



COMPARATIVE STUDY ON INITIAL TRAINING FOR PUBLIC PROSECUTORS

- ✓ International standards
- ✓ Foreign practices
- ✓ Observations for Ukraine



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This Study has been prepared to assist the Ukrainian authorities as they prepare to implement the changes in the organisation and operation of the professional training institution of the prosecution system. Its focus is on the initial training of public prosecutors and does so in the light of European and international standards and best practices not only for such training but also those concerning the qualities and capacities necessary for appointment as a public prosecutor. It examines the approach taken in four Council of Europe member States to give effect to these standards and, based on this examination and other relevant material, draws out the substantive and organisational aspects of the arrangements for initial training that have been considered most helpful in preparing intending prosecutors for the role that they will play and the responsibilities that they must discharge. It concludes with a number of concluding observations that could be taken into account when developing the initial training that intending public prosecutors in Ukraine will be expected to undergo.



INTRODUCTION

1. This Study is concerned with the initial training of public prosecutors. In particular, it considers the requirements for such training in the light of European and international standards for both such training and the qualities necessary for appointment. It also takes account of the different approaches taken by a number of Council of Europe member States in implementing those standards.
2. It has been prepared with a view to providing Ukrainian authorities with comprehensive information regarding relevant standards and best practices as they prepare to implement the changes in the organisation and operation of the professional training institution of the prosecution system, pursuant to the adoption of a new Law of Ukraine "On the Public Prosecutor's Office" on 14 October 2014.
3. The Study first reviews the various European and international standards that have been adopted or identified with respect to the selection of public prosecutors and any initial training that they must undergo before appointment. It then provides an account of the approach taken towards selection and initial training in four countries: Bulgaria; the Netherlands; Poland and Romania. These countries were chosen to illustrate the diversity of approaches that can be taken to the provision of initial training and because most of them have revised their arrangements following the reform of their prosecutorial systems. Thereafter, it draws out of these four country studies and a handbook prepared by the European Judicial Training Network ("the EJTN Handbook")¹ those aspects of the initial training — both substantive and organisational — that have been considered helpful in preparing intending public prosecutors for the role that they will play and the responsibilities that they must discharge. The Study concludes with some recommendations as to the nature and organisation of the initial training to be provided for intending public prosecutors in Ukraine.
4. The Study has been prepared by Jeremy McBride² and John Pearson³ under the auspices of the Council of Europe's Project "Continued Support to the Criminal Justice Reform in Ukraine", which is implemented under the "Good Governance and Human Rights Programme in Ukraine, 2015-2018" funded by the Government of the Kingdom of Denmark.

¹EJTN Handbook on Judicial Training Methodology in Europe, 2016: http://www.ejtn.eu/Documents/EJTN_JTM_Handbook_2016.pdf.

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B

EUROPEAN AND INTERNATIONAL STANDARDS

1. Introduction

5. There are no European or international treaty provisions governing the standards expected to be observed with respect to either the selection of public prosecutors or any initial training that they must undergo before appointment.⁴

6. However, both the case law of the European Court of Human Rights and various soft law standards do give some important indications as to the qualities and capacities that public prosecutors must have, which are clearly relevant to the manner of their selection and formation.

7. These soft law standards are to be found in the Recommendation of the Committee of Ministers of the Council of Europe on the role of public prosecution in the criminal justice system⁵, various opinions and a study of the European Commission for Democracy through Law ("the Venice Commission")⁶, certain opinions of the Consultative Council of European Prosecutors ("the CCPE")⁷ and the European Guidelines on ethics and conduct for public prosecutors adopted by the Conference of Prosecutors General of Europe⁸, the UN Guidelines

on the Role of Prosecutors of 1990⁹, the Standards of professional responsibility and statement of the essential duties and rights of prosecutors adopted by the International Association of Prosecutors in 1999¹⁰, as well as in the guide produced in 2014 by the latter association together with the UN Office on Drugs and Crime on the Status and Role of Prosecutors¹¹ and in the *Guidelines for Initial Training of Judges and Prosecutors* prepared pursuant to a Leonardo da Vinci Partnership Project ("the da Vinci Guidelines")¹².

8. Furthermore, many of these soft law standards also set out requirements as to how public prosecutors are to be selected and some give guidance with regard to the training that is considered necessary.

9. This section of the study thus reviews the European and international standards as to the qualities that public prosecutors are expected to have before considering the ones applicable to the selection process and any initial training to be undertaken.

⁴ Cf. the requirement by Article 14 of the International Covenant on Civil and Political Rights and Article 6 of the European Convention on Human Rights for judges to constitute an 'independent and impartial tribunal' which determines rights and obligations in a reasoned manner. This has clear implications both for the manner in which judges are appointed or removed and for the way in which they conduct themselves.

⁵ Adopted by the Committee of Ministers on 6 October 2000 at the 724th meeting of the Ministers' Deputies, ("Recommendation Rec (2000)19").

⁶ To be found in the *Compilation of Venice Commission Opinions and Reports concerning Prosecutors*, (CDL-PI(2015)009) and *Report on European standards as regards the independence of the judicial system: Part II - The Prosecution System* (Study No. 494/2008, CDL-AD(2010)040, 3 January 2011 ("The Prosecution System").

⁷ In particular, Opinion No.1 (2007) on "Ways of improving international co-operation in the criminal justice field", 4 on "Judges And Prosecutors In A Democratic Society", ("the Bordeaux Declaration"), 5 (2010) on Public prosecution and juvenile justice ("the Yerevan Declaration"), 7 (2012) on the management of the means of prosecution services, 8 (2013) on relations between prosecutors and the media, 9 (2014) on European norms and principles concerning prosecutors and 11 (2016) on the quality and efficiency of the work of prosecutors, including when fighting terrorism and serious and organised crime.

⁸ Generally referred to as "the Budapest Guidelines", (Council of Europe, 2005).

⁹ Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990 ("the United Nations Guidelines").

¹⁰ 23 April 1999 ("the IAP Standards"). These were endorsed by the United Nations Commission on Crime Prevention and Criminal Justice (Resolution 17/2, 14-18 April 2008).

¹¹ United Nations Office on Drugs and Crime, *The Status and Role of Prosecutors* (2014) (the UNODC/IAP Guide).

¹² The Guidelines are the outcome of a joint venture undertaken by five judicial training institutions – the Belgian Judicial Training Institute, the French National School for the Judiciary, the Romanian National Institute of Magistracy, the Centre for Judicial Studies of Spain and the Justice Academy of Turkey – within the framework of the Leonardo da Vinci Partnership Project. The Leonardo da Vinci Partnership is a framework funded by the European Union for small-scale cooperation activities between organisations working in the field of vocational education and training which will be cooperating on themes of mutual interest to the participating organisations. All five institutions that took part in the project provide initial training for both judges and public prosecutors. See, http://www.cej-mjusticia.es/cej_dode/doc_users/doc/4_222_201327103538440.pdf.

¹³ Thus, the United Nations Guidelines provide that "Persons selected as prosecutors shall be individuals of integrity" (para. 1), the Venice Commission considers that prosecutors should be "suitable persons of high standing and good character" and that "It is evident that a system where both prosecutor and judge act to the highest standards of integrity and impartiality presents a greater protection for human rights than a system which relies on the judge alone" (*The Prosecution System*, para. 18). The Budapest Guidelines require that public prosecutors "at all times exercise the highest standards of integrity" (Title II) and the IAP Standards require that "Prosecutors shall [...] at all times exercise the highest standards of integrity and care" (Title 1). Integrity is also one of the common values for judges and public prosecutors that are identified in the da Vinci Guidelines; Title 1, Chapter 1.

¹⁴ Thus Recommendation Rec(2000)19 specifies that "In the performance of their duties, public prosecutors should in particular: a. carry out their functions fairly, impartially and objectively" (para. 24) and the United Nations Guidelines provide that: "In the performance of their duties, prosecutors shall: (a) Carry out their functions impartially and avoid all political, social, religious, racial, cultural, sexual or other kind of discrimination" (para. 13). Furthermore, having regard to their responsibilities in the criminal process, the Venice Commission has considered that "15. The prosecutor must act fairly and impartially. Even in systems which do not regard the prosecutor as part of the judiciary, the prosecutor is expected to act in a judicial manner. It is not the prosecutor's function to secure a conviction at all costs. The prosecutor must put all the credible evidence available before a court and cannot pick and choose what suits. The prosecutor must disclose all relevant evidence to the accused and not merely the evidence which favours the prosecution case. Where evidence tending to favour the accused cannot be disclosed (for example, because to do so would compromise the safety of another person) it may be the duty of the prosecutor to discontinue the prosecution.16. Because of the serious consequences for the individual of a criminal trial, even one which results in an acquittal, the prosecutor must act fairly in deciding whether to prosecute and for what charges. 17. A prosecutor, like a judge, may not act in a matter where he or she has a personal interest, and may be subject to certain restrictions aiming to safeguard his or her impartiality and integrity.. 18. [...] Of course, where a prosecutor falls short of the required standard, the impartial judge may be able to correct the wrong that is done. However, there is no guarantee of such correction and in any event great damage can be caused. It is evident that a system where both prosecutor and judge act to the highest standards of integrity and impartiality presents a greater protection for human rights than a system which relies on the judge alone"; *The Prosecution System*. In addition, the Budapest Guidelines require that "Public prosecutors should at all times and in all circumstances [...] carry out their functions fairly, impartially consistently and expeditiously" (Title I, which is elaborated further in Titles II, III and IV) and CCPE Opinion No.9 provides that "Striving for impartiality, in which 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" (para. 54). Moreover, the IAP Standards provide as regards impartiality that; "Prosecutors shall perform their duties without fear, favour or prejudice. In particular they shall: carry out their functions impartially; remain unaffected by individual or sectional interests and public or media pressures and shall have regard only to the public interest; act with objectivity; have regard to all relevant circumstances, irrespective of whether they are to the advantage or disadvantage of the suspect; in accordance with local law or the requirements of a fair trial, seek to ensure that all necessary and reasonable enquiries are made and the result disclosed, whether that points towards the guilt or the innocence of the suspect; always search for the truth and assist the court to arrive at the truth and to do justice between the community, the victim and the accused according to law and the dictates of fairness" (Title 3). Also, the UNODC/IAP Guide provides that: "Prosecutors have great responsibility, and much is expected of them by society [...] the accused expects that the evidence will be carefully considered and the law correctly applied and that where discretion can be used, it is used fairly and impartially"; p. 26. The issue of the impartiality of prosecutors has also been the subject of a Report of the Special Rapporteur on the independence of judges and lawyers; A/HRC/20, 191, 7 June 2012 and it is one of the common values for judges and public prosecutors that are identified in the da Vinci Guidelines; Title 1, Chapter 1

¹⁵ Thus, the Venice Commission has observed in respect of a draft law that: "Article 8(h) disqualifies persons who have been convicted of an intentionally committed crime and punished by imprisonment of more than six months. It seems inappropriate that any person who has committed an intentional offence serious enough to be punished by imprisonment of any duration should be regarded as suitable for appointment as a [...] prosecutor. [...]"; CDL-AD(2011)004, Opinion on the Draft Law on Judges and Prosecutors of Turkey, paras. 31-32 and 35.

