribunals function and first instance courts (judecatorii) have prosecutors' offices attached to them. The territorial competence of the prosecution offices is the same as the territorial competence of the courts they are attached to. The prosecution offices attached to the courts of appeal and those attached to tribunals act as legal entities – the general prosecutor of the prosecution offices attached to the courts of appeal act as secondary credit operator and the chief prosecutor of the prosecution offices attached to tribunal act as tertiary credit operator. At first instance level prosecution offices are not distinct legal entities. The budgets of various prosecution offices are organic parts of the budget of the prosecution office hierarchically superior and ultimately part of the budget of the Public Ministry.

Two specialized structures operate within the Public Ministry – the Directorate for Combatting Organized Crime and Terrorism (DIICOT) and the National Anticorruption Directorate (DNA). They are headed by Chief Prosecutors who report directly to the Prosecutor General of Romania. These two directorates have regional structures, but not at the level of each court. DIICOT and DNA recruit their prosecutors through interviews from prosecutors with at least 6 years of professional experience. The appointment in these structures is not limited in time.

Given the similar professional status of judges and prosecutors – both being magistrates – the self-management body is responsible for the career of both categories. The Superior Council of Magistrates is composed of 17 members with a 6 years mandate – 14 elected members (9 judges and 5 prosecutors), the minister of justice and 2 representatives of NGOs with legal background. Every year the members of the Superior Council of Magistracy vote for the President and the Vice-president of CSM – one must be a judge and the other a prosecutor. Though there is no formal rule, the President tends to be a judge and the vice-president a prosecutor (though once the positions were reversed). No member of the CSM may hold twice the position of President or Vice-president. The ex-officio members may not be voted in the management of the SCM, nor the NGO representatives. The judge and the prosecutor voted to lead the CSM also lead their respective sections within the SCM. The President²¹ and the Vice-president play an important role in the shaping of the activity of SCM and must present before the elections their programmatic documents. The SCM operates both in plenary session and in sessions of the two sections (of judges and of prosecutors). In Plenary session, the SCM shall:

- ▶ make proposals to the President of Romania on the appointment and removal from office of judges and prosecutors, except for the debutant judges and prosecutors;
- ▶ appoint the debutant judges and prosecutors, based on the results they obtain in the exam of graduation of the National Institute for Magistracy;
- ▶ decide the promotion of judges and prosecutors;

21. The President of SCM:

- a) shall represent the Superior Council of Magistracy in its internal and international relations;
- b) shall coordinate the activity of the SCM and shall distribute the works for the Plenum and for the sections;
- c) shall chair the sessions of the Plenum of the Superior Council of Magistracy, except for the case when the President of Romania is attending the proceedings;
- d) shall propose to the Plenum the measures to be undertaken with the view to initiate the revocation procedures for the members of the Superior Council of Magistracy and the procedures for filling the vacancies;
- e) shall sign the acts issued by the Plenum of the Superior Council of Magistracy;
- f) shall call upon the Constitutional Court to solve the legal disputes of constitutional nature arising between public authorities;
- g) shall designate the members of the Superior Council of Magistracy who may be consulted for the elaboration of draft normative acts;
- h) shall draw up and present, in a public session of the Plenum, the annual report on the activity of the Superior Council of Magistracy, which shall be sent to the courts and prosecutors' offices and made public.

- ▶ remove from office the debutant judges and prosecutors;
- ▶ recommend to the President of Romania the bestowing of distinctions to judges and prosecutors, according to the law;
- ▶ fulfil any other duties set forth by laws or regulations.
- ▶ at the proposal of the Scientific Council of the National Institute for Magistrates, shall establish the annual number of auditors of justice for the National Institute for Magistracy, shall approve annually the date and place of the exam for admission to the National Institute for Magistracy, subject-matters approving the programme of professional training for auditors of justice, shall issue endorsements and adopt regulations, in the cases and on the conditions provided in the law;
- ▶ appoint the commission for the admission exam and the commission for elaboration of the subjects for the admission exam to the National Institute for Magistracy, according to the Regulation on the organisation of the exam for admission to the National Institute for Magistracy;
- ▶ organize and validates, according to laws and regulations, the capacity exam for judges and prosecutors and approving the programme for the in-service professional training of judges and prosecutors, at the proposition of the Scientific Council of the National Institute for Magistracy, as well as the subject-matters for the activities of in-service professional training organised by courts of appeal and the prosecutor's offices attached to these;
- ▶ organize and validates, according to laws and regulations, the competitive exam for judges and prosecutors appointment into leading position;
- ▶ decide on the organisation of the competitive exam for judges and prosecutors promotion;
- ▶ appoint the commission for the evaluation of the professional activity of judges and prosecutors, according to the law;
- ▶ appoint and revoking the director and deputy-directors of the National Institute for Magistracy, at the proposal of the Scientific Council of the National Institute for Magistrates, and designating the judges and prosecutors who will be part of the Scientific Council of the National Institute for Magistrates;
- ▶ approve the organisational structure and the personnel establishments of the National Institute for Magistracy at the proposal of the Scientific Council of the National Institute for Magistracy;

- ▶ appoint the director and the deputy-directors of the National School for Court Clerks and designating judges and prosecutors as members of the School's Leading board.
- ▶ fulfil any other duties set forth in laws or regulations.
- ▶ When acting in Section session, the SCM shall:
 - ▶ decide the delegation and the secondment of judges and prosecutors, according to the law;
 - ▶ appoints judges and prosecutors in leading positions, according to the law and to the regulation;
 - ▶ examine recommendations received from the leading board of the High Court of Cassation and Justice on the appointment of judges to this Court;
 - ▶ analyse if the debutant judges and prosecutors who succeed to the capacity examination, the other jurists who succeed to the exam for admission into the magistracy, the judges and prosecutors who applied for the promotion exam and the judges and prosecutors proposed for appointment in leading positions fulfil the legal requirements;
 - ▶ solves the objections against the evaluation marks granted by the legally set up boards of evaluation of the professional activity of judges and prosecutors;
 - ▶ takes measures for solving the notifications received from litigants or from other persons on the inappropriate conduct of judges and prosecutors;
 - ▶ proposes to the President of Romania the appointment and revocation from office of the president, vice-president of sections and section presidents of the High Court of Cassation and Justice;
 - ▶ shall endorse the proposal made by the minister of justice on the appointment and revocation of the General Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice, of the Chief prosecutor of the National Anti-Corruption Department, of their deputies, of the chief-prosecutors of section within these prosecutor's offices, as well as of the chief prosecutor of the Directorate for Investigation of Offences of Organised Crime and Terrorism and of his deputy;
 - ▶ approve the transfer of judges and prosecutors;
 - ▶ decides on the suspension from office of the judges and prosecutors;
 - ▶ approve the setting up and closing down of sections in courts of appeal, of courts in the latter's jurisdiction, as well as the setting up of secondary premises of courts, according to the law;

- ▶ approve the proposal of the General Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice or of the chief prosecutor of the National Anti-Corruption Department on the setting up or closing down of sections in prosecutor's offices;
- ▶ endorse the draft Government decision regarding the list of places that are part of the jurisdictions of first instance courts;
- ▶ establish the categories of trials or applications to be solved in the city of Bucharest only by certain courts, while observing the substantive competence provided in the law;
- ▶ at the proposal of the presidents of courts of appeal, shall establish the number of vice-presidents for the courts of appeal, tribunals and specialised tribunals, as well as the first instance courts where one vice-president works;
- ▶ upon the proposal of the Prosecutor General of Romania or of the Chief prosecutor of the National Anti-Corruption Department, shall establish the number of deputies of the general prosecutors within prosecutor's offices attached to courts of appeal and of prime-prosecutors within prosecutor's offices attached to tribunals, as well as prosecutor's offices attached to first instance courts, where prime-prosecutors are assisted by deputies;
- ▶ fulfils any other duties set forth by laws or regulations.

Status and functions of the prosecutors

In Romanian judges and prosecutors are magistrates enjoying a very similar professional statute. This similar statute springs from article 133 of the Romanian Constitution that regulates the composition of the Superior Council of Magistracy (SCM). This constitutional provision allowed for the development of an entire legal framework ensures for prosecutors similar guarantees against undue interference in their professional activities as for judges. The public prosecutors are initially appointed by the President of Romania, upon the proposal from the SCM. They enjoy stability and may be moved only through permanent transfer, temporary transfer, or promotion, based on their consent. They may be delegated, suspended or discharged from their positions under the terms stipulated specifically by law. Prosecutors are independent in their relationships with the courts of law, as well as with the other public authorities.

The article 132 of the Romanian Constitution states that the function of prosecutor is incompatible with any other public or private function, with the exception of teaching activities in the universities or academies. The law 304/2004 further develops this concept referring to more borderline situations - prosecutors are prohibited from:

- a) carrying out trading activities, directly or by means of agents;
- b) carrying out arbitration activities in civil, trading, or any other kind of disputes;
- c) acting as partners or members in the managing, administration or control bodies of civil companies, trading companies, including banks or other credit institutions, insurance or financial companies, public corporations, national companies or autonomous regimes;
- d) acting as members of a group of economic interest.