¹⁶ E.g., the Venice Commission has indicated of a draft law that: "Article 33 provides for background checks on candidate public prosecutors who have passed the proficiency test and is, in principle, appropriate. [...]" CDL-AD(2013)025, Joint Opinion on the Draft Law on the Public Prosecutor's Office of Ukraine, para. 110.

¹⁷ Autonomy is not always a quality referred to explicitly but it is implicit in the emphasis placed frequently on the independence of individual prosecutors. Thus, it is a quality that is expected of public prosecutors by Recommendation Rec(2000)19 ("11. States should take appropriate measures to ensure that public prosecutors are able to perform their professional duties and responsibilities without unjustified interference or unjustified exposure to civil, penal or other liability. However, the public prosecution should account periodically and publicly for its activities as a whole and, in particular, the way in which its priorities were carried out [...] 13. Where the public prosecution is part of or subordinate to the government, states should take effective measures to guarantee that: a. the nature and the scope of the powers of the government with respect to the public prosecution are established by law; [...] e. public prosecutors remain free to submit to the court any legal arguments of their choice, even where they are under a duty to reflect in writing the instructions received; f. instructions not to prosecute in a specific case should, in principle, be prohibited. Should that not be the case, such instructions must remain exceptional and be subjected not only to the requirements indicated in paragraphs d. and e. above but also to an appropriate specific control with a view in particular to guaranteeing transparency.

2. The qualities and capacities required of public prosecutors

10. The first set of qualities that public prosecutors are expected to have are to be persons of high standing and good character, including integrity¹³ and impartiality¹⁴. This will undoubtedly preclude the appointment of persons convicted of offences that are punishable by imprisonment¹⁵ and will also justify some background checks on candidates for appointment¹⁶.
11. They are also expected to be able to act autonomously¹⁷ and to preserve professional confidentiality¹⁸.
12. Furthermore, they must understand both what is needed to act fairly and to respect human rights in the conduct of criminal proceedings¹⁹, as well as what are the ideals and ethical duties of the office of public prosecutor²⁰.

13. Moreover, public prosecutors must have "appropriate legal qualifications"²¹ but, while this may include a requirement to have passed the bar or a comparable professional examination, the latter is not something that must necessarily be required²².
14. In addition, the possession by public prosecutors of certain more practical and professional skills is seen to be necessary²³. However, it is also considered that the need for professional competence should not be displaced by other requirements such as minority representation²⁴.
15. There may be certain requirements as to citizenship and health²⁵ but the latter should not be vague in character²⁶.
16. Moreover, there may also be requirements as to language skills²⁷.

¹⁴ In countries where the public prosecution is independent of the government, the state should take effective measures to guarantee that the nature and the scope of the independence of the public prosecution is established by law", the United Nations Guidelines ("4. States shall ensure that prosecutors are able to perform their professional functions without intimidation, hindrance, harassment, improper interference or unjustified exposure to civil, penal or other liability"), the Venice Commission ("1. The independence of the prosecution service as such has to be distinguished from any "internal independence" of prosecutors other than the prosecutor general. In a system of hierarchic subordination, prosecutors are bound by the directives, guidelines and instructions issued by their superiors. Independence, in this narrow sense, can be seen as a system where in the exercise of their legislatively mandated activities prosecutors other than the prosecutor general need not obtain the prior approval of their superiors nor have their action confirmed. Prosecutors other than the prosecutor general often rather enjoy guarantees for non-interference from their hierarchical superior"; The Prosecution System), the Bordeaux Declaration ("27. The independence of public prosecutors is indispensable for enabling them to carry out their mission. It strengthens their role in a state of law and in society and it is also a guarantee that the justice system will operate fairly and effectively and that the full benefits of judicial independence will be realised (Declaration, paragraphs 3 and 8). Thus, akin to the independence secured to judges, the independence of public 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"), CPCE Opinion No. 9 ("the Rome Charter") ("V. Prosecutors should be autonomous in their decision-making and should perform their duties free from external pressure or interference, having regard to the principles of separation of powers and accountability"), the IAP Standards ("The use of prosecutorial discretion, when permitted in a particular jurisdiction, should be exercised independently and be free from political interference"; Title 2) and the da Vinci Guidelines ("4.1. [...]").

¹⁸ Thus, the United Nations Guidelines require that: "In the performance of the duties, prosecutors shall: [...] (c) Keep matters in their possession confidential, unless the performance of duty or the needs of justice require otherwise" (para. 13) and the Budapest Guideline state that: "Public prosecutors should at all times adhere to the highest professional standards and [...] preserve professional confidentiality" (Title II). Furthermore, the European Court observed in a case that concerned the dismissal of the Head of the Press Department of the Prosecutor General's Office for having disclosed to a newspaper information concerning the commission of a serious offence by the Deputy Speaker of Parliament, that it is "mindful that employees have a duty of loyalty, reserve and discretion to their employer. This is particularly so in the case of civil servants since the very nature of civil service requires that a civil servant is bound by a duty of loyalty and discretion"; *Güja v. Moldova* [CC], no. 14277/04, 12 February 2008, at para. 70. Moreover, it observed in *Kudeshkina v. Russia*, no. 29492/05 that "Disclosure by civil servants of information obtained in the course of work, even on matters of public interest, should therefore be examined in the light of their duty of loyalty and discretion" (para. 85). Furthermore, in *Di Giovanni v. Italy*, no. 51160/06, 9 July 2013, the European Court found no violation of the right to freedom of expression where disciplinary action was taken against a judge for having failed in her duty of respect and discretion vis-à-vis members of the National Council of the Judiciary on account of her having given a newspaper interview in which she stated that a member of the examining body for a public competition was opened to recruit judges and public prosecutors had used his influence to help a relative.

¹⁹ See the importance attached by the European Court to public prosecutor in observing the presumption of innocence and the equality of arms and other rights of the defence in cases such as *Khuzhin and Others v. Russia*, no. 13470/02, 23 October 2008, *Moiseyev v. Russia*, no. 62936/00, 9 October 2008 and *Naturen v. Finland*, no. 212022, 31 March 2009. See also the recognition of the European Court of their role in ensuring respect for human rights through ensuring the conduct of thorough and effective investigations into various alleged violations in cases such as *Kaya v. Turkey*, no. 22729/93, 19 February 1998. The responsibility of public prosecutors regarding human rights is also underscored in Recommendation Rec(2000)19, which states that: "In the performance of their duties, public prosecutors should in particular: b. respect and seek to protect human rights, as laid down in the Convention for the Protection of Human Rights and Fundamental Freedoms" (para. 24). It is also emphasised in the Budapest Guidelines, which provide that: "Public prosecutors should at all times and under all circumstances [...] respect, protect and uphold human dignity and human rights [...] When acting in the framework of criminal proceedings public prosecutors should at all times: [...] a. uphold the principle of fair trial as enshrined in Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and the Case-law of the European Court of Human Rights" (Titles I and III). In addition CPCE Opinion No. 11 (2016) provides, under the heading "Management of cases": "A high quality decision or other relevant action by a prosecutor is one which reflects both the available material and the law, and which is made fairly, speedily, proportionally, clearly and objectively. In this respect, it is obvious that prosecutorial actions should, in line with the ECHR and other relevant international instruments, respect the rights of victims, their families and witnesses and be balanced with the rights of the defendants, as well as with the public interest in prosecuting crimes. Therefore, prosecutors should seek to carry out their work in accordance with these principles". Furthermore, it has been observed that: "Prosecutors are the essential agents of the administration of justice, and as such should respect and protect human dignity and uphold human rights, thus contributing to ensuring due process and the smooth functioning of the criminal justice system. Prosecutors also play a key role in protecting society from a culture of impunity and function as gatekeepers to the judiciary"; *Report of the Special Rapporteur on the independence of judges and lawyers*, (A/HRC/20, 191, 7 June 2012), para. 93. This quality is also seen in the concept of "loyalty" as defined in the da Vinci Guidelines ("4.4. Loyalty is the value of showing – usually by taking an oath – that one is bound by the rule of law. Loyalty implies two things: on the one hand the duty to exercise the powers entrusted in one and on the other hand the prohibition to exceed them", Title).

²⁰ Thus, the United Nations Guidelines state that: "States shall ensure that: 2. [...] (b) Prosecutors have appropriate education and training and should be made aware of the ideals and ethical duties of their office, of the constitutional and statutory protections for the rights of the suspect and the victim, and of human rights and fundamental freedoms recognised by national and international law". In addition, the UNODC/IAP Guide provides that: "Prosecutors have great responsibility, and much is expected of them by society. The courts expect prosecutors to demonstrate [...] well-defined ethics"; p. 26.

²¹ Thus, the Venice Commission has observed that: "In order to allow them to exercise their functions in accordance with the law, appropriate legal qualifications are indispensable for all levels of prosecutors"; *The Prosecution System*, para. 47. Furthermore, the United Nations Guidelines provide that: "Whereas it is essential to ensure that prosecutors possess the professional qualifications required for the accomplishment of their functions, through improved methods of recruitment and legal and professional training, and through the provision of all necessary means for the proper performance of their role in combating criminality, particularly in its new forms and dimensions [...]. Persons selected as prosecutors shall be individuals of integrity and ability, with appropriate training and qualifications". In addition, the UNODC/IAP Guide provides that: "Prosecutors have great responsibility, and much is expected of them by society. The courts expect prosecutors to demonstrate a high level of legal acumen [...]. Investigators expect and need sound and proper legal advice or supervision in increasingly complex investigations [...]. None of the competencies mentioned above are easily obtained, but none of them can be ignored by a prosecution service that is committed to excellence"; p. 26. The da Vinci Guidelines provide in Chapter 2 of Title I that all appointees "should have or acquire extensive knowledge of substantive national and international law and procedures before they take up their duties"

²² E.g., while the Venice Commission has observed of proposed legislation that: "The draft Law [...] sets out general requirements that persons wishing to be appointed as [...] prosecutors need to satisfy, as well as requirements for the appointments to the different [...] prosecutor's offices. General requirements include [...] professional competence, the bar exam [...] These appear to be appropriate and in line with European standards"; CDL-AD(2014)008, Opinion on the draft Law on the High Judicial and Prosecutorial Council of Bosnia and Herzegovina, para. 73, it has also stated in respect of other draft legislation that: "Among the qualifications for becoming a prosecutor in Article 11, the requirement to be a professional lawyer (third paragraph) should be clarified to show whether this means all law graduates or only those who have been advocates and are registered with the bar. The profession of prosecutor should be open to all those who have followed law studies satisfactorily, have passed the necessary prosecutor examinations and had the necessary training"; CDL-AD(2011)007, Opinion on the Draft Organic Law of the Public Prosecutor's Office of Bolivia, paras. 26-27.