As an exemption, magistrates may be stockholders or partners in commercial entities as a result of the law on mass privatization. In addition, prosecutors shall not be subordinated to political purposes or doctrines and shall not be members of political parties or organizations or carry out political activities. In the exercise of their powers, magistrates are bound to abstain from expressing or showing their political beliefs, in any manner whatsoever.

According to article 131 of the Romanian Constitution, the Public Ministry represents the general interests of society and defends the rule of law, as well as the citizens' rights and freedoms. Prosecutors run investigations and supervise the investigative work of the police. More complex crimes, such as corruption, organised crime and money laundering fall directly within the investigative competence of the prosecutors, whereas ordinary crimes rest within the ambit of the police – in these cases prosecutors only supervise the investigations. Apart from the investigative activities, prosecutors also defend the accusations before courts and in Romania, these two tasks have been traditionally separated. This separation is also mirrored by the institutional organization of prosecution offices that in most cases have separate sections for the two functions. However, there is no legal prohibition forbidding the investigative prosecutors to also defend their cases in courts and some structures encourage this approach in more complex cases or when arrest or search warrants are demanded from the courts during criminal investigations.

According to article 63 of law 304/2004, the Public Ministry has the following competences exercised through public prosecutors:

- a) to carry out criminal prosecution in the cases and under the conditions stipulated by the law, and participate, according to the law, in solving conflicts by alternative means;
- b) to run and supervise the criminal investigation activity of the criminal police, to run and control the activity of other criminal investigation bodies;
- c) to notify courts of law for the judgment of criminal causes, according to the law;
- d) to exercise civil actions, in the instances stipulated by the law;
- e) to participate in court sessions, under the terms of the law;
- f) to exercise the legal means against court decisions, under the terms stipulated by the law;
- g) to defend the legitimate rights and interests of minors, of persons laid under interdiction, of missing persons and other persons, under the terms of the law;
- h) to act in order to prevent and control crime, under the co-ordination of the Minister of Justice, with a view to achieving a global criminal policy of the state;
- i) to study the causes that generate or favour crime, to prepare and submit proposals to the Minister of Justice, aimed at eliminating such causes, as well as perfecting the legislation in this field;
- j) verifies that preventive arrest locations comply with the law;
- k) to exercise any other powers stipulated by the law.

Article 132 of the Romanian Constitution states that prosecutors conduct their activities in accordance with the principles of legality, impartiality and hierarchical control, as well as under the authority of the minister of justice. The principle of hierarchical control means that the orders of superior prosecutors – given in writing and in accordance with the law - are compulsory for the prosecutors under their authority. However, in his/her investigative activity the prosecutor is independent and s/he may complain to the Superior Council of Magistrates against interventions of the superior prosecutors with regard to the criminal investigation or with regard to the solution given at the end of the investigation. The decision of a prosecutor may be invalidated by the superior prosecutor. In this situation, the superior prosecutor will show the grounds for which he believes the decision is not in accordance with the law. The prosecutor that defends the accusation before the courts is not

bound by the arguments or by the views expressed by the prosecutor that has conducted the investigation.

Prosecutors in each prosecution office are subordinated to the head of that office which in turn is subordinated to the head of the prosecutors' office hierarchically superior. Ultimately, all prosecutors are subordinated to the Prosecutor General of Romania. The hierarchical control can be carried out directly or through designated inspectors who are also prosecutors.

The Minister of Justice under whose authority the Public Ministry operates may, upon his/her own initiative or upon the request of the SCM, conduct a control through inspectors. Article 69 of law 304/2004 sets the limits for the control performed by the minister of justice – it may only regard the efficiency of managerial activity and the manner in which prosecutors interact with individuals in the course of criminal proceedings. This control may not regard the solutions issued in particular cases, nor the measures taken by prosecutors during the criminal investigations. Also in accordance with the same article, the minister of justice may demand the Prosecutor General of Romania or the Chief Prosecutor of the DNA to provide informative updates with regard to the activity of various prosecution offices and the minister may issue written guidance with regard to the efficient combat of criminal activity.

Prosecutors take part in judicial proceedings before judges and play an active part in finding the truth. Prosecutors are free to present in court the conclusions s/he deems to be well grounded, according to the law, taking into consideration the evidence produced in that cause. In criminal lawsuits, court sessions may be attended by the public prosecutor having carried out the criminal prosecution or another public prosecutor designated by the head of the Public Prosecutor's Office. A public prosecutor shall exercise, under the terms of the law, the legal means to challenge court judgments s/he deems to be groundless and unlawful.

Selection and appointment of prosecutors

Prosecutors' recruitment takes place following an examination, based on their professional competence, abilities, and good reputation. Recruitment and initial professional training in view of taking up a magistrate's position shall be provided by the National Institute of Magistracy.

The National Institute of Magistracy is a public institution placed under the co-ordination of the Superior Council of Magistracy, that achieves the initial

training of judges and public prosecutors, the continual professional training of prosecutors (magistrates, in general) in office, as well as the training of trainers. The General Assembly of the Superior Council of Magistracy decides annually the number of available seats for auditors of justice, as well as approves the initial training program of prosecutors, based on the proposal by the National Institute of Magistracy. It also appoints and dismisses the director and deputy directors of the National Institute of Magistracy, at the proposal of the Scientific Council of NIM. The members of the Scientific Council are appointed by the General Assembly of the SCM.

Admission to the National Institute of Magistracy takes place in compliance with the principles of transparency and equality, only following an examination and it is open for any person meeting all the following conditions:

- a) he/she is a Romanian citizen, resides in Romania, and has full exercise capacity;
- b) he/she is a graduate with a law degree;
- c) he/she has no prior criminal record or fiscal record, and enjoys a good reputation;
- d) he/she can speak Romanian;
- e) he/she is medically fit to exercise the position.

The candidates admitted to the National Institute of Magistracy act as justice auditors throughout the initial professional training program of 2 years, which consists of theoretical and practical training. After the first year of studies, justice auditors choose between the two available careers – judge or prosecutor - in the descending order of their average marks and depending on the number of available positions. During the courses, the justice auditors are seconded within the courts of law and the Public Prosecutor's Offices, attending the sessions of the courts and criminal investigation activities, in order to be acquainted directly with the activities carried out by magistrates and the auxiliary specialized personnel. After the 2 years of courses with the National Institute of Magistracy, the justice auditors take a graduation examination, which consists of theoretical and practical tests. The justice auditors having passed the examination and having chosen at the end of the first year of studies within the National Institute of Magistracy to be a prosecutor will then be appointed, as a rule, at which point they become on probation prosecutors.

On probation, public prosecutors are appointed to their positions by the Superior Council of Magistracy, based on their results in the graduation

examination with the National Institute of Magistracy. They are appointed only to positions with Public Prosecutor's Offices next first instance courts. The length of the probationary period is 1 year. On probation, public prosecutors can draw conclusions in courts of law, and prepare and sign procedural documents, under the co-ordination of a public prosecutor that enjoys stability. Moreover, decisions/solutions of probationary prosecutors have to be co-signed by prosecutors in charge.

During the probation period, public prosecutors are bound to continue their professional training, under the co-ordination of a public prosecutor specially designated by the senior public prosecutor of the Public Prosecutor's Office next to that court. The coordinator draws up, on an annual basis, an individual assessment report on how well the practical knowledge typical of the public prosecutor's activity has been acquired. With a view to taking the ability examination, the last individual assessment report shall include, by all means, the advisory opinion of the general public prosecutor of the Public Prosecutor's Office next to that court of appeal.

The probationary magistrates' ability examination shall be organised annually by the Superior Council of Magistracy, through the National Institute of Magistracy. After the completion of the probation period on probation, prosecutors take an ability examination. If an on probation prosecutor does not pass the ability examination, he/she can take it during the next session. The ability examination consists of checking theoretical and practical knowledge by means of written and oral tests. The topics covered by the theoretical tests are: constitutional foundations of the rule of law, basic institutions of law, judicial organization, and the Deontological Code of the Magistrates. Practical tests consist of solving given cases and preparation of judicial documents specific for public prosecutors.

After the validation of the ability examination, the list of all vacant positions in Public Prosecutor's Offices next to courts of first instance will be published right away, in the Official Gazette of Romania, Part III, and posted at the Public Prosecutor's offices. The compliance with this obligation is ensured by the Superior Council of Magistracy.

Admitted candidates will then choose their positions, in the descending order of their average marks, within 15 free days of their being published in the Official Gazette of Romania, Part III. In the event of equal average marks, the priority in choosing a position goes, in the following order, to the holder of a Ph.D. in law, the person who has a longer length of service in magistracy, or

the magistrate who already functions in the Public Prosecutor's Office which he/she has chosen. A candidate who has not exercised his/her right to choose a position within the time limit stipulated under paragraph, will be offered a position, *ex officio*, by the Superior Council of Magistracy. His/her refusal to take the proposal will be deemed a resignation.

Irremovable judges and public prosecutors who enjoy stability shall be appointed by the President of Romania upon the proposal of the Superior Council of Magistracy. The nominations shall be made within 3 months of the date of ability examination validation at the latest. The President of Romania may refuse appointing the proposed judges and prosecutors, in a justified manner, only once. The refusal will be immediately communicated to the Superior Council of Magistracy. The Council can maintain the initial proposal but has to justify its option and to communicate it immediately to the President of Romania. In this case, the President is obliged to make the appointment. Before starting to exercise their position, public prosecutors take an oath.

In order to become a military prosecutor, one has to fulfil all the steps required to become a prosecutor and in addition obtain the approval of the Ministry of National Defence. The appointment, transfer from a civil prosecution office to a military prosecution office, as well as awarding higher military rank follows special regulations drawn up by the Superior Council of Magistracy and the Ministry of National Defence.

Art. 33 of Law no. 303/2004 enumerates the types of professionals with at least 5 years of work experience which, upon examination, can become prosecutors without going through the initial training program of NIM. This list includes: ex-prosecutors that have not left the service as a result of a sanction, personnel assimilated with judges and prosecutors, lawyers, notaries public, judicial assistants, legal councillors, probation personnel with a degree in law, judicial police officers with a degree in law, judicial clerks with a degree in law, personnel that has worked in the legal department with the Parliament, the Presidential Administration, the Government, the Constitutional Court, the Ombudsmen, the Court of Accounts, the Legislative Council, the Legal Research Institute of the Romanian Academy, the Romanian Institute for Human Rights, professors in the certified legal graduate training, assistant magistrates with the High Court of Cassation and Justice. The Superior Council of Magistracy is responsible for holding the examination for such candidates, annually, or as many times as deemed necessary, by means of NIM. The appointment rules discussed above apply also to these cases, including with regard to the possibility of the President to refuse only once the appointment.

After being appointed to the magistrate's position, the persons stipulated under paragraph (1) shall have to attend, for a 6-month period, a professional training course within the National Institute of Magistracy, which will mandatorily include a course of EU law. Prosecutors appointed under this procedure cannot be delegated, detached, transferred nor be promoted to higher prosecution offices for a period of 3 years after being appointed.

Evaluation and promotion of prosecutors

Prosecutors evaluated every 3 years, from the point of view of efficiency, quality of professional activity, integrity, continual training and taking up specialization courses, and for management positions specifically, from the point of view of carrying out management attributions. The first evaluation of prosecutors takes place 2 years after appointment. The evaluation is conducted by commissions appointed through a decision of the Superior Council of Magistracy, which consists of the managing prosecutor of the Prosecution office in question/the division of the Prosecution Office next to the High Court of Cassation and Justice or the National Anticorruption Directorate, as well as two prosecutors designated by the managing council. The Superior Council of Magistracy adopts the Regulation regarding the evaluation of judges of prosecutors through a decision. The evaluation commissions will comprise a report of evaluation of the professional activity of the prosecutor and will award one of the following marks: 'very good', 'good', 'satisfactory', 'unsatisfactory'. Prosecutors can contest at the Prosecutors Section of the Superior Council of Magistracy the mark awarded, in 30 days from communication. The decision of the Prosecutors Section may be challenged to the Plenum of SCM whose decision is final.

Prosecutors' promotion to execution positions takes place only following a national examination, taking into consideration their length of service in magistracy and their professional activity, as well as the vacancies existing with tribunals and courts of appeal or Public Prosecutor's Offices, as the case may be. The examination for the prosecutors' promotion to execution positions is organised annually or whenever necessary by the National Institute of Magistracy by means of a decision by the Superior Council of Magistracy.

Prosecutors who, in the last 3 years before the examination, have received the mark «very good», have shown no disciplinary departures, and meet the following minimal conditions of length of service may participate in the examination for promotion to execution positions:

- a) 5 years' length of service in magistracy, for promotion to the positions of public prosecutor in the Public Prosecutor's Office next to the tribunal or the Public Prosecutor's office next to the juvenile and family specialized court of law;
- b) 6 years' length of service in magistracy, for promotion to the positions of judge in a court of appeal and of public prosecutor in the Public Prosecutor's Office next to a court of appeal;
- c) 8 years' length of service in magistracy, for promotion to the position of public prosecutor in the Public Prosecutor's Office next to the High Court of Cassation and Justice.

The examination for the promotion to execution positions consists in written tests with both theoretical and practical character. The commission for promoting prosecutors is constituted of prosecutors from the Prosecutor's Office next to the High Court of Cassation and Justice, prosecutors from the Prosecutor's Office next to courts of appeals and instructors from the National Institute for Magistracy, appointed through a decision of the Superior Council of Magistracy, based on the proposal of the National Institute of Magistracy.

Appointment in management positions – chief-prosecutor of the Prosecutor's office next to a court of appeal, first prosecutor of the Prosecutor's office next to a tribunal for minors and family or first prosecutor of the Prosecutor's office next to a first instance court and their deputies – is done through examination, every time it is necessary, organized by the Superior Council of Magistracy, through The National Institute of Magistracy. Only prosecutors that have obtained a 'very good' mark at the last evaluation can participate. Also, prosecutors willing to promote to these management positions should not have had any disciplinary sanctions in the last 3 years and comply with conditions of length of service.

The examination commission is appointed by the Superior Council of Magistracy, upon the proposal of the National Institute of Magistracy, and it is constituted of 2 prosecutors from the Prosecutor's Office next to the High Court of Cassation and Justice, 2 prosecutors from the Prosecutor's offices next to courts of appeal and 3 specialists in management and institutional organization. When such commissions are constituted, prosecutors who have attended management courses will be taken into consideration primarily.

Prosecutors are then appointed to management positions if they have been declared admitted after the examination or have obtained the highest score in the examination. The appointment is done for a period of 3 years with the

possibility of reinstatement for another term. For appointment in management positions, the prosecutor has to be entitled to work at the Public Prosecutor Office for which he/she is applying to manage. For a prosecutor to be promoted to management positions, the following minimal conditions of length of service are required:

- a) for the position of chief prosecutor or deputy prosecutor of the Public Prosecutor's Office next to that court of first instance, a 5 years' length of service in magistracy;
- b) for the position of chief-prosecutor or deputy prosecutor of the Public Prosecutor's Office next to a tribunal or the Public Prosecutor's Office next to a juvenile and family court and public prosecutor in charge of a division of the Public Prosecutor's Office next to a regular court or the Public Prosecutor's Office next to a juvenile and family court, a 6 years' length of service in magistracy;
- c) for the position of chief-prosecutor or deputy prosecutor of the Public Prosecutor's Office next to a court of appeal, public prosecutor in charge of a division of the Public Prosecutor's Office next to a court of appeal, an 8 years' length of service in magistracy;

Dismissal from management positions of prosecutors is enacted by the Superior Council of Magistracy, ex officio or at the proposal of the general assembly of the Prosecutor's office or at the proposal of the managing prosecutor of the Prosecutor's office in question for the following reasons:

- a) if the prosecutor no longer fulfils the necessary conditions for appointment in management positions
- b) if the prosecutor in question does not exercise in adequate manner attributions regarding efficient organization, behaviour and communication skills, assuming responsibilities and management abilities.
- c) if the prosecutor is disciplinarily sanctioned.

The General Prosecutor of the Public Prosecutor's Office next to the High Court of Cassation and Justice, his/her senior assistant and the latter's assistant, as well as the chief-prosecutor of the National Anticorruption Directorate, his/her deputy prosecutors, chief-prosecutors of divisions inside the DNA, as well as the chief-prosecutor of DIICOT and its deputies shall be appointed by the President of Romania, based on the proposal by the Ministry of Justice, following the advisory opinion of the Superior Council of Magistracy from amongst public prosecutors who have a minimum length of service of 10

years of magistracy, for a 3 years term, with the possibility to be reappointed for another term. The President of Romania can refuse the proposal and has to publicly present the reasons of his decision.

The managing prosecutors of the DNA, DIICOT and the General Prosecutor can be dismissed from these positions by the President of Romania, upon the proposal of the Minister of Justice ex officio or notified by the general assembly of the Public Prosecutor's Office in question or by the General Prosecutor, the chief-prosecutor of DNA, or the chief-prosecutor of DIICOT, with the advisory opinion of the Superior Council of Magistracy for the following reasons:

- a) if the prosecutor no longer fulfils the necessary conditions for appointment in management positions
- b) if the prosecutor in question does not exercise in adequate manner attributions regarding efficient organization, behaviour and communication skills, assuming responsibilities and management abilities.
- c) if the prosecutor is disciplinarily sanctioned.