²³ Thus, the Explanatory Note to the Bordeaux Declaration provides that: "The highest level of professional skill is a pre-requisite for the trust which the public has in both judges and public prosecutors and on which they principally base their legitimacy and role. Adequate professional training plays a crucial role since it allows the improvement of their performance, and thereby enhances the quality of justice as a whole"; para. 43. The skill set of prosecutors has been elaborated as follows in CPCE Opinion No. 11 (2016): "47. It is the opinion of the CPCE that prosecution services should support prosecutors' work by setting out good practices of case management in various fields of prosecutorial competences and duties. Prosecutors' decisions should further reflect the following elements: a. **Objectivity and impartiality** 48. Prosecutors should remain independent in the performance of their functions and exercise them always upholding the rule of law, integrity of criminal justice system and the right to a fair trial. Prosecutors should adhere to the highest ethical and professional standards, should carry out their duties fairly, and always behave impartially and objectively. 49. Prosecutors should provide for equality of individuals before the law without any kind of discrimination, including on the grounds of gender, race, colour, national and social origin, political and religious belief, property, social status and sexual orientation. b. **Comprehensiveness** 50. All decisions and actions by prosecutors should be carefully considered by them. They should seek out evidence relating both to guilt and innocence and should ensure that all appropriate lines of enquiry be carried out, including those leading to evidence in favour of the accused or suspected persons. Thus, they should consider if the evidence delivered by the investigation is clear and comprehensive. This does not, however, require an investigator to engage in a disproportionate commitment of resources and should be reasonably and realistically interpreted on the facts of each case. It does not take away from the responsibility of defence lawyers to seek out evidence they consider relevant. 51 Prosecutors should decide to prosecute only upon well-founded evidence, reasonably believed to be reliable and admissible, and refuse to use evidence involving a grave violation of human rights. c. **Reasoning** 52. Clear reasoning and analysis are basic requirements of prosecutors' work. They should fully consider all relevant evidence and examine factual and other issues revealed by the investigation and by the parties. All decisions or actions by prosecutors should reflect such relevant evidence, be in accordance with the law and general guidelines which may exist on the subject. Decisions and actions by prosecutors should be justified in consistent, clear, unambiguous and non-contradictory manner. d. **Clarity** 53. All instructions or directives, as well as any official acts given by prosecutors should be clearly understandable by those to whom they are addressed. Where in writing, such instructions and directives should be drafted in a very clear language. In addition, prosecutors should pay particular attention to the format of written instructions and directives so that they can be readily identified. e. **Exchange of information and co-operation** 54. Co-operation is essential for the effectiveness of the prosecution service both at national and international levels, between different prosecution offices, as well as between prosecutors belonging to the same office, as well as between prosecutors and law enforcement agencies/investigators. Increasing specialisation of prosecutors is likely to improve the effectiveness of such cooperation. 55 Where prosecutors have an investigative function, they should seek to ensure an effective exchange of information in a due manner among themselves, as well as between themselves and law enforcement agencies/investigators. This should help in avoiding duplication of work, as well as in complementing efforts of different prosecutors and law enforcement agencies in cases which are connected to each other. 56. Where prosecutors do not have such an investigative function, they should, as appropriate, co-operate during investigations with the relevant investigating agency, particularly by furnishing relevant advice and/or guidance. 57. Such co-operation should continue until the end of investigation, with a view to ensuring that all relevant evidence is made available to the prosecutor and disclosed, as appropriate, to the defence". A slightly different formulation – albeit with much the same content – can be seen in the da Vinci Guidelines, which emphasise in Chapter 4 of Title 1 the importance of the following competences: knowledge and command of personal ethics and deontological rules; ability to analyse and summarise a case file; ability to prepare and conduct investigations, hearings and questioning respectful of adversarial procedures and legal framework; adaptability and flexibility; human attitude; ability to listen; capacity to elicit agreement and conciliation; capacity to formalise and explain legal grounds of a decision and to communicate clearly; awareness of local, national and international environment; management and organisational skills; hard work and commitment to improving public confidence in the judiciary.

²⁴ E.g., the Venice Commission has observed in respect of draft legislation that: "However, the provision then goes on to say that in making the list, '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' using court. It is unclear what this means in practice. What happens if the original list based on professional competence, etc., does not contain anyone from a particular national minority or with the necessary language skills? Is the list to be supplemented? Presumably, if it can be supplemented with persons who did not have the necessary professional skills to make it on to the original list, they must at least reach some acceptable minimum standard. Is a quota to be fixed? These matters need to be clarified in the text of the Law, as the practical implications of the current provision are very vague. [...]"; CDL-AD(2013)006, Opinion on the Draft amendments to the Law on the Public Prosecution of Serbia, para. 32.

²⁵ E.g., the Venice Commission has observed that: "The draft Law [...] sets out general requirements that persons wishing to be appointed as [...] prosecutors need to satisfy, as well as requirements for the appointments to the different [...] prosecutor's offices. General requirements include citizenship of BiH, a good medical record [...] These appear to be appropriate and in line with European standards"; CDL-AD(2014)008, Opinion on the draft Law on the High Judicial and Prosecutorial Council of Bosnia and Herzegovina, para. 73.

²⁶ Thus, the Venice Commission observed of another draft law that: "Chapter 2 deals with recruitment of [...] prosecutors and Section 1 deals with the traineeship period. Article 8 sets out the qualifications of trainees. Among the qualities required of a trainee [...] prosecutor is the following (Article 8(g)): 'Not to have physical or mental health problems or disabilities which will prevent to perform the profession of [...] prosecutorship throughout the country, or not to have handicaps such as unusual difficulties for speaking or controlling movement of organs that may be regarded as odd by other people'. This provision is far too broad and would not be regarded as generally acceptable according to European standards in its approach to how to deal with persons under a physical or mental disability. The test of something appearing odd to other people seems an inappropriate one. [...] It seems extraordinary that physical appearance should be a valid criterion for suitability for appointment as a judge or prosecutor. So far as concern behaviour and reactions it needs to be clarified what is meant by these and what type of behaviour or reaction would disqualify a candidate"; CDL-AD(2011)004, Opinion on the Draft Law on Judges and Prosecutors of Turkey, paras. 31-32 and 35.

²⁷ However, the Venice Commission has noted that ensuring this can be problematic: "The fourth paragraph of Article 11 stipulates the requirement to 'speak at least two official languages' without specifying the level of knowledge required. Prosecutors already working as such should be allowed time to learn the second language. In addition, the second language concerned may not always be used in a specific case, because another language than that learned may be required. It seems therefore difficult to guarantee the right to use local languages, as set out in Article 32.23 or Article 63 of the preliminary draft Law"; CDL-AD(2011)007, Opinion on the Draft Organic Law of the Public Prosecutor's Office of Bolivia, paras. 26-27.

3. Selection

17. There is recognition that the different ways in which prosecution systems are organised can lead to diverse approaches to the recruitment of public prosecutors²⁸.
18. However, it is considered that the process should lead to the recruitment of persons who are properly qualified²⁹ and that all selection decisions should be based on objective criteria that are formally established and applied in a procedure that is transparent and reasoned³⁰.
19. The objective criteria should include professional qualifications, ability or competence, performance and experience³¹.
20. Moreover, such criteria should not be discriminatory³².
21. The selection process should usually entail a competitive examination³³ and an interview³⁴.
22. Furthermore, it is considered that the selection process should not be handled exclusively within the public prosecution service³⁵ and that the selection process should be subject to judicial control³⁶.

²⁸ Thus, it is observed in the UNODC/IAP Guide that: "Different States will have different recruitment methods depending on how the prosecution service is constructed and on factors such as the way legal education is taught in the State, the qualifications and standards needed to practise law and become a prosecutor and the strength of the body that governs the profession. As mentioned in the preceding section, the selection of prosecutors is an important function and should be governed by fair and impartial procedures for recruitment, promotion and transfer. The selection process varies from State to State but the nature of the selection process does not matter as much as how it is conducted. What is important in selection is that prosecutors are properly screened to obtain candidates who possess the requisite integrity and legal ability to prosecute and that the selection process itself is conducted in a fair, impartial and transparent manner. Some methods of selection are a national competitive examination, programmes aimed at young law graduates, a multifaceted interview process, and examination and appointment by the government"; p. 24 (footnotes omitted).

²⁹ Thus, it is observed in the UNODC/IAP Guide that: "It is to be expected that prosecution services will have systems and processes and criteria to ensure that only properly qualified persons are eligible to be appointed as prosecutors [...]. Many States have taken steps to establish well-defined protocols for the hiring and monitoring of prosecutors, thus leading to enhanced transparency and trustworthiness of the prosecution service in the eyes of the public"; p. 24.

³⁰ E.g., the Venice Commission has observed of three draft laws that "[...] [i]t is mandatory to ensure that appointments of prosecutors and deputy prosecutors are made on the basis of objective criteria. These criteria in turn must be established in advance by law or in conformity with the procedure provided by law, on the basis of a transparent procedure and that decisions must be reasoned" (CDL-AD (2013)006, Opinion on the Draft amendments to the Law on the Public Prosecution of Serbia, para. 34); "The appointment process starts with a public announcement of vacancies that must be well-publicised. The announcement is followed by nominations of candidates by special departments set up by the judicial or prosecutorial sub-councils of the HJPC for nominations for vacancies in the different courts and prosecutors' offices consisting of four or five judges or prosecutors. This suggests that candidates cannot apply for a certain position directly, but only through the sub-councils. Such a practice could be seen as problematic, as it could undermine the transparency and openness of the process" (CDL-AD (2014)008, Opinion on the draft Law on the High Judicial and Prosecutorial Council of Bosnia and Herzegovina, para. 76); and "This Article, which regulates the nomination and election of candidates for public prosecutor's office, is rephrased and seems not to have introduced any major changes, except for the introduction of the obligation to publish the list of candidates on the Internet site of the State Prosecutorial Council. The obligation to publish the list of candidates is to be welcomed" (CDL-AD (2013)006, Opinion on the Draft amendments to the Law on the Public Prosecution of Serbia, para. 31). Furthermore, CCPE Opinion No. 11 (2016) states that "To promote quality, it is indispensable that the selection, recruitment, promotion and relocation of prosecutors be based on clear and predictable criteria laid down in law or internal guidelines in written form" (para. 24) and the UNODC/IAP Guide states that: "As mentioned in the preceding section, the selection of prosecutors is an important function and should be governed by fair and impartial procedures for recruitment, promotion and transfer. The selection process varies from State to State but the nature of the selection process does not matter as much as how it is conducted. What is important in selection is that prosecutors are properly screened to obtain candidates who possess the requisite integrity and legal ability to prosecute and that the selection process itself is conducted in a fair, impartial and transparent manner. Some methods of selection are a national competitive examination, programmes aimed at young law graduates, a multifaceted interview process, and examination and appointment by the government"; p. 25 (footnotes omitted).

The need for fair and impartial recruitment procedures is also emphasised in Title 6 of the IAP Standards.

³¹ E.g., Recommendation Rec(2000)19 provides that: "States should take measures to ensure that: b. the careers of public prosecutors, their promotions and their mobility are governed by known and objective criteria, such as competence and experience" (para. 5).

³² Thus, the United Nations Guidelines state that: "(a) Selection criteria for prosecutors embody safeguards against appointments based on partiality or prejudice, excluding any discrimination against a person on the grounds of race, colour, sex, language, religion, political or other opinion, national, social or ethnic origin, property, birth, economic or other status, except that it shall not be considered discriminatory to require a candidate for prosecutorial office to be a national of the country concerned" (para. 2). In addition, the UNODC/IAP Guide provides that: "Prosecution services should ensure that their screening process does not exclude any person due to prejudice against any group and should ensure that steps, including legislative protections, are enacted to prohibit any inequality in employment opportunities in the prosecution service. Rigorous attention to the Guidelines and the IAP Standards regarding recruiting and promotion practices also has the benefit of ensuring that corruption in the form of favouritism in recruitment or promotion does not find its way into a prosecution service, with consequent negative impact on operational effectiveness and subsequent loss of public confidence. Steps should be taken to prevent political considerations from being a factor in the appointment of career prosecutors"; p. 25 (footnotes omitted).

³³ Thus, the Venice Commission has observed of three draft laws that: "[...] Normally one would expect that appointments would be made only of persons who had succeeded in the competitive examination and that they would be made in the order in which the candidates had been successful unless there was very good reason to the contrary" (CDL-AD(2008)019, Opinion on the draft law on the Public Prosecutor's service of Moldova, para. 45); "As regards the system for entering on a prosecutor's career, implementing regulations should clearly indicate the existence of objective proof such as written papers in the competitive examination concerned" (CDL-AD(2011)007, Opinion on the Draft Organic Law of the Public Prosecutor's Office of Bolivia, para. 52) and "There is a written qualifying exam for the appointment as a judge, prosecutor or an associate or expert (Article 45 of the draft Law). The introduction of such an exam, recommended by the Venice Commission in its 2012 Opinion is to be welcomed" (CDL-AD(2014)008, Opinion on the draft Law on the High Judicial and Prosecutorial Council of Bosnia and Herzegovina, para. 77). Such an approach has also been supported in a report by the United Nations Special Rapporteur on the independence of judges and lawyers: "a public competitive selection process (an examination) is an objective way to ensure the appointment of qualified candidates to the profession"; A/HRC/20, 191, 7 June 2012, para. 62. However, UNODC/IAP Guide only observes that: "Some methods of selection are a national competitive examination, programmes aimed at young law graduates, a multifaceted interview process, and examination and appointment by the government"; p. 24.

³⁴ E.g., the Venice Commission has observed of a draft law that: "Candidates who pass the written exam are then called for an interview conducted by the departments who are responsible for rating the candidates. The department is required to assess the candidate's motivation to work in the judiciary in the position applied for, ability to perform the function responsibly, independently and impartially, understanding of the importance of judicial and prosecutorial ethics, communication and presentation skills, analytical capabilities and the ability to solve legal problems. The interviews and written qualifying exams are to be audio visually recorded for the purpose of any subsequent appeal. The sub-councils then make a list of successful candidates with the nomination of candidates for appointment which they then submit to the HJPC. The candidates with the highest scores are appointed to relevant courts or prosecutor's offices and take office after swearing an oath. It is not entirely clear how and on what basis candidates are allocated to courts and prosecutors' offices, especially at a lower level"; CDL-AD(2014)008, Opinion on the draft Law on the High Judicial and Prosecutorial Council of Bosnia and Herzegovina, para. 77.

³⁵ E.g., the Venice Commission considers that: "In view of the special qualities required for prosecutors, it seems inadvisable to leave the process of their appointment entirely to the prosecutorial hierarchy itself. Various methods can help to remove the danger that within a monolithic prosecution system instructions from above count more than can be done ideally in the framework of an independent body like a democratically legitimised Prosecutorial Council or a board of senior prosecutors, whose expertise will allow them to propose appropriate candidates for appointment. Such a body could act upon a recommendation from the Prosecutor General with the body having the right to refuse to appoint a person but only for good reason"; *The Prosecution System*, para. 48.

³⁶ Thus, the Venice Commission has observed of a draft law that: "[...] [T]he HJPC is both the body making the decision [on appointment] and hearing the appeal. There does not appear to be any provision for an appeal to a court of law, which should be added"; CDL-AD(2014)008, Opinion on the draft Law on the High Judicial and Prosecutorial Council of Bosnia and Herzegovina, para. 78.

4. Training

23. The need for initial training is only alluded to in the Bordeaux Declaration³⁷ but it is recognised more explicitly in other standards³⁸.
24. Without specifying when it should occur, emphasis has also been placed on need for the training of public prosecutors to include ethical standards, law and human rights³⁹, professional identity and an understanding of the context in which they work⁴⁰, as well as some more practical matters relevant to the work of public prosecutors⁴¹.
25. In addition, the topics that have been seen as necessary for training to cover include: information technology⁴²; the media⁴³, management⁴⁴; some specialisation⁴⁵ (notably as regards juvenile justice⁴⁶); new challenges⁴⁷; social sciences⁴⁸; foreign languages⁴⁹; and some focus on aspects of international cooperation, even if that might generally be more a matter for further training after appointment⁵⁰.

³⁷ "Training for judges and prosecutors involves not only the acquisition of the professional capabilities necessary for access to the profession but equally permanent training throughout their career"; paragraph 44 of the Explanatory Note (emphasis added).

³⁸ Thus, Recommendation Rec(2000)19 states that: "7. Training is both a duty and a right for all public prosecutors, before their appointment as well as on a permanent basis. States should therefore take effective measures to ensure that public prosecutors have appropriate education and training, both before and after their appointment". Furthermore, the Explanatory Note to CCPE Opinion No.9 (2014) provides that: "63. States should therefore take effective measures to ensure that prosecutors have appropriate education and training, both before and after their appointment and in a report by the United Special Rapporteur on the independence of judges and lawyers, it is stated that: "89. [...] In addition to training prior to or on appointment as a prosecutor [...] 124. **Prosecutors should receive adequate training both on initial appointment and periodically throughout their career**"; A/HRC/20/19, 7 June 2012. In addition, in the UNODC/IAP Guide it states that: "Training should commence in the induction phase" p. 26. Furthermore, the need for public prosecutors (as well as judges) to undergo some initial training is the predicate on which the da Vinci Guidelines have been elaborated.

³⁹ Thus, Recommendation Rec(2000)19 states that: "In particular, public prosecutors should be made aware of: a. the principles and ethical duties of their office; b. the constitutional and legal protection of suspects, victims and witnesses; c. human rights and freedoms as laid down by the Convention for the Protection of Human Rights and Fundamental Freedoms, especially the rights as established by Articles 5 and 6 of this Convention" (para. 7) and this is reaffirmed in paragraph 63 of the Explanatory Note to CCPE Opinion No.9 (2014). Furthermore, the Venice Commission considers that: "Such training should include legal, including human rights, training"; *The Prosecution System*, para. 70. In addition, the need for human rights education is emphasised in two reports of the United Nations Special Rapporteur on the independence of judges and lawyers: "29. Courses for judges, prosecutors and lawyers should be grounded in the international human rights standards concerning the administration of justice, in particular article 14 of the International Covenant on Civil and Political Rights and the Basic Principles on the Independence of the Judiciary" (A/HRC/14/26, 1 April 2015) and "Training should mandatorily include regional and international human rights norms and standards. Training on the gender-sensitive handling of cases should be also provided" (A/HRC/20/19, para. 124 7 June 2012). See also the statement in the da Vinci Guidelines that the priority goals for initial training should include: "Deepening the trainee's understanding of the features of the figure of the prosecutor within the constitutional and legal framework of each country, together with the real challenges and problems of the profession that the trainees are going to embrace" and "Assumption by the trainee of the functions of a prosecutor in accordance with legal principles as well as ethical and deontological values"; Title 1, Chapter 3.

⁴⁰ Thus, two priority goals for initial training specified in the da Vinci Guidelines are: "Promoting a professional identity and the acquisition of the necessary skills of the profession" and "Acknowledgment of the social, political, professional, economical and cultural environment in which the prosecutor discharges his/her duty"; Title 1, Chapter 3.

⁴¹ Recommendation Rec(2000)19 states that the training should cover: "d. principles and practices of organisation of work, management and human resources in a judicial context; e. mechanisms and materials which contribute to consistency in their activities. Furthermore, states should take effective measures to provide for additional training on specific issues or in specific sectors, in the light of present-day conditions, taking into account in particular the types and the development of criminality, as well as international co-operation on criminal matters"; para. 7. The Explanatory Memorandum to this Recommendation further states that: "The expression "*in a judicial context*" refers to the fact that many legal systems require public prosecutors, judges and other officers of the law to work together in the same functional administrative structures or in structures that, although separate, are closely linked and increasingly interconnected.

Moreover, there are certain specific features of legal management and administration that differ from those of mainstream administrative management and must be taken into account. Lastly, greater equality of treatment for persons appearing before the courts depends on achieving greater consistency in the work of the prosecution service at local, regional and central levels, and not only with regard to individual decisions. Training must therefore include information about the different mechanisms that can promote consistency. [...] At a practical level, and in the light of developments in crime, there is a good case for additional training in specific sectors, such as: - cross-border crime and other forms of crime of international concern; - organised crime; - computer crime; - international trafficking in psychotropic substances; - offences relating to complicated financial transactions, such as money laundering and large-scale fraud; - international co-operation on criminal matters; - comparative criminal justice systems and comparative law; - prosecution strategies; - vulnerable witnesses and victims; - the contribution of criminal law to the protection of the environment, in particular the Council of Europe texts in this field, namely Resolution (77) 28 and the Convention on the Protection of the Environment through Criminal Law (ETS 172); - scientific-based evidence, in particular the use of recently developed technologies such as DNA profiling." See also the stipulation in Recommendation Rec(2001)11 of the Committee of Ministers to member states concerning guiding principles on the fight against organised crime that "28. Member states should provide the necessary means for training law enforcement agencies and, where appropriate, other components of the criminal justice system, in the area of financial investigations and new methods of investigation"; footnote omitted. See also the view in the da Vinci Guidelines that the focus of an initial training programme should be on: "Acquiring the necessary skills to write judgments, rulings, indictments, reports, papers, etc., required by the duties of a prosecutor/judge; Acquiring the relevant communicative skills required by the duties of a judge/prosecutor; Enhancing international cooperation through activities such as exchange programmes, study visits and studying foreign languages, etc.; Promoting the strategic approach of working in groups for better exchange of experiences among future judges/prosecutors; Promoting the professional relationship between the future prosecutor/judge and other court staff, legal professionals, citizens and members of civil society through specific training activities; Using modern technologies in order to perform functions optimally; Managing and controlling stress situations during professional work; Training future judges and prosecutors in the techniques and skills involved in the handling of cases; Raising social awareness by understanding the different subjects that reflect the complexity of life in society; Integrating the European legal framework in the curriculum, especially in the EU Member States. This dimension should be present in the training approach and the activities to be developed during the initial training period; Developing awareness among prosecutors/judges of their role in the active promotion of a European judicial culture"; Title 1, Chapter 3.

⁴² Thus, CCPE Opinion (2012) No. 7 provides that: "43. Member States are encouraged to enable prosecution services to use IT equipment in their daily work, by introducing e-justice tools, electronic case management and data exchange systems with the bodies in charge of the application of law that prosecutors are in contact with when carrying out their tasks. This would enable ensuring a more efficient case management, reducing the length of proceedings and guaranteeing the application of data protection and confidentiality measures". See also Chapter 2 of Title I of the da Vinci Guidelines.

⁴³ CCPE Opinion No. 8 made the following recommendation: "vii. Where prosecutors have direct relations with the media, in order to ensure proper information, training in the field of communication should be provided as appropriate. This training may be in common with/or be facilitated by experts and journalists".