Appointment for all other management positions in these prosecution offices is done by the Superior Council of Magistracy, upon the proposal of either the Prosecutor General or the Chief Prosecutors of DNA or DIICOT respectively, for 3 years, with the possibility of reinstatement for another term. Dismissal from these positions is done by the Superior Council of Magistracy, ex officio or based on the proposal of the managing prosecutor of the prosecution office in question or of the general assemblies of those prosecution offices or the managing prosecutor of the section or direction for the following reasons:

- a) if the prosecutor no longer fulfils the necessary conditions for appointment in management positions
- b) if the prosecutor in question does not exercise in adequate manner attributions regarding efficient organization, behaviour and communication skills, assuming responsibilities and management abilities.
- c) if the prosecutor is disciplinarily sanctioned.

Disciplinary liability

Disciplinary action against prosecutors can be initiated by the Judiciary Inspection through a judicial inspector, by the Minister of Justice or by the General Prosecutor of the Prosecutor's Office next to the High Court of Cassation

and Justice. Prosecutors shall be liable from the disciplinary point of view for failures with regard to the job duties, as well as for actions affecting the prestige of the institution. The Superior Council of Magistracy through the Prosecutors Section acts as a court in matters regarding the public prosecutors' disciplinary liability. Preliminary verifications shall be conducted in all cases upon the decision of the entity starting the disciplinary action.

The disciplinary sanctions that may be applied to prosecutors should be proportionate to the failures:

- a) warning;
- b) reduction of the gross monthly emolument by up to 15% for a period from one to 3 months;
- c) disciplinary temporary transfer for a period of one to 3 months to a court of law or Public Prosecutor's Office in the district of the same court of appeal or of the same Public Prosecutor's Office next to that court of appeal;
- d) recalling from the management position held;
- e) exclusion from magistracy.

A disciplinary procedure against a prosecutor can be initiated in the following manner:

- ▶ If the minister of justice or the General Prosecutor of the Prosecutor's Office next to the High Court of Cassation and Justice are the ones starting the disciplinary action, they should notify the Judiciary Inspection regarding possible disciplinary departures committed by a judge or a prosecutor.
- ▶ If the Judicial inspection decides to start the disciplinary action, it can start it ex-officio or it can be notified in writing (the person submitting the complaint must substantiate his/her personal interest in the matter). The Superior Council of Magistracy may also notify the Judicial Inspection, with regards to possible disciplinary departures committed by judges or prosecutors.

The notification to take disciplinary action against a magistrate will undergo a preliminary verification by the judicial inspectors within the Judicial Inspection Office. This preliminary verification shall establish if there is sufficient evidence that a disciplinary failure has occurred. These prior verifications have to take place in maximum 45 days from the date of notification. The judicial inspector can decide to extend the duration of this investigation with up to another 45 days, if there is serious justification to do so.

If, following the preliminary verification, the judicial inspector reaches the conclusion that there is no sufficient evidence to indicate a disciplinary failure:

- ▶ If the Judicial Inspection has been notified by the Minister of Justice or the General Prosecutor of the Prosecutor's Office next to the High Court of Cassation and Justice, the judicial inspector notifies the initiator of the notification of its proposal to dismiss the notification, in 10 days from the closure of the prior investigation. These stakeholders can then proceed in the following manner: they can dismiss the disciplinary procedure initiated and notify the person who had notified the stakeholders as well as the magistrate under investigation or to start disciplinary investigation, nevertheless. The stakeholders can also request in a justified manner that the prior verification be completed, when it deems that it is incomplete. The completion is done by the judiciary inspector in 30 days from the date of the request.
- ▶ If the Judicial Inspection is the initiator of the disciplinary action either ex officio or following a notification brought by another person, the notification will be dismissed and all persons interested will be notified of the dismissal.

If, following the prior verification, the judicial inspector finds sufficient evidence to indicate a disciplinary failure, then the judicial inspector:

- ▶ notifies the initiator in 7 days from the closing of the prior verification, of the proposal to start the prior disciplinary investigation, if the Judicial Inspection was notified by the Minister of Justice or the General Prosecutor of the Prosecutor's Office next to the High Court of Cassation and Justice. Each of these stakeholders can then initiate the prior disciplinary investigation.
- ▶ initiates the prior disciplinary investigation by adopting a resolution.

The preliminary investigation shall establish the facts and their consequences, the circumstances under which they were committed, the presence or absence of guilt, and any other conclusive data. Hearing the person in question and checking the defence of the magistrate under investigation shall be mandatory. The refusal of the prosecutor under investigation to make declarations or to appear for the investigations shall be stated in a written report and shall not prevent the investigation from being concluded. The prosecutors under investigation shall be entitled to be informed about all the investigation facts and to request evidence in his/her defence. The disciplinary investigation will

be suspended if criminal investigation has been initiated against the magistrate in question for the same action.

The preliminary disciplinary investigation will be conducted in 60 days from the date when it was started, with the exception of the situation when the disciplinary procedure is suspended. The disciplinary investigation can be extended with up to 30 days, if there is serious reason to justify such a measure. The disciplinary action can be initiated in 30 days from the closure of the disciplinary investigation, but no later than 2 years from the moment when the act was committed.

If the Judicial Inspection has initiated the disciplinary investigation either ex officio or following a notification by any person interested, then the judicial inspector can proceed in the following manner, by adopting a written and justified resolution:

- a) admit the notification by initiating disciplinary action and by notifying the Prosecutors Division of the Superior Council of Magistracy;
- b) dismiss the notification, if the notification is not signed, does not include the identification information of the author or evidence to permit the identification of the action that has triggered the notification, as well as if there is not sufficient evidence to indicate that a disciplinary departure has occurred.
- c) reject the notification, if, following the disciplinary investigation, the judiciary inspector finds that the conditions for initiating disciplinary action are not met.

The resolution adopted by the judicial inspector is subject to confirmation by the chief-inspector. The chief-inspector can request the finalization of the disciplinary investigation by the judicial inspector. The finalisation has to be done in 30 days from the date it was requested by the chief-inspector.

The resolution can also be in firm by the chief-inspector, in written and in a justified manner. The chief inspector can then in opposition with the judicial inspector on the case, through a different resolution, decide to initiate disciplinary action or dismiss the notification. The resolution to dismiss the notification can be contested by the initiator at the Panel for administrative and fiscal litigations of the Bucharest Court of Appeal, in 15 days from communication of the resolution.

The Bucharest Court of Appeal can decide in one of the following manners:

- ▶ Dismiss the contestation

- ▶ Admit the contestation and annul the resolution adopted by the judicial inspector or the chief-inspector and resend the file for continuing disciplinary investigation.

The decision of the court is final.

If the disciplinary investigation is initiated following the decision of the Minister of Justice, or the General Prosecutor of the Prosecutor's Office next to the High Court of Cassation and Justice, the judicial inspection will communicate the result of the investigation in 7 days from the date it was finalized. All of the stakeholders mentioned above can request finalization of investigation only once. After receiving the results of the disciplinary investigation, they can initiate disciplinary action by notifying the Prosecutors Section of the Superior Council of Magistracy.

In the disciplinary procedure before the sections of the Superior Council of Magistracy, the subpoena of the prosecutor against whom the disciplinary action is being brought shall be mandatory, as well as that of the author of the disciplinary action. The prosecutor may be represented by another magistrate or may be assisted or represented by an attorney.

The disciplinary action is carried out before the Prosecutors Section of the Superior Council of Magistracy by the judicial inspector that initiated the action, and, only in case s/he is not available, by another judicial inspector designated by the chief-inspector. If the initiator of the disciplinary action is the Minister of Justice or the General Prosecutor of the Prosecutor's Office next to the High Court of Cassation and Justice, the action shall be presented by a designated representative.

The prosecutor and, as the case may be, his/her representative or attorney shall be entitled to see all the documents within the file and may wish to produce evidence in his/her defence. In case the sections of the Superior Council of Magistracy find that the notification has good grounds, they shall apply one of the disciplinary sanctions stipulated by the law, in relation to the seriousness of the disciplinary offence committed by the prosecutor and to his/her personal circumstances.

The decisions of the Prosecutors section of the Superior Council of Magistracy based on which the disciplinary action is finalised – the written grounds must be provided within 20 days of pronouncement. The General Secretariat of the Superior Council of Magistracy shall be in charge of the notification of the decisions.

Against the decisions of the Prosecutors Section of the SCM an appeal may be lodged within 15 days of notification. The competent court for solving the appeal shall be the Panel of 5 judges within the High Court of Cassation and Justice. The members of the Superior Council of Magistracy who are eligible to vote and the prosecutor being given a disciplinary sanction shall not be included in the Panel of 5 judges. The appeal shall suspend the enforcement of the decision by the Prosecutors Section of the Superior Council of Magistracy for applying the disciplinary sanction. The decision of Panel of 5 judges within the High Court of Cassation and Justice is final.

Capacity building and training

The continuous professional training shall take into consideration the dynamics of the legislative process and consists mainly of becoming familiar with and knowing deeply the home legislation, the European and international documents Romania is a party to, the jurisprudence of the courts of law and the Constitutional Court, the jurisprudence of the European Court for Human Rights and of the Court of Justice of the European Communities, comparative law, the deontological rules of the magistrate's profession, the multidisciplinary approach to new institutions, as well as learning a foreign language and computer skills.