⁴⁴ Thus, paragraph 47 of the Explanatory Note to the Bordeaux Declaration states that: "[...] Courses should not only cover the law and protection of individual freedoms, but should also include modules on management practices and the study of judges' and the prosecutors' respective missions" and paragraph 61 of the Explanatory Note to CCPE Opinion No.9 refers to this in connection training before prosecutors take their duties and CCPE Opinion No. 11 under the heading "Management of human resources: selection, recruitment, promotion and training of prosecutors" emphasises that: "Principles and guidelines on issues such as time management, adequate methodology or increased co-operation with other actors of the justice administration system should aim at facilitating everyday work and thus enhancing the quality and efficiency of prosecutorial work" (para. 28).

26. The da Vinci Guidelines also emphasise the need for the training to be “pluralist in order to guarantee and strengthen the open-mindedness of the [...] prosecutor”⁵¹.

27. Only the da Vinci Guidelines address the issue of the actual length of any initial training, providing that

*Depending on the existence and length of previous professional experience, training should be of significant length in order to avoid its being purely a matter of form*⁵².

28. Furthermore, there is seen to be a need for expertise in the formulation of the planning of the training that is to be undertaken⁵³.

29. The Venice Commission envisages the body responsible for training being “independent from other state bodies”⁵⁴. In addition, the need for the autonomous character of the institution in charge of organising training for public prosecutors to be assured has also been emphasised in the Bordeaux Declaration⁵⁵. There is no explicit requirement as to the nature of the institution responsible for the training but it seems implicit that this should be a discrete professional body rather than an academic one⁵⁶.

⁵¹Thus, paragraph 44 of the Explanatory Note to the Bordeaux Declaration states that training “addresses the most diverse aspects of their professional life, including the administrative management of courts and prosecution departments, and must also respond to the necessities of specialisation”. Moreover the Rome Charter provides that: “XIII. The highest level of professional skills and integrity is a pre-requisite for an effective prosecution service and for public trust in that service. Prosecutors should therefore undergo appropriate education and training with a view to their specialisation” and paragraph 62 of its Explanatory Note states that: “Prosecutors should benefit from appropriate specialised training in order to adequately fulfil their responsibilities within and outside the criminal justice system, including in relation to the management of budgetary resources and in the field of communication”. See also Chapter 2 of Title I of the da Vinci Guidelines.

⁵²Thus, the Yerevan Declaration provides that: “Prosecutors should have the necessary and appropriate means to exercise their competences with juveniles or these means should be attributed to other competent services in charge of juveniles. In particular, a system of recruitment, appropriate training as well as necessary staff, means and specialised services should be provided to them. Moreover, member States should consider setting up specialised units or officers for juvenile delinquency.” (para. 18).

⁵³Thus, paragraph 64 of the Explanatory Note to CCPE Opinion No.9 states that: “New criminal challenges as well as the growing complexity of certain types of criminality are due to the speedy development of new technologies, the globalisation and expanding international trade and data flow. Special training to enable prosecutors face the threats posed by the above mentioned phenomena is also required”. In addition the United Nations Special Rapporteur on the independence of judges and lawyers has observed that: “the development of new forms of criminality and the need for appropriate responses from prosecutorial authorities⁵³ In this vein specialisation constitutes an important aspect of the training of prosecutors, who should also be provided with the adequate human and technical resources to properly investigate crimes, when they have the mandate to do so”; A/HRC/20/19, para. 90, 7 June 2012 (footnote omitted from quotation).

⁵⁴Chapter 2 of Title I of the da Vinci Guidelines.

⁵⁵Ibid.
⁵⁶Thus, CCPE Opinion No. 1 (2007) provides that: “27. Relying namely on Recommendation Rec(2000)19 (in particular Article 38), on the Opinions of the Consultative Council of European Judges (CCJE) N° 4 (2003) on appropriate initial and in-service training for judges at national and European levels and n° 9 (2006) on the role of national judges in ensuring an effective application of international and European law, as well as on the conclusions of the European Conference of prosecutors in Warsaw, the CCPE recommends that the training of prosecutors engaged in international judicial cooperation as well as other players in such cooperation is strongly developed. Improved professional training on international cooperation should take account not only of existing conventions on the subject but also operational information collated by existing organisations and systems. It should equip practitioners with the necessary skills to better draft their requests for assistance and better understand and execute the requests that are addressed to them. Efforts for raising awareness of the international judicial cooperation players could also be undertaken in order to develop their skills so as to formulate their request for assistance more precisely and to avoid overloading third systems with misdemeanour requests. 28. It might not be necessary or even possible that every prosecutor or judge should be well aware of the relevant international instruments and channels. But it is essential that some of them are specialists on this issue and thus specifically trained. Therefore the CCPE recommends that each member state sets up an appropriate structure by which this specialisation should be guaranteed. 29. This training focused on international cooperation in the criminal justice field must include human rights training for judges and prosecutors, as well as for defence lawyers where specifically appropriate. In addition to the general overview of the fundamental elements of human rights law, it is essential to explicitly identify those basic rights and relevant standards which concern directly individuals in criminal proceedings related to the execution of requests for international assistance in criminal matters. This should result in commentaries on each of the relevant law sources, as the applicable rights and standards differ according to the cooperation forms. Such commentaries or specialised documents should also rely on the prevailing practice and case-law. 30. This knowledge must be disseminated by appropriate means, and by training organisations, in particular judicial and prosecutorial national training institutions. The relevant European bodies for judicial and prosecutorial training such as the Lisbon Network of the Council of Europe and the European Judicial Training Network could also play a leading role in this context. 31. This training should also be completed by training in foreign languages, namely to contribute to improve direct contacts between practitioners, the quality of their assistance requests and a better understanding of the requests addressed to them”. Similarly, the da Vinci Guidelines specify that a priority goal for initial training should be: “Fostering in trainees appreciation for matters relating to legal cooperation in civil and criminal law as a crucial element in the construction of a European judicial area and international cooperation in general”; Title 1, Chapter 3.

⁵¹Chapter 2 of Title I.

⁵²Ibid.

⁵³Thus, the Venice Commission has observed that “an expert body like a Prosecutorial Council could play an important role in the definition of training programmes”; The Prosecution System, para. 70.

⁵⁴The Prosecution System, para. 65.
⁵⁵Thus, paragraph 46 of the Explanatory Note states: “Different European legal systems provide training for judges and prosecutors according to various models. Some countries have established an academy, a national school or other specialised institution; some others assign the competence to specific bodies. International training courses for judges and prosecutors should be arranged. It is essential, in all cases, to assure the autonomous character of the institution in charge of organising such training, because this autonomy is a safeguard of cultural pluralism and independence”.

⁵⁶As with all the institutions covered by the country studies below, the National Institution for Magistracy (NIM) in Romania is not part of the national educational system and is not subject to legislation governing certification of higher education institutions. Initial training for future prosecutors and judges is provided exclusively by the NIM. For an insightful discussion of the issues surrounding the establishment and maintenance of an independent judicial training institution, see Building & Operating Judicial Education Institutes. <http://www.iojt-dc2013.org/~media/Microsites/Files/IoJT/11042013-Building-Operating-Judicial-Institutes.ashx>.

30. It is considered important that practitioners should be involved in the training but that it should not be restricted to them⁵⁷. However, only the da Vinci Guidelines emphasise the need for all trainers — whether full-time, part-time or occasional — to be trained⁵⁸.

31. However, there is also recognition that there can be diverse approaches to training⁵⁹ and that joint training with judges can be beneficial⁶⁰.

32. Furthermore, there has been some emphasis on the need for the effectiveness of any training to be evaluated⁶¹, as well as on the need for those being trained to be paid⁶².

5. Conclusion

33. There is thus an unambiguous requirement in European and international standards that persons appointed as public prosecutors should be appropriately qualified, with some important elaboration as to what that entails.

34. Furthermore, ensuring that this requirement is fulfilled necessitates a selection process that is objective and impartial by persons who are qualified to make the necessary assessment of candidates.

35. In addition, the need for initial training before appointment as a public prosecutor is increasingly seen as necessary, even if the approach taken as to its form can vary.

36. What is involved in such training can undoubtedly contribute to those who become public prosecutors being appropriately qualified.

37. There is, however, no clear demarcation in most European and international standards between the training that is to be undertaken before appointment and that which can come afterwards.

38. The general absence of prescription in this regards undoubtedly stems from the recognition that there can be diversity in the approaches taken as regards selection and training, for which the prior education and experience of potential candidates will undoubtedly be relevant.

⁵⁷Thus paragraph 47 of the Explanatory Note to the Bordeaux Declaration states that: “In this context, much importance attaches to the direct contribution of judges and prosecutors towards training courses, since it enables them to provide opinions drawn from their respective professional experience [...] At the same time, additional lawyers’ and academic contributions are essential to avoid taking a narrow-minded approach”.

⁵⁸Title III.

⁵⁹Ibid. This is reaffirmed in paragraph 58 of the Explanatory Note to the Rome Charter.

⁶⁰Thus the Venice Commission considers that: “For reasons of cost and efficiency, synergies could be found in common training for prosecutors and judges”; The Prosecution System, para. 70. Furthermore, the Bordeaux Declaration states that: “10. The sharing of common legal principles and ethical values by all the professionals involved in the legal process is essential for the proper administration of justice [...] Where appropriate, joint training for judges, public prosecutors and lawyers on themes of common interest can contribute to the achievement of a justice of the highest quality”. Paragraph 45 of the Explanatory Note adds that “This common training should make possible the creation of a basis for a common legal culture”. The value of common training is reaffirmed in paragraph 59 of the Explanatory Note to the Rome Charter, in which it is stated that: “If it is appropriate, joint training for judges, prosecutors and lawyers on themes of common interest can contribute to improving the quality of justice”. Moreover, the United Nations Special Rapporteur on the independence of judges and lawyers “is of the opinion that, in addition to the necessary specific and separate training for prosecutors, joint training for judges, prosecutors and lawyers on themes of common interest could enhance mutual understanding and cooperation [...] In addition to the necessary specific and separate training for prosecutors, joint training for judges, prosecutors and lawyers on themes of common interest should be encouraged as it could enhance mutual understanding and cooperation”; A/HRC/20/19, paras. 91 and 125, 7 June 2012.

⁶¹Thus, the Bordeaux Declaration states that: “10. [...] training should be [...] regularly and objectively evaluated for its effectiveness and paragraph 47 of the Explanatory Note also refers to such evaluation covering the “quality” of training. In addition, paragraph 59 of the Explanatory Note to CCPE Opinion No.9 states that: “Such training should be [...] regularly and objectively evaluated for its effectiveness”. See also Chapter 3 of Title III of the da Vinci Guidelines.

⁶²Thus, the United Nations Special Rapporteur on the independence of judges and lawyers has noted: “with some concern that in some countries the training activities of prosecutors are at their own expense” and has recommended that “The training of prosecutors should be paid by the State as an important incentive to their qualifications”; A/HRC/20/19, paras. 90 and 126, 7 June 2012.

39. However, the overriding consideration seen in European and international standards is that those appointed as public prosecutors should actually be capable of discharging the significant responsibilities entrusted to them.

40. In view of the extensive knowledge and competences required for this purpose, it will probably only be in the most exceptional cases that someone could be expected to act as a public prosecutor without first undergoing some form of initial training.

41. Moreover, while the initial training should obviously build on the existing knowledge and competences of those intending to become public prosecutors, this will need to be more than "a matter of form" in order to be sure that entrusting them with this important role is justified.



1. Introduction

42. The four country studies all concern countries in which part of the initial training programme is — following the selection process — common for both intending public prosecutors and intending judges but most of the initial training is undertaken by them separately. In all cases, the initial training involves both theory and practice, with the balance between these two elements varying.

43. Three of the four countries studied — Bulgaria, Poland and Romania — have seen a significant evolution in the role of the public prosecution system, involving a departure from the former Socialist model to one consistent with Council of Europe standards. This has necessarily influenced the current shape of the initial training programmes for public prosecutors in them. However, further change is now underway in Poland and the final shape of the programme has still to be settled.

44. There has also been some evolution in the structure of the public prosecution service in the Netherlands and that has led to some revisions to the initial training programme being provided there.

45. Each of the country studies considers the following issues: the pre-requisites for appointment and entry to training; the selection process for admission to the training; the nature of the training institution (i.e., its formal status, organisation and resources); the background of those who do the training; the body responsible for determining the curriculum (including the way that this is determined and any quality assessment arrangements); the length of the training; the nature of the training (i.e., topics and methods, including the balance between theory and practice); and the method of assessment (including the use of probation and any evaluation before confirmation of appointment).

46. Bulgaria and Romania provide routes to becoming a prosecutor without taking initial training. In Bulgaria, individuals who have served in a position requiring higher legal education are able to apply for newly announced positions in the prosecution service in a competition process based on performance appraisals. If successful, they do not have to complete any formal initial training, presumably because they are already experienced

prosecutors. But as a result, a significant percentage of Bulgaria's prosecution service may never have had the benefit of an initial training course that receives favourable reviews. In Romania the ordinary way to become a prosecutor is to graduate from the National Institute of Magistracy ("the NIM"). Another separate and extraordinary way to become a prosecutor only takes place when there is shortage of magistrates and does not entail taking a course at the NIM. Since these ways of becoming a prosecutor do not involve formal initial training programmes, they will not be considered below in any detail.

2. Bulgaria

a. Overview

47. Bulgaria's latest Judicial Reform Strategy⁶³ acknowledges that the development of the judicial system depends on the state of its human resources and therefore aims at ensuring that justice there will be administered by highly-skilled specialists with high morals and adequate motivation⁶⁴. Bulgaria has comprehensive legislation — Judiciary System Act ("the JSA") — regulating all aspects of its judicial system, including the initial training programme for prosecutors and judges⁶⁵. The first step for those seeking to become prosecutors through an initial training process is to achieve success in an annual, centralised competition⁶⁶. The second step is to complete a 9-month training programme at the National Institute of Justice ("the NIJ") with a "pass" grade. The number of junior prosecutors graduating from the NIJ fluctuates each year, with between 40 and 50 graduating annually. Those passing then become junior prosecutors and work for 2 years with an experienced mentor, effectively providing them with a total of two years and 9 months for the initial training that has to be undergone. The mentorship-trainee relationship plays an integral part of the education of new prosecutors and mentors receive extensive training on how to most effectively perform their role. Positive reviews of reforms at the NIJ indicate it has strengthened its capacity by curriculum and methodology improvement and the application of novel interactive teaching methods.

b. Pre-requisites for appointment and entry to the training

48. Applicants must be Bulgarian citizens and have:

- a higher education in the specialty area of law;
- undergone the internship provided in the JSA and obtained legal competency; and
- the required standard of ethics and professionalism complying with the rules of professional ethics for prosecutors, judges and investigating magistrates⁶⁷.

c. The selection process for admission to the training

49. Applicants participate in annual centralised competition. The Supreme Judicial Council ("the SJC")⁶⁸, on the advice of the Prosecutor General, determines the available positions for junior prosecutors for each upcoming year⁶⁹. The SJC designates by a draw of lots, 20 percent of the number of positions available in the prosecution office. The available positions are announced by the SJC through publication in the State Gazette, in a central daily, and on the website of the SJC. The announcement sets out:
 - The number and type of positions;
 - The documents required to be submitted;
 - The deadline and location for their submission;
 - The programme for the competition; and
 - The date, time and venue for the competition.
50. An applicant may take part in a competition for junior prosecutor if she/he meets the above requirements and files the required documents with the administration of the SJC. One of the SJC's commissions⁷⁰ inspects the submitted documents and admits to the competition all candidates who satisfy the pre-requisites. The lists of individuals admitted and not admitted (with reasons given) are announced on the website of the SJC at least 7 days prior to the competition.
51. The competition is carried out by members from the Commission referred to in para. 50, consisting of a chairperson, four regular and two reserve members. Depending on the number of candidates, the SJC may set up more than one board. The names of each board member are designated in a resolution of the SJC. The competition consists of written and oral examinations and marks are given on a scale of six. The written examination is anonymous and consists of a case study.
52. The results of the written examination are posted at a public location inside the building of the SJC and on its website. A candidate who passes the written examination with a mark not lower than 4.5 is admitted to take the oral examination. The competition commission posts the results of the oral examination within 7 days of the examination at a public location inside the building of the SJC and on its website. A candidate who has successfully passed the competition files — within 7 days of the publication of the results — a statement confirming participation in the ranking for a particular position and for the judicial system body (i.e., prosecutor, judge, or investigating magistrate) for which he or she is applying.

⁶³ http://www.justice.government.bg/Files/UPDATED_STRATEGY_EN_ADOPTED__EN_635576978036934663.pdf.

⁶⁴ Bulgarian Institute for Legal Initiatives and the American Bar Association Rule of Law Initiative, *Judicial Reform Review for Bulgaria*, February 2013, p.17.

⁶⁵ The last update is in State Gazette issue 69 of 5.08.2008: http://www.vks.bg/English/vksen_p04_06.htm.

⁶⁶ Lawyers with a minimum of three years' experience as prosecutors, investigators, attorneys or a variety of other official legal positions may be appointed directly to the magistracy, without first serving as a junior prosecutor or judge. These direct appointees do not go through a formal initial training programme and will not be discussed further.

⁶⁷ A Bulgarian citizen who has been sentenced to imprisonment for a deliberate criminal offence or who suffers from a mental illness cannot be appointed as a prosecutor, judge, and investigating magistrate.

⁶⁸ The SJC is a permanent acting body of twenty-five members, which represents the judicial power and secures its independence, determines its personnel and the work organisation of the judicial system, and manages its activities without interfering with the independence of its bodies. Permanent and temporary commissions are created within the SJC to support its activities.

⁶⁹ The number of positions cannot be altered after the announcement of the annual competition.

⁷⁰ The Commission on proposals and the performance appraisals of judges, prosecutors, and investigating magistrates. The competition is carried out by a competition board consisting of a chairperson, four regular and two reserve members. Depending on the number of candidates, the SJC may set up more than one board. At least one habilitated legal scientist shall be a regular commission member. Members of an initial appointment commission shall have a rank equal to or higher than that of the announced available position. The names of each commission member shall be designated in a resolution of the SJC.

53. The competition commission ranks the candidates for each position by ordering them in accordance with their score, which is a sum of the marks at the written, the oral examination and the grade point average of their state examinations. The chairperson of the competition commission files a proposal with the SJC for the appointment of the candidates. The SJC adopts a resolution for the appointment of candidates in accordance with the order of their ranking until the number of available vacancies is exhausted.

54. A candidate who successfully passes the competition is, after taking the oath of office, appointed as a junior prosecutor and assigned to a regional prosecution office. The junior prosecutor is appointed for a term of two years, which may be extended by 6 months pursuant to a SJC resolution. The administrative head of the prosecution office to which the junior prosecutor is assigned is required to order an experienced prosecutor to monitor and assist the professional development of the junior prosecutor (mentoring)⁷¹. The mentor provides expert guidance to facilitate the trainee's integration into the judicial system. The experience of mentors is instrumental in providing the trainees with practical tools to handle their day to day duties.

55. Immediately after entering office, junior prosecutors undergo the mandatory 9 month "inception training course" at the NIJ. During initial training, trainees receive a monthly allowance from the NIJ amounting to 70% of a junior magistrate's base salary. They do not pay tuition fees but are required to cover their own room and board during their stay in Sofia.

56. Following the expiry of the 2-year term, the junior prosecutors sit a pass/fail examination⁷². If the junior prosecutor passes the examination, he or she is appointed prosecutor at a regional prosecution office. If a position is not available at a local office, the prosecutor is offered a vacant position in another office.

d. The nature of the training institution

57. Training is provided at the NIJ, which is a public institution and a "moral person" under Bulgarian law. It is located in Sofia. The institution is funded from the budget of the judiciary, from programmes and projects, from donations, and through its own business related to training. The SJC provides resources to the NIJ budget for the delivery of all trainings envisaged in the law.

58. A management board heads the NIJ. It includes four representatives of the SJC and three representatives of the Ministry of Justice. The chairperson of the Supreme Court of Cassation is an *ex lege* member of the management board from the quota of the SJC and is the chair of that board. The Minister of Justice is an *ex lege* member of the management board from the quota of the Ministry of Justice.

59. The management board:

- i. appoints and terminates the Director and Deputy Directors of the NIJ;
- ii. adopts the training programmes;
- iii. approves the draft NIJ budget and submits it to the SJC;
- iv. adopts internal rules;
- v. approves the composition of the programme board of the NIJ;
- vi. sets the number of staff;
- vii. adopts a three-year business plan; and
- viii. organises, directs and controls the participation of the NIJ in the EJTN⁷³.

60. The NIJ is managed on a day by day basis by a Director appointed by the management board for a term of 3 years, with a right to reappointment after a performance evaluation by the management board.

e. The trainers

61. Prosecutors, judges, investigating magistrates, legal science professors and research workers may be permanent instructors at the NIJ. They are on official leave when they perform this role, or may be seconded by the SJC at the proposal and expense of the NIJ. The selection of trainers is a joint commitment of the supporting partners of the NIJ (e.g., the SJC, the Ministry of Justice, international donors and programmes). Trainers are taught adult educational techniques in line with the "Training for Trainers" system. During their training they prepare training materials and carry out mock presentations. Foreign professionals may also participate in some training sessions.

62. The NIJ knows that the training of its trainers is the educational cornerstone of an effective and sustainable institution. The NIJ is committed – through its Strategic Plan, its Internal Regulations and Procedures, and the structure of its curriculum – to ensure that trainers have mastered the principles of training. To this end, the NIJ has created a cadre of prosecutor "Master Trainers" who train other prosecutors to train and established "Correspondent Magistrates" in most Prosecutor Offices to institutionalise the reach of well-trained trainers. Bulgaria's use of workplace mentors and trainers allows a smooth transition of trainee prosecutors into the judicial system and places particular emphasis on the practical side of training on an individualised basis. The mentor is normally a highly experienced prosecutor with good pedagogical skills. The goal of workplace mentoring is to maintain the level of effective governance and to create opportunities and conditions for tacit, experience-based knowledge as well as appropriate grounds for discussion on performance and effectiveness.

⁷¹The mentors are trained by the NIJ and periodically meet to exchange good practices. The goal is to keep the performance of junior judges and prosecutors in line with the initial training they have received at NIJ.
⁷²If the junior prosecutor receives a "fail" grade, she/he sits the examination again three months later. If the junior prosecutor fails the subsequent examination, the individual is relieved of the position she/he occupies.