The responsibility for the magistrates' continuous professional training belongs to the National Institute of Magistracy, the heads of the courts of law or Public Prosecutor's Offices where they carry out their activity, as well as to each magistrate, by means of individual training. Magistrates shall participate, at least once every 3 years, in continuous professional training programs organized by the National Institute of Magistracy, Romanian or foreign higher education institutions, or by means of other forms of professional training improvement. The Superior Council of Magistracy shall approve the magistrates' continuous professional training program, on an annual basis, based on the proposal by the National Institute of Magistracy.

The continuous professional training of magistrates shall be achieved by taking into account the need for their specialization. Within each court of appeal and within each Public Prosecutor's Office next to a court of appeal, continuous professional training activities shall be organised periodically, consisting of consultations, debates, seminars, sessions or round tables, with the participation of the National Institute of Magistracy. The topics for such reunions shall be approved by the Superior Council of Magistracy.

The president of the court of appeal or, as the case may be, the general public prosecutor of the Public Prosecutor's Office next to that court of appeal shall designate the magistrates in charge of organizing the continuous professional training activity for the magistrates in the court of appeal and the courts of law within its district, or for those in the Public Prosecutor's Office next to that court of appeal and the subordinate Public Prosecutor's Offices, respectively.

Serbia

Institutional arrangements of the prosecution service

A public prosecution office is composed of a public prosecutor, deputy public prosecutors and public prosecution staff. The prosecution function is exercised by the public prosecutor to whom all the other staffs in the prosecution office are subordinated.

In terms of hierarchical structure, the Public Prosecution of the Republic of Serbia consists of the Republic Public Prosecution, the appellate public prosecutions, the higher public prosecutions, the basic public prosecutions, and the public prosecutions with special jurisdiction.

A. The Republic Public Prosecutor shall manage the work of the Public Prosecution and represent it. The Republic Public Prosecutor is accountable to the National Assembly for the work of the Public Prosecution and his/her own work.

Deputy public prosecutors are accountable for their work to public prosecutors. Deputy public prosecutors are required to perform all actions entrusted to them by public prosecutors. Deputy public prosecutors may undertake all actions for which prosecutors are authorised without special authorisation.

The Republic Public Prosecutor is competent to proceed before all courts and other authorities in the Republic of Serbia, and to undertake all actions within the purview of the public prosecution.

The Republic Public Prosecutor shall also be competent to:

- ▶ file extraordinary legal challenges in accordance with the law;
- ▶ oversee the work of the public prosecutors and the implementation of instructions,
- ▶ observe and study the practice of public prosecutors and courts;

- ▶ propose professional advanced training programs for public prosecutors and deputy public prosecutors;
- ▶ submit to the National Assembly an annual report on the work of public prosecution in the Republic of Serbia and the reports requested by the competent committee of the National Assembly;
- ▶ perform other tasks defined by law.

In the performance of the tasks within his competences, the Republic Public Prosecutor shall act directly and through his deputies. The Republic Public Prosecutor shall issue in written form general mandatory instructions for all public prosecutors aimed at achieving legality, efficiency and uniformity in proceedings. The Republic Public Prosecutor may issue in written form general mandatory instructions upon a proposal of the Collegium of the Republic Public Prosecution.

B. Public prosecutions with special jurisdiction are the Public Prosecution for Organised Crime and the Public Prosecution for War Crimes. The Public Prosecution for Organised Crime may have separate departments outside its headquarters, in accordance with the law regulating its activity.

C. Appellate public prosecutions shall be formed for the territories of appellate courts.

D. Higher public prosecutors shall be formed for the territory of higher courts, and basic public prosecutions shall be formed for the territories of basic courts.

The establishment, headquarters and territories of appellate, higher and basic public prosecutions are regulated by a separate law. Public prosecutions may have separate departments responsible for prosecuting certain criminal offences, in accordance with a separate law.

The State Prosecutorial Council is an autonomous body ensuring and guaranteeing autonomy of public prosecutors and deputy public prosecutors. The State Council shall have 11 members. Members of the State Council shall include the Republic Public Prosecutor, the Minister competent for the judiciary and the Chairperson of the competent Committee of the National Assembly, as members by virtue of office, and eight elective members elected by the National Assembly, in accordance with this Law. Elective members shall comprise six public prosecutors or deputy public prosecutors with permanent tenure, minimum one of whom is from the territory of autonomous provinces, and two distinguished and prominent jurists with minimum 15 years of professional experience, one of whom is an attorney

and the other a Faculty of Law professor. In the performance of its functions, the State Prosecutorial Council cooperates with the High Judicial Council, other public authorities and organizations, prosecutorial councils of other states and international organizations.

The Republic Public Prosecutor is the President of the State Council, by virtue of office. The president of the State Council represents the State Council, manages its operations and performs other tasks, in accordance with law. The State Council has a Deputy President, who is elected from among ranks of prosecutors and deputy public prosecutors - elective members of the State Council by the State Council and dismissed from office by the State Council. Deputy President shall perform the tasks of the President if the latter is away or prevented from doing so. The manner of election of the Deputy President of the State Council and the duration of term of office shall be regulated by the State Prosecutorial Council's Rules of Procedure.

Status and functions of the prosecutors

The function of the public prosecution is performed by the Republic Public Prosecutor and other public prosecutors, in accordance with the law. The public prosecution is an autonomous state body. It is in charge with prosecuting perpetrators of criminal and other punishable offences, but also plays a role in the protection of constitutionality and legality. In the conduct of its activities, the public prosecution complies with the Constitution, the primary and secondary legislation, as well as ratified international agreements.

Public prosecutors and deputy public prosecutors are autonomous in relation with the executive and the legislative powers in performance of their duties. A public prosecutor is accountable for the work of the public prosecution and his/her own work to the Republic Public Prosecutor and to the National Assembly, while a lower ranked public prosecutor is also accountable to his immediate superior. Public prosecutors and deputy public prosecutors are independent in the performance of their competences.

All forms of influence by the executive and the legislative authorities on the work of the public prosecution and its activity in cases, attempted by using public office, the public information media and any other means, which may threaten the independence of the work of a public prosecution, is prohibited. Public prosecutors and deputy public prosecutors are obliged to repel any activity that may present an influence on independence of work of public prosecution.

Public prosecutors and deputy public prosecutors shall be obliged to professionally, conscientiously, impartially, fairly and without undue delay carry out their functions in particular taking into account the protection of victims and prevention of discrimination on any grounds.

A lower ranked public prosecutor is subordinated to the immediately higher ranked public prosecutor, and a lower ranked public prosecution to the immediately higher ranked public prosecution. A basic public prosecution is ranked lower than a higher public prosecution. A higher public prosecution is ranked lower than an appellate public prosecution.

Public prosecutions of special jurisdiction and the appellate public prosecution shall be ranked lower than the Republic Public Prosecution. All public prosecutors are subordinated to the Republic Public Prosecutor and all public prosecutions to the Republic Public Prosecution.

A higher ranked prosecutor may issue to an immediately lower ranked prosecutor mandatory instructions for proceeding in particular cases when there is doubt in respect of the efficiency and legality of his actions. The Republican Public Prosecutor may issue such instruction to any public prosecutor. Mandatory instructions are issued in writing and must contain the reasons and substantiation for their issuance. Also, the public prosecutor may issue a verbal mandatory instruction when it is necessary for actions that cannot be postponed. In this case, mandatory instruction in writing shall be submitted within three days of the issuance of the oral instruction.

A lower ranked prosecutor who deems mandatory instructions unlawful and unjustifiable may submit a substantiated objection to the Republic Public Prosecutor within eight days of the date of receiving the instructions. The objection is filed through the public prosecutor who issued the mandatory instruction, who is required to review the mandatory instruction he issued within three days from the day of receiving the objection. The public prosecutor filing the objection is required to act in accordance with the instructions until the decision of the higher ranked public prosecutor or the decision of the Republic Public Prosecutor. No objection is allowed against mandatory instructions of the Republic Public Prosecutor.

The immediately higher public prosecutor may set aside the mandatory instructions and in such case the objection shall not be forwarded to the Republic Public Prosecutor. The Republic Public Prosecutor is required to issue a decision within 15 days from the date of receiving the objection to the mandatory instructions. A higher ranked public prosecutor may undertake

all actions for which a lower ranked public prosecutor is competent, and is required to issue a substantiated ruling thereof.

A lower ranked public prosecutor who deems the decision of the higher ranked public prosecutor unjustifiable may file an objection with the Republic Public Prosecutor within eight days from the date of receiving the decision. The objection shall be filed through the prosecutor who had issued the decision, who is required to review the ruling issued within three days from receiving the objection. The lower ranked public prosecutor may not undertake any case-related actions until the decision on the objection is issued. In the course of reconsideration, the public prosecutor may issue a decision setting aside his ruling, in which case the objection shall not be forwarded to the Republic Public Prosecutor. The Republic Public Prosecutor shall decide on the objection within 15 days from receiving the objection to the ruling.