⁷³With the exception of resolutions relating to i – iv above, management board resolutions have to be adopted by a majority of more than half its members. Resolutions relating to i – iv above have to be adopted by a majority of two-thirds of the members.

f. The body determining the curriculum

63. A programme board provides the NIJ with advisory support. This board is approved by the management board and includes prominent specialists of legal theory and practice. The programme board members are involved in the preparation and updating of training programmes, which are endorsed by the management board at the proposal of the Director.

64. Following the completion of initial training and before assuming office, a new prosecutor continues to receive assistance from the NIJ. The NIJ is obliged by law to follow up the performance of its graduates during their first two years of service. This provides the NIJ with feedback about how the initial training programme (content, organisation, etc.) meets the requirements of practice.

g. The length of training

65. Effective January 1, 2012, the length of the initial training course was increased from 6 to 9 months. The length of training for the purpose of this Study, however, is — as already noted⁷⁴ — treated as 2 years 9 months, since those who become a junior prosecutor after completion of the 9-months initial course must spend two more years working under the supervision of an experienced mentor.

h. The nature of the training

66. The NIJ, notably its initial training programme, has growing significance and elicits positive feedback from magistrates. It has also received favourable international reviews⁷⁵. The United States Agency for International Development (USAID) considers it the finest judicial training institution in Eastern Europe. The NIJ has steadily strengthened its capacity by curriculum and methodology improvement and the application of novel interactive teaching methods⁷⁶. Its sustainability rests on attention to strategic planning, attention to adult learning theory, and an intensive outreach programme keeping it in touch with the best and brightest minds in the Bulgarian judiciary⁷⁷.

67. The initial training programme includes the following major topics:

- civil law and procedure;
- criminal law and procedure;
- constitutional law;
- ethics and corruption; and
- topics related to European Union law and the *Convention for the Protection of Human Rights and Fundamental Freedoms*.

68. The underlying approach is based on the rationale that trainees have demonstrated they already have adequate grounding in theoretical subjects during the rigorous recruitment process. Thus, the programme is focused on:

- acquiring practical knowledge and professional skills;
- developing greater familiarity with areas of immediate relevance to future work (including the rights of prosecutors and judges) and duties;
- ethical rules;
- media relations;
- psychology;
- forensic science and accounting;
- obtaining exposure to the working environment in the judicial system; and
- creating a team spirit and fostering collegiate relations among the three branches of magistrates.

i. The method of assessment

69. In the course of their nine months of training at the NIJ junior prosecutors sit interim tests and participate in mock trials. When they begin their active professional work, they still need the expert guidance of a mentor to facilitate their integration into the prosecution service and to provide them with practical tools to handle their day-to-day obligations. The NIJ is mandated by law to follow up the performance of its graduates during their first two years within the legal profession. The mentors are trained by the NIJ and periodically meet together to exchange ways on how to keep the performance of the prosecutors in line with the initial training received at the NIJ.

70. The mentors are also involved in the evaluation of junior prosecutors and judges, which is carried out by the Supreme Judicial Council (SJC). The mentors submit reports to the NIJ on a quarterly basis detailing their activities as mentors, the cases they have examined, events attended, observations on the mentee's performance, etc. The NIJ Initial Training Department places all data received in the personal file of each junior magistrate and submits it to SJC.

3. The Netherlands

a. Overview

71. The Netherlands has reformed its prosecution system so that there are now three types of prosecutor: full prosecutors following their initial training, assistant-prosecutors and adjunct-prosecutors.

⁷⁴ See para. 47 above.

⁷⁵ European Commission, *Judicial Training Structures in the EU*, Bulgaria, National Institute of Justice, September, 2012.

⁷⁶ USAID, *Strengthening Bulgaria's Judiciary*, 1999-2007

⁷⁷ American Bar Association Rule of Law Initiative, Judicial Reform Review for Bulgaria, February 2013.

72. The latter two types of prosecutors were introduced in response to a new idea about how work within the prosecution service should be done. Thus, it was thought that in more simple cases the person responsible for preparing a case — an assistant-prosecutor — should be the one to present it in court. Formerly, these two tasks were done respectively by a legal advisor and a prosecutor. An adjunct-prosecutor is an assistant in large cases. He or she has the authority to represent the prosecution in hearings before an investigative judge and may also be the second prosecutor of the case, representing the prosecution in formal sessions like a 'pro-forma' hearing.

73. The training requirements for assistant-prosecutors and adjunct-prosecutors are less exacting than that for full prosecutors.

b. Pre-requisites for appointment and entry to the training

74. All candidates for the programme must have graduated as a master in law and generally need to have at least two years' relevant legal experience (e.g., working as a clerk in a court or in the office of a prosecutor or lawyer). However, students who have just finished their university education and got their law-degree can also be candidates to become assistant-prosecutors.

c. The selection process for admission to the training

75. The selection procedure for becoming a prosecutor has in the past been centralised, with four prosecution services having been appointed as 'educational services'. However, because of the number of prosecutors in training, all of the regional offices of the prosecution service will now be allowed to train new prosecutors.

76. After publication of a vacancy, candidates apply in writing and those who pass an initial sifting are received for a pre-selection interview. Those who are still under consideration after that then undergo an assessment by the Organisation of the Public Prosecution Service, which is followed by an interview with the selection committee.

77. In the selection process the focus is more on competences than on the legal skills. The competences considered important include the ability to cooperate, initiative, group-sensitivity, sensitivity to developments in society and the ability to communicate clearly in writing and orally. The personality of the candidate is also important. Sometimes a case-study assignment will be part of the procedure. The object is not to look for brilliant lawyers but for good ones who also have a good understanding of people and society.

78. Candidates must always send in a declaration on their behaviour, i.e., a formal declaration issued by the municipality in which they live that is proof of not having been convicted of an offence.

d. The nature of the training institution

79. Training that is course-based is undertaken by the *Studiecentrum Rechtspleging* ("the SSR"), i.e., the Dutch Training and Study Centre for the Judiciary but the practical part is provided in prosecution offices and other traineeships.

80. The SSR is an institution owned by and funded by the organisations of the judges and prosecutors, meaning that it is indirectly funded by the Ministry of Security and Justice. However, actual amount of funding that is made available for the education of judges and prosecutors is decided upon by the board of SSR, consisting of a member of the Council of the Judiciary and a procurator-general of the Prosecution Service.

e. The trainers

81. Most of the trainings are given by judges and prosecutors so as to ensure that the education provided is in close contact with working practice. However, it also draws upon other teachers involved, notably from universities and specialised bureaus, the latter being used for example when communication skills are being taught.

82. There are trainings available to provide the prosecutors and judges involved in the training with teaching skills but these are not obligatory. These trainings extend to the workplace trainers and mentors who instruct, train, coach and guide the trainee, and provide feedback on their performance. A varied programme of courses and other activities has thus been developed for the workplace trainers and mentors aimed both at beginners and those with more experience.

83. The programme includes coaching, peer consultation sessions and master classes and in 2012 a digital handbook for workplace trainers and mentors was published. In addition, a Day at the Workplace event is regularly organised for the trainers and mentors, which enables them to share experiences and strengthen their networks.

f. The body determining the curriculum

84. The SSR is responsible for the curriculum but the various elements of the programme continue to change in response to both new demands and feedback received.

85. Evaluation of the training provided is currently done in cooperation between the prosecution service and the SSR. It is expected that there will be a formal visitation to assess the training.

g. The length of the training

86. The actual length of each part of the educational programme is dependent upon the type of prosecutor concerned and the knowledge and experience that the student brings with him/her, which can be vary considerably.

87. Thus, for full prosecutors, the duration can vary from 18 months to 4 years and will be determined by personal education programme formulated jointly by the student, the SSR and the prosecution service where he or she will work.

88. In the case of assistant-prosecutors there is a standardised programme that lasts for 12 months. The programme for adjunct-prosecutors is more tailor-made and lasts 18 months.

h. The nature of the training

89. The training programme for full prosecutors is organised according to the following principles:

- each candidate is the "owner" of his or her own learning process, is expected to show an active approach as to contents and progress of the training and is offered a stimulating environment in which he/she is able to acquire the required knowledge and skills;
- theory and practice are combined so there is no discrete theoretical part;
- the need to get to know the legal environment and so be aware and informed about the functioning of the organisations linked with the prosecutorial process (the court system, the police and the bar, as well as other penitentiary or forensic institutions); and
- the ability to represent the prosecutor's office in court being a prerequisite.

90. In the initial training programme, there are many mandatory courses on substantial as well as procedural criminal law. During this period, each candidate will spend 1-2 days at the SSR and the remainder of the time at the prosecutor's office where they will later work. However, as they will have assignments relating to the courses taken at the SSR they cannot be regarded as really working at the prosecutor's office concerned.

91. The training provided by the SSR also includes performance and soft-skills.

92. The next period has four different stages: 3-15 months' practical training in the prosecutor's office and in court; 2-6 months at the prosecutor's office before the appeal courts; 6-36 months' practical training at the prosecutor's office, the court and a traineeship outside the judiciary (e.g., a law firm, an international organisation, the Ministry of Justice or a penitentiary or forensic institution); and 3-6 months in depth training at a branch of the prosecutor's office.

93. There are different types of "education-coordinators", one for the duration of the whole education and one for every specific period in which the student is working within a specific working environment. The former, together with the candidate concerned, will identify with him or her his or her training need, both in practice and in theory.

i. The method of assessment

94. Assessment of potential full prosecutors is not by examinations but by each candidate's personal portfolio, in which he or she gathers his work and assignments. These portfolios are seen as giving an insight into what has been learned and the competences that have been acquired. Thus, there are competences formulated that the student must master at the end of the programme. These are translated into end-terms, related to each part/period of the programme. In that way it is made explicit how the student can show that he or she has mastered the different skills required.

95. A team leader is responsible for the formal evaluations during the training and will hold a meeting with the candidate every three months to discuss his or her progress. The assessment at the end of the educational programme is by a manager of the prosecution service where the new prosecutor is going to work. An explicit choice has been made to keep the coordinators/mentors of the students separate from the assessment procedure. However, there is still an on-going debate about this element of the system.

96. A candidate who twice fails the proof of proficiency to represent in court and design his or her training plan for the entire training period has to quit the service.

4. Poland

a. Overview

97. The main route to becoming a public prosecutor is through completion of a two-stage training programme — with the first part being a mixture of theory and practice and the second one being entirely practical — followed by a year as an assessor — essentially a form of probation — before becoming eligible for appointment as a prosecutor. There is a competition for admission to this training programme. However, it is also possible to become a prosecutor by taking an examination after 5 years spent as a prosecutorial assistant.

98. The main scheme is currently being reformed and it is likely that this will lead to the training becoming even more practical but the details have not yet been settled.

b. Pre-requisites for appointment and entry to the training

99. Every graduate who has finished 5 years of study at a law faculty and has obtained the title of master⁷⁸ is considered to be a "lawyer" but such a person cannot, without undergoing further training, perform any specialised tasks or act before court. In order to become a prosecutor, graduates must complete initial training provided in the National School of Judiciary and Public Prosecution (Krajowa Szkoła Sądownictwa i Prokuratury) ("the NSJPP").