An immediately higher ranked public prosecutor may authorise a lower ranked public prosecutor to proceed in a matter under the jurisdiction of another lower ranked public prosecutor when the competent public prosecutor is prevented by legal or material reasons from proceeding in a particular case, and shall in such case issue a substantiated ruling.

Exceptionally, the Republic Public Prosecutor may authorise the Prosecutor for Organised Crime to proceed in a matter under the jurisdiction of another public prosecutor for the purpose of more efficient prosecution or for other significant reasons, and is required to issue a substantiated explanation thereof. No objection shall be allowed to explanation of the Republic Public Prosecutor.

In order to exercise seniority of rank, the Republic Public Prosecutor is entitled to inspect any case, and a higher ranked prosecutor is entitled to inspect any case of an immediately lower ranked prosecutor. The request for inspection shall be submitted to the lower ranked public prosecutor, who shall thereafter promptly forward the case to the higher ranked public prosecutor.

A public prosecutor may issue to his deputy mandatory instructions for work and action. In addition, the public prosecutor may issue a verbal mandatory instruction when it is necessary for actions that cannot be postponed. In this case, mandatory instruction in writing shall be submitted within three days of the issuance of the verbal instruction. A deputy public prosecutor who deems the mandatory instruction unlawful and unjustified may file an objection with an explanation to an immediately higher public prosecutor within

eight days from the date of receiving the instruction. The objection is filed through the public prosecutor who had the instruction, who is required to review the issued instruction within three days from the day of receiving the objection. The public prosecutor may during the reconsideration procedure set aside the mandatory instruction and in such case shall not forward the objection to the higher public prosecutor. The deputy public prosecutor filing the objection is required to act on the instruction until the decision of the higher public prosecutor. The immediately higher public prosecutor is required to issue a decision within eight days from the day of receiving the objection to the mandatory instruction. The decision of the immediately higher public prosecutor in respect of the objection is final.

A public prosecutor and deputy public prosecutor may not be members of political parties or engage in any political activities. A public prosecutor or deputy public prosecutor may not hold office in authorities, which enact regulations, in executive public authorities, public services, and bodies of autonomous provinces and local self-management units; may not be members of political parties, engage in public or private paid work, provide legal services or provide legal advice for compensation.

By exception, a public prosecutor or deputy public prosecutor may be a member of the governing body of the institution responsible for judicial training, in accordance with a decision of the State prosecutors Council, pursuant to another law. A public prosecutor or deputy public prosecutor may outside office hours engage without explicit permission in paid educational and scientific activities.

Other functions, jobs or private interests that are contrary to the dignity and independence of the public prosecution or harm its reputation are also incompatible with the function of public prosecutor or deputy public prosecutor. The State Prosecutors Council shall determine the offices and engagements that are contrary to the dignity, violate the autonomy, or damage the reputation of a public prosecution.

A public prosecutor and deputy public prosecutor may not be held accountable for opinions expressed in the performance of prosecutorial office, except in case of the commission of a criminal act by a public prosecutor or deputy public prosecutor.

A public prosecutor or deputy public prosecutor may not be deprived of liberty in connection with a criminal offence committed in the

performance of prosecutorial office or service without the permission of the relevant committee of the National Assembly.

Public prosecutors and deputy public prosecutors shall be suspended from duty when remanded in custody. A public prosecutor and deputy public prosecutor may be suspended from duty upon the institution of proceedings for their dismissal, or of criminal proceedings for an offence that may lead to dismissal. A public prosecutor and deputy public prosecutor are entitled to file objections with the State Prosecutors Council in connection with decisions of the Republic Public Prosecutor's on non-mandatory suspension.

The Republic Public Prosecutor shall be entitled to object to the competent National Assembly committee against a State Prosecutors Council decision on non-mandatory suspension. The objection referred to above shall be filed within three days, and the competent authority shall make a decision on the objection within 30 days.

A deputy public prosecutor may be permanently transferred to another public prosecution of the same level only with his/her written consent. The ruling on the transfer shall be issued by the Republic Public Prosecutor. In the case that a public prosecution is dismantled, a deputy public prosecutor may be transferred even without his/her consent, based on a decision of the State Prosecutors Council. A deputy public prosecutor shall continue to perform his/her office permanently in the public prosecution to which he/she is transferred.

A deputy public prosecutor may be assigned, with his/her written consent, to another public prosecution for a period not exceeding one year. Upon a proposal by a special public prosecutor, a deputy public prosecutor may be assigned, with his/her written consent, to a special prosecution for a period not exceeding four years. When a deputy public prosecutor is assigned to a public prosecution of a higher rank, he/she must fulfil the requirements for election as deputy public prosecutor of the public prosecution to which he/she is transferred. By exception, a deputy public prosecutor may be assigned without his/her consent to a public prosecution of the same or lower rank, due to an insufficient number of public prosecutors in the other public prosecution. The transfer may not exceed one year. The decision on the assignment is issued by the Republic Public Prosecutor.

A deputy public prosecutor may be assigned, for performing professional tasks, to the State Prosecutors Council, the Ministry responsible for the judiciary, an institution responsible for judicial training, and to a judicial

international organisation. The assignment in such a case is conducted upon a proposal of the head of the authority, institution, or organisation to which a deputy public prosecutor is being assigned, having obtained the opinion of the public prosecutor from the prosecutor's office in which the deputy public prosecutor performs his/her function, and with a written consent of the deputy public prosecutor himself/herself. The assignment may not exceed a period of 3 years. The ruling on the assignment is issued by the State Prosecutors Council.

Selection and appointment of prosecutors

A citizen of the Republic of Serbia who fulfils the general requirements for employment in government authorities, who is a law school graduate with a passed Juridical Examination, and who is worthy of the office of a public prosecutor, may be elected public prosecutor or deputy public prosecutor.

In terms of placement in various prosecution offices the requirements are as follows:

- ▶ four years for a basic public prosecutor, and three years for a deputy basic public prosecutor;
- ▶ seven years for a higher public prosecutor, and six years for a deputy higher public prosecutor;
- ▶ ten years for an appellate public prosecutor and a public prosecutor with special jurisdiction, and eight years for a deputy appellate public prosecutors and deputy public prosecutor with special jurisdiction;
- ▶ twelve years for the Republic Public Prosecutor and eleven years for Deputy Republic Public Prosecutor.

The State Prosecutorial Council is in charge of electing prosecutors. The State Prosecutors Council shall advertise for the election of public prosecutors and deputy public prosecutors. The notice shall be published in the Official Gazette of the Republic of Serbia and other public media that cover the entire territory of the Republic of Serbia.

Applications shall be submitted to the State Prosecutors Council, within 15 days from the publication of the notice. Proof of fulfilment of the election requirements shall be attached to the applications, unless it is already in the public prosecution. The State Prosecutors Council shall obtain information and opinions about the professional qualifications, specific knowledge and worthiness of candidates. Information and opinions are obtained from

bodies and organisations in which the candidate worked in the legal profession. Prior to taking decision on the election, the State Prosecutors Council may interview the candidates.

In nominating and electing candidates to a prosecutorial function, the State Prosecutors Council shall take into consideration the professional qualifications, competence and worthiness of a candidate, pursuant to the criteria for the evaluation of the professional qualifications, specific knowledge and worthiness determined by the State Prosecutors Council in accordance with the law.

Professional qualification means possessing of theoretical and practical knowledge necessary for the performance of public prosecution office.

Competence implies skills, which enable efficient application of specific juridical knowledge in solving of judicial cases.

Worthiness implies the moral qualities a public prosecutor or a deputy public prosecutor should possess and behaviour in accordance with those qualities. Moral qualities: honesty, conscientiousness, equity, dignity, persistence and exemplarity, and behaviour in accordance with these characteristics implies preserving the reputation of public prosecution in the service and beyond, awareness of social responsibility, maintaining independence and impartiality, reliability and dignity in service and outside and take responsibility for the internal organization and a positive image of the public prosecutor's office in public.

In electing and nominating candidates for election as public prosecutors and deputy public prosecutors, care shall be taken of the national composition of the population, adequate representation of members of national minorities, as well as knowledge of professional legal terminology in national minority languages in official use in courts. In nominating and electing candidates to a prosecutorial function, discrimination on any grounds shall be prohibited. All proposals or decisions regarding the election passed by State Prosecutors Council must be substantiated.

The Republic Public Prosecutor shall be elected by the National Assembly, upon a nomination by the Government, to a term of six years and may be re-elected. The Government shall obtain the opinion of the competent committee of the National Assembly on the candidates nominated. The Government shall propose one or more candidates to the National Assembly for the office of the Republic Public Prosecutor. The Government

shall nominate candidates from the list of candidates determined by the State Prosecutors Council. The State Prosecutors Council shall propose to the Government a list of one or more candidates for the election to office of public prosecutor. If the State Prosecutors Council proposes only one candidate to the Government, the Government may return the proposal to the State Prosecutors Council.

If the Republic Public Prosecutor is not re-elected to the same office after the expiry of the term in office, or if his/her office is terminated at personal request, he/she shall continue work as a Deputy Republic Public Prosecutor. The State Prosecutors Council shall take a decision on election.

Public prosecutors are elected from the ranks of public prosecutors and deputy public prosecutors or from the ranks of persons who fulfil requirements for election, to a term of office of six years, and may be re-elected.

The term of office of a deputy public prosecutor who is elected to the office for the first time shall be three years, and any subsequent election shall be permanent.

If a public prosecutor is not re-elected to same office following the expiry of the term of office, or if his/her office is terminated at personal request, he/she shall continue work as a deputy prosecutor

It shall be deemed that a public prosecutor or deputy public prosecutor has not been elected if, without justifiable reason, he/she fails to assume office within 30 days after the election, decision about which shall be issued by the Republic Public Prosecutor. An objection against this decision may be filed to the State Prosecutors Council, within 8 days.

The National Assembly shall be notified of the decision of the Republic Public Prosecutor and the State Prosecutors Council, in cases where it is competent for the election of public prosecutors and deputy public prosecutors.

The State Prosecutors Council shall issue a decision on reasons for the failure of the Republic Public Prosecutor to assume office; the competent Committee of the National Assembly shall issue a decision on an objection.

Evaluation and promotion of prosecutors

The evaluation of the performance of a public prosecutor or deputy public prosecutor constitutes grounds for election, mandatory training, and dismissal.

The evaluation of performance shall be conducted on the basis of publicised, objective and uniform criteria based on applicable and comparable standards established by the State Prosecutors Council in the Regulation on the Criteria and Standards for Evaluating Performance.

The performance of a public prosecutor and deputy public prosecutor with tenure of office shall be evaluated once in three years, while the performance of a of a first-time elected deputy public prosecutor shall be evaluated once a year. Exceptionally, based on a decision of the State Prosecutors Council, the performance of a public prosecutor and deputy public prosecutor may be subjected to unscheduled evaluation.

Performance shall be rated. Ratings are: «performs the prosecutorial function exceptionally», «satisfactory performance of prosecutorial function», and «unsatisfactory performance». Ratings shall be entered in public prosecutors' or deputy public prosecutors' personal files. A public prosecutor or deputy public prosecutor is entitled to object to the rating to the State Prosecutors Council within 15 days from the day of service of the decision on the rating, which must be substantiated.

The evaluation of the performance of a public prosecutor shall be conducted by the immediately superior prosecutor, after obtaining the opinion of the Collegium of immediately superior public prosecution. The evaluation of the performance of a deputy public prosecutor shall be conducted by a public prosecutor, after obtaining the opinion of the Collegium of the public prosecution. In evaluating performance, periodical reports on the work of the public prosecution shall be taken into account.

Disciplinary liability

The Republic of Serbia shall be liable for any damage caused by a public prosecutor and deputy public prosecutor through unlawful or incompetent work. If it is determined by a final decision of the Constitutional Court, a final court decision, or a settlement before a court or another competent body, that damage was caused intentionally or by gross negligence, the Republic of Serbia shall be entitled to seek compensation of the amount paid out from the public prosecutor or deputy public prosecutor.

Disciplinary offences are unconscientiously performance of prosecutorial office, or such actions of a public prosecutor or deputy public prosecutor that renders them unworthy of office, prescribed by this Law.

Public prosecutors or deputy public prosecutors commit a disciplinary offence if they:

- ▶ fail to render prosecutorial decisions and file ordinary and extraordinary legal remedies within stipulated time limits;
- ▶ frequently miss, or are late for, scheduled trials, hearings, and other procedural actions in cases allocated to them;
- ▶ fail to request recusal in cases where legal grounds for doing so exist;
- ▶ refuse to perform assigned tasks and duties;
- ▶ fail to comply with a written instruction of a superior public prosecutor;
- ▶ manifestly violate rules of proper procedure in respect of judges in proceedings, parties, their legal counsel, witnesses, staff or colleagues;
- ▶ engages in inappropriate relations with parties or their legal counsels in pending proceedings;
- ▶ provide in complete or incorrect information important to the work of the State Prosecutorial Council in procedures for appointment or dismissal of public prosecutors and deputy public prosecutors, disciplinary accountability proceedings, and other matters under his competence;
- ▶ violate the principle of impartiality and jeopardizes the public's trust in the public prosecution;
- ▶ engage in activities set forth by the Law as incompatible with a public prosecutorial office;
- ▶ accepts gifts, contrary to regulations governing the conflict of interest;
- ▶ fail to observe working hours;
- ▶ make serious violations of the Code of Ethics;
- ▶ fail to attend mandatory training programmes without justification.

Serious disciplinary offences are deemed to exist if a disciplinary offence resulted in a serious disruption in the performance of prosecutorial office, or in the performance of work tasks in the public prosecution, or in serious damage to the reputation of, and trust in, the public prosecution, which in particular includes the expiry of the statute of limitations for criminal prosecution, as well as in cases of repeated disciplinary offences. Repeated disciplinary offences shall be put in question the responsibility for a disciplinary offence of a public prosecutor or deputy public prosecutor if it occurs on three occasions.

Disciplinary sanctions are: a public reprimand, a salary reduction of up to 50% for a period not exceeding one year, and prohibition of promotion in service for a period of three years. The disciplinary sanction pronounced shall be proportional with the seriousness of the committed disciplinary offence. A public reprimand may be issued only when disciplinary responsibility of a public prosecutor or deputy public prosecutor is established for the first time.

Disciplinary bodies are: Disciplinary Prosecutor and deputies, and the Disciplinary Commission, established by the State Prosecutors Council.

The State Prosecutors Council appoints members of disciplinary bodies from the ranks of public prosecutors and deputy public prosecutors. The composition, requirements for appointment, duration of term of office and the manner of termination of office, as well as the manner of work and decision-making in disciplinary bodies, shall be regulated by an act of the State Prosecutors Council, which shall be published in the Official Gazette of the Republic of Serbia.

Disciplinary proceedings shall be conducted by the Disciplinary Commission on a proposal of the Disciplinary Prosecutor. The Disciplinary Prosecutor shall file a motion for the initiation of disciplinary proceedings on the basis of a disciplinary report. Disciplinary proceedings shall be deemed urgent and closed to the public, unless the public prosecutor or deputy public prosecutor subject to the proceedings requests that the proceedings be open to the public. Disciplinary proceedings shall be subject to the statute of limitation of one year from the day the disciplinary offence was committed. The Disciplinary Prosecutor may reject a disciplinary report as unfounded or uphold the accusation and file a motion for disciplinary proceedings.

A public prosecutor or deputy public prosecutor has the right to be promptly notified of the motion of the Disciplinary Prosecutor, to examine the case file and supporting documentation, and to present explanations and evidence for his/her statements, in person or through a representative. A public prosecutor or deputy public prosecutor has the right to verbally present his/her statements before the Disciplinary Commission. Having conducted the disciplinary proceedings, the Disciplinary Commission may deny the motion of the Disciplinary Prosecutor or uphold the motion and pronounce a disciplinary sanction. The Disciplinary Prosecutor and the public prosecutor or deputy public prosecutor subject to disciplinary proceedings may

file an appeal to the State Prosecutors Council against the decision of the Disciplinary Commission, within eight (8) days of the service of the decision.

Deciding on the appeal, the State Prosecutors Council may either uphold or reverse the first-instance decision of the Disciplinary Commission. The State Prosecutors Council shall decide on the appeal within 30 days from the delivery of the appeal. The decision of the State Prosecutors Council shall be final.

A public prosecutor and deputy public prosecutor to whom the disciplinary sanction was pronounced may initiate an administrative dispute. The final decision on the imposition of a disciplinary sanction shall be entered in the personal record of the public prosecutor or deputy public prosecutor.

Capacity building and training

Public prosecutors and deputy public prosecutors have a right and an obligation undergo professional training at the expense of the Republic of Serbia, in a manner regulated by law. The Judicial Academy is the main training institution for both the judges and the prosecutors. The Judicial Academy organizes both the initial and continuous training, as well as entrance exam for the initial training. The number of available positions for the initial training is set by the State Prosecutors' Council on the basis of the vacancies in the prosecution system. Upon the finalization of the initial training the trainees pass a final exam. The continuous training is mandatory only when decided by the State Prosecutorial Council – otherwise continuous training is voluntary.

The governing bodies of the Judicial Academy are the Steering Committee, the Director and the Program Council. The Steering Committee has nine members from the relevant legal professions, but members of the High Judicial Council and State Prosecutorial Council are not eligible. They are appointed for four years with the possibility of renewal. The Steering Committee makes policy decisions and adopts rules for the operation of the Judicial Academy. The Director is the executive body of the Judicial Academy. The term of office is of five years with the possibility of reappointment. The Program Council is the professional body of the Judicial Academy and includes 11 members appointed by the Steering Committee (at least five judges and at least three prosecutors).

Comparison

Institutional arrangements of the Prosecution Service

In all the four countries analysed prosecution is a hierarchical system where lower prosecution offices are subordinated to the higher prosecution services. In Albania, Romania and Serbia the prosecution service is led by the General Prosecutor, while in the Netherlands the Board of Procurators-General leads. In the appointment of the head(s) of the prosecution service several actors interact – in Albania the Parliament appoints upon a proposal from the High Prosecutorial Council; in the Netherlands the Crown appoints the members of the Board upon the proposal of the Minister of Justice; in Romania the President of the country appoints upon a proposal from the Minister of Justice followed by an opinion of the Superior Council of Magistrates (the Prosecution Section); while in Serbia the appointment is done by the Parliament. The term of office for the highest positions in the prosecutor service is limited in time to avoid capturing of the system – in the Netherlands and Romania the mandate is for 3 years with the possibility for one renewal. In Serbia, however, the mandate is of 6 years, with the possibility of renewal. The role of the Prosecutor General also differs among jurisdictions – from a mainly managerial role in Albania to a very powerful position in Serbia where the Prosecutor General also acts as the President of the Prosecutorial Council. In Albania and Romania most of the career related powers of the Prosecutor General were transferred to the Prosecutorial Council.

Mandatory directions and instructions are also a distinctive feature of prosecution services given their hierarchical structure. Again, practices differ among the countries covered by this analysis, but common features include the written form of the instruction (except in urgent cases where verbal instructions are permitted) and the fact that it has to be reasoned. In Albania instructions issued by the General Prosecutor may only regard organizational matters and may not refer to a particular case under investigation. In the Netherlands there are various types of instruction the Board may issue - some that generate rights for citizens and some that only have effects inside the prosecution service. In addition, the Minister of Justice, under whose authority the prosecution system functions, may issue instructions or might consult with the case prosecutors regarding particular investigations were given their social impact the Minister is expected to take political responsibility. In most of the cases, however, the Minister would consult with the Board for it to issue instructions, rather than exercise this competence directly. In Romania, the Prosecutor General may issue general instructions even with regard to particular provisions in the substantive and procedural legislation. The Minister of Justice issue written guidance with regard to the efficient combat of criminal activity. In Serbia, higher prosecutors may issue mandatory instructions to lower ranking prosecutors and the Prosecutor General may also issue such instructions.

Albania, Romania and Serbia have set-up prosecutorial self-governing bodies with a view to take over career management issues from the Minister of Justice or from the Prosecutor General. The involvement of the Prosecutor General and of the Minister of Justice in the activity of the Council varies, from Serbia where the Prosecutor General is the President of the Council to Romania where s/he plays a lesser role, being just one of the ex-officio members who are not eligible for managerial positions in the Council. Entrusting the most sensitive aspects of career management to a Council that comprises apart from prosecutors representatives of the civil society, lawyers and/or academics is seen as a mechanism to foster the autonomy of action for prosecutors and shield them from political undue influence. It balances to a certain extent the political involvement in the appointment process for key managerial positions, which has important reverberation in a hierarchical system such as the prosecution service.

Status and functions of the prosecutors

The issue of status and functions of the prosecutors is at the core of the debate about the independence and impartiality of the criminal justice system. In

three of countries analysed the status of prosecutors tends to be similar with that of judges – in Albania and Romania they are both magistrates, while in the Netherlands they are both judicial officials. In Albania, Romania and Serbia prosecutors are bound by a long list of interdictions regarding outside employment. The usual exemptions regard teaching activities as well as cultural creation.

There are differences between the independence judges enjoy and the autonomy of prosecutors. Given the fact that the prosecution is a hierarchical system, management's decisions impact on the work of prosecutors. Mandatory instructions are common in the work of prosecution services and if they are not followed this can trigger disciplinary liability. In Romania the prosecutors defending cases before courts are not bound by the views expressed by the investigating prosecutors. This is an interesting feature that contributes to the procedural independence of prosecutors.

Some systems introduced mechanisms for complaint if individual prosecutors feel their activity has been hampered by the intervention of a superior prosecutor. In Romania and Albania the competence of hearing such complaints rests with the Superior Council of Magistracy. In Serbia complaints against mandatory instructions may be submitted to the Republic Public Prosecutor. In addition, there are limitations regarding the possibility of re-assignment of cases in Albania, the Netherlands and Romania.

Selection and appointment of prosecutors

The mechanisms for selection and appointment of prosecutors are key to the establishment of a professional service where accession is merit-based. In the countries covered we notice a distinct tendency towards ensuring that all prosecutors receive a consistent initial training delivered by a Training Academy specifically set-up for this purpose. Sometimes recruitment is dependent on passing the entering exam at this Academy, in other cases initial training occurs after the completion of the recruitment process.

In Albania, the Netherlands and Romania the prosecutors are entering the judiciary in a similar manner as judges. In Albania, the recruitment of prosecutors is done via the School for Magistrates. The graduates are afterwards appointed by the High Prosecutorial Council following a check of their assets. In the Netherlands law graduates apply to vacancy notices published by various prosecution offices, pass an online assessment and a pre-selection interview followed by other assessments and an interview before the National

Selection Committee appointed by the Board of Prosecutors General. After that the Minister of Justice appoints the successful candidates as candidate prosecutors. The candidate prosecutors undergo the initial training with the Training and Study Center for the Judiciary and upon the completion of the training are appointed prosecutors by the Crown or by the Minister of Justice depending on the grade. In Romania, the regular selection of prosecutors is done via the National Institute of Magistracy. The law graduates pass an admission exam and after the completion of the two years training in the Institute take the graduation exam and are appointed on probation prosecutors by the Superior Council of Magistracy. After one year of probation the prosecutors pass the ability exam organized by the Institute. The successful candidates are then appointed by the President of Romania upon the proposal of the Superior Council of Magistracy as irremovable prosecutors. Romania also allows certain professionals with previous experience to enter the prosecution service after passing an examination organized by the Institute. They will undergo a six-month inception training at the Institute.

In Serbia the selection for prosecutors is handled by the State Prosecutorial Council. The Council receives the applications from law graduates and may interview the candidates before appointment. Deputy prosecutors are appointed initially for a three years mandate and afterwards are appointed permanently. Public prosecutors are appointed for a six years mandate with possibility for renewal.

Evaluation and promotion of prosecutors

The mechanisms for evaluation and promotion of prosecutors are as important as merit-based selection in ensuring autonomy from the executive and legislative powers and thus independence of the investigations. Some countries require prosecutors to be periodically evaluated while others use seldom evaluations as a tool to improve performance. Albania, Romania and Serbia fall under the first category, while the Netherlands is a good example of the second one. Evaluations may regard also the managerial skills if the prosecutor evaluated holds a management position. In Albania, self-evaluation is used as an element of the overall evaluation. The Prosecutorial Council play a key role in the evaluation process in Albania and Romania the prosecutor who is evaluated has the right to contest the evaluation. In Serbia the evaluation is done by the hierarchically superior prosecutor in accordance with the rules set forth by the High Prosecution Council.

In Albania and Romania, promotion to higher offices is competitive process managed by the Prosecutorial Councils. The results of the competition may be challenged to court and seniority conditions are applicable for various positions in the prosecution system. In Albania, a check of the assets of successful candidates is performed before they are appointed to the new position. In the Netherlands, the National Selection Committee is in charge of promotions.

Disciplinary liability

In the countries covered, with the exception of the Netherlands, the primary legislation includes very clear provisions regarding the possible grounds for disciplinary liability, the procedure for disciplinary investigations, the available sanctions and rules on access to justice. This clear and strict legal background is needed to ensure that disciplinary liability is not used as a coercion mechanism against prosecutors that do not give in to political pressure. At the same time an efficient disciplinary process is needed to ensure good performance and accountability within the prosecution service. In the Netherlands rules about disciplinary liability are rather broad, but given the specificity of the country they are not abused in practice.

In Albania, Romania and Serbia the Prosecution Council play a central role in the disciplinary process, usually hearing the case that has been built against the respective prosecutor by the Judicial Inspection. In the Netherlands, the procedure is in the hands of the superior functional authority (which might also be the Ministry of Justice).

Capacity building and training

All the countries analysed have set-up Judicial Academies in charge of delivering initial and continuous training. They offer inception courses but also tailor made courses for more experienced prosecutors. In some countries, the work of the Judicial Academy is coordinated with the Prosecutorial Councils.

This study was prepared within the Council of Europe Project “Continued support to the criminal justice reforms in Ukraine”, funded by the Danish government, in response to the demands of Ukraine, a country undergoing profound reforms in relation to the judiciary, prosecution and law enforcement services. It is the result of desk research of national and international standards, legislation and policy documents. The study provides a comparison of four models of the prosecutorial self-governance bodies in the Council of Europe member states, namely in Albania, the Netherlands, Romania and Serbia.

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