100. In addition to have the title of master in law, intending prosecutors must be of Polish nationality, enjoy full civil and civic rights, have impeccable personal morals, have a clean criminal record and have sufficiently good health to perform the tasks of a trainee.

101. At present this initial training is in two-stages, a general training shared with intending judges that last for 12 months, followed by a prosecutorial training programme which lasts 30 months. Trainees receive a scholarship during the general initial training and employed as prosecutorial trainees by prosecutors' offices under employment contracts during the second stage. Those trainees who pass the final exam can be appointed for a position of prosecutor's assessor and as such are able to fulfil most of the prosecutor's duties. After spending at least a year as a prosecutor's assessor they can then be appointed as a prosecutor.

102. The present system will be replaced in the course of 2017 or 2018 by a one-stage prosecutorial training programme that will last for 36 months⁷⁹.

103. Independently of the training dispensed by the National School of Judiciary and Public Prosecution, any law graduate who has worked as a prosecutorial assistant for five years may also take the prosecutor's exam. A list of fixed term prosecutorial posts (assessor) is offered by the Prosecutor General to the examinees who can choose out of the list according to their place in the ranking. Judges — as well as advocates and notaries who have worked in this capacity for three years — can be appointed assessors or prosecutors without any additional exam — if only there is a vacancy in a prosecutor's office.

c. The selection process for admission to the training

104. Candidates for the current initial training at the NSJPP are selected pursuant to a centrally-managed procedure with a two-stage written competition verifying candidates' knowledge of law and their ability to apply it in practice.

105. The first stage is a test of 150 questions which covers mainly subjects on civil, criminal and administrative law, both substantive and procedural matters, as well as in constitutional law. In the second stage candidates are required to write solutions to three case studies on civil, criminal and administrative law. All the candidates' papers are sealed and checked by the independent inquiry. The maximum amount of points for the test is 150 and for the case studies it is 75. The number of points received by each candidate determines his place on the ranking list. In 2016 1998 persons applied to take on the exam, 1710 wrote the first part and 218 were admitted to the training. The number of places on the training is determined each year by the Minister of Justice.

106. There will be a single selection procedure for the new judicial and prosecutorial training programmes. This will be a two-stage contest comprised of a test verifying candidates' knowledge of the various fields of law and a written paper checking the candidates' ability to apply legal reasoning, the principles of interpretation of law and classification of facts. The second stage of the contest will be open to those candidates who have scored at least a minimum number of points in the test, each time specified by the Minister of Justice. The number of such candidates may not be higher than twice the admission limit. The test and written tasks will be prepared by the contest team appointed by the Minister of Justice who then approves the contents of the test and tasks. Following completion of the selection process, tests, and tasks are published on the NSJPP's website. After the contest the board appointed by the Minister of Justice will submit to the NSJPP's Director a ranking list of candidates for the judicial and prosecutorial training programme. The order on the list will depend on a sum of the points scored by candidates in both stages of the contest.

107. Those persons who are on this list will be able to apply to the NSJPP's Director to be admitted to a training programme. A refusal can be appealed against to the Minister of Justice, whose decision is subject to review by an administrative court.

d. The nature of the training institution

108. The NSJPP was established as a legal entity on the basis of the Act of 23 January 2009⁸⁰ and started its activities on 4 March 2009. It is the only central institution responsible for the initial and continuous training of the judiciary and prosecution staff in Poland.

109. The NSJPP operates on the basis of a statute that defines its structure, headquarters, logo, and the mode and manner of implementing training activities. The statute is enacted by the Minister of Justice by way of regulation. The Minister of Justice also monitors compliance of the NSJPP's activities with the legal regulations and the statute.

⁷⁸This can be obtained from a faculty of law in Poland or from a foreign institution of higher education recognised in Poland.

⁷⁹There will be a separate, similar programme for intending judges.

⁸⁰Journal of Laws No. 2012, item 1230.

110. The financial resources for the functioning of the NSJPP and the implementation of its statutory tasks are granted from the part of the budget of the state that is under the supervision of the Minister of Justice. The NSJPP also generates its own income, which is allocated for conducting its activities. Furthermore, it also accomplishes its tasks with the use of funds obtained from the European Union.

e. The trainers

111. In order to become a lecturer for the NSJPP it is necessary to be a judge, prosecutor or an expert on subject in demand and to receive a positive reference from the NSJPP's Programme Board⁸¹ but the Minister of Justice has the right to object any candidate approved by the Board.

112. Those who do the training also include the workplace trainers and mentors – i.e., prosecutors in prosecution offices — in the practical phases. These instruct, train, coach and guide the trainee and provide feedback on their performance.

113. There is no systematic or obligatory programme resembling training of trainers for those who do the training. However, the NSJPP offers a variety of workshops and seminars dedicated to the lecturers and the workplace trainers and mentors concerning teaching methodology and improvement of their didactic skills, which is aimed both at beginners and those with more experience. Issues related to the methodology of teaching are also elaborated in documents prepared for organisational purposes for each meeting (meetings/classes for trainees take 1 week every month). There are also editorials describing ways of conducting workshops with legal trainees and the composition of study materials.

f. The body determining the curriculum

114. The NSJPP's Programme Board — currently appointed by the Minister of Justice — is comprised of 18 members: the Minister of Justice, the General Prosecutor, three members nominated by the National Council of the Judiciary and the National Council of Prosecutors and one member appointed by the First President of the Supreme Court, the President of the Supreme Administrative Court, the President of the Supreme Bar Council, the President of the National Council of Legal Advisers, the President of the National Council of Notaries and the basic organisational units of universities conducting courses in law. A member of the Programme Board can only be a judge, a prosecutor, a person holding the title of professor or a post-doctoral degree in law, or a retired judge or prosecutor. The term of office for members of the Programme Board lasts 4 years.

115. The responsibilities of the Programme Board include drafting the annual schedules of training activities of the NSJPP and adopting curricula for initial legal training.

g. The length of the training

116. As already noted, the current arrangement involves a general initial training lasting 12 months and then further, separate training for judges and prosecutors that lasts for 30 months in both cases.

117. The first initial training programme was launched on 30 November 2009 and, since then, six classes of participants have completed the course. In 2016 a seventh group of trainees started their training and an eighth group is expected to start their training this year.

118. Those who complete the general initial training programme may then work as prosecutor's assistants or seek admission to the specialised prosecutorial training. Their admission to the latter is determined by their ranking in a list determined by the number of points scored by them in all examinations and an arithmetic mean of grades received in apprenticeship programmes. The admission limits for the specialised training is set by the Ministry of Justice but admission to it is determined by the NSJPP's Director. The latter's decision is subject to appeal by the Minister of Justice and subsequent judicial review.

119. Between 2013 and 2015 the first three classes of prosecutorial trainees completed the 30-month prosecutorial training programme and were appointed as assessors of a common organisational unit of the public prosecution by the General Public Prosecutor. Prosecutorial tasks were then delegated to them for a period of up to three years, taking into account all applicable statutory limitations. The assessment period is the last stage that needs to be completed by assessors before they can be appointed prosecutors. On 8 December 2015 the General Public Prosecutor appointed the first two trainees who had completed the prosecutorial training programme as district public prosecutors.

120. As already noted, the present scheme will be replaced by a one-stage prosecutorial training programme that will last for 36 months, whose content and organisation is still to be determined. Thus, it is not yet known what, if any, formal education will need to be undertaken in addition to any time that will be spent in prosecutors' offices, as well as what, if any, role will be played by the NSJPP.

h. The nature of the training

121. During each month of the existing general initial training, the trainees have a one week session of theoretical training (5 days – 40 hours). These classes are concentrated on the analysis of case law and case files, as well as on solving cases. Occasionally, the trainees take part in simulated court proceedings. Only a small percentage of classes are classical lectures.

⁸¹ As to which, see further para. 115 below.

122. Every week of theoretical training is followed by three weeks of practical training in public prosecution units, courts, police units, as well as in tax administration units, penitentiary administration units etc. (the curriculum is unique for every trainee), i.e., learning by doing. In the framework of their practical training, the trainees work — under the tutorship of internship supervisors (i.e. experienced prosecutors, judges etc.) — on the specific issues which were discussed during the previous session of theoretical training (i.e. they draft specific decision or motions).

123. Under the new scheme, prosecutorial trainees will be employed in prosecutors' offices and their apprenticeship programmes will be arranged by regional prosecutors rather than the NSJPP's Director. The reformed programme will mean that prosecutorial trainees will be given the competences enjoyed by prosecutors' assistants. In addition, after 12 months of training prosecutorial trainees will take a test verifying their knowledge and skills with respect to the entire prescribed curriculum covered so far. Having successfully passed this internal test, prosecutorial trainees will then be qualified to appear before district courts as public prosecutors in cases in which the preparatory proceedings have been completed in the form of inquiry.

i. The method of assessment

124. Each theoretical training session begins with a test. However, it must be noted that such a test never takes the form of an essay or an MCQ. As a rule, the trainees have to write a decision or a motion on the basis of an authentic case file. The subject of the test is always related to the previous theoretical training session and to the practical training which followed that session. Before the test, a seminar is held by the members of the examining board who discuss with the trainees any doubt related to the subject of the test. Another seminar conducted by the members of the examining board takes place immediately after the test. In the practical training trainees are assessed by their supervisors.

125. After completing the whole training cycle, the trainees take the final examination (the prosecutor's exam). The questions for the examination are submitted by a commission appointed by the Minister of Justice. However, the examination as such is carried out by another commission which is also appointed by the Minister of Justice. The ranking of graduates is arranged in accordance with the grades received at the final examination (the assessments issued by the internship supervisors, as well as the results of the tests described above can be taken into account on a subsidiary basis).

126. The NSJPP's Programme Board is responsible for assessing both the general initial training and the respective initial training for judges and prosecutors. This takes place at the end of the monthly seminars and workshops and of each training as a whole. The focus of the

assessment is on matters such as the quality of the lecturers and particular sessions and the difficulty of the exam. The NSJPP's Research and Analysis Department evaluates the completed questionnaires and produces a report for the NSJPP's Director and Programme Board. The conclusions of these reports are closely analysed and, where necessary, changes are made to the organisation of specific trainings. Furthermore, the performance of lecturers is carefully assessed by the Programme Board given its responsibility for selecting them.

5. Romania

a. Overview

127. The initial training process for prosecutors and judges in Romania is regulated by legislation⁸². Both professions are considered magistrates and undergo the same initial training at the National Institute of Magistracy ("the NIM") for 2 years. At the end of the first year, trainees elect their future profession: prosecutor or judge. The second year takes place mainly within first instance courts and prosecution offices attached to these courts.

128. The study of law in initial training is mainly practical, preparing future prosecutors and judges for an effective and responsible participation in their profession. The assessment of the knowledge and skills acquired during initial training consists both of formative and final assessments. Successful completion of the NIM graduation examination confers the status of junior prosecutor or judge for one year, following which candidates take a capacity examination. Those who pass are confirmed in office by the Superior Council of Magistracy ("the SCM").

b. Pre-requisites for appointment and entry to the training

129. Candidates seeking to become prosecutors or judges are expected to have a university degree in law. The usual way to enter the magistracy is by passing the NIM entrance examination and becoming "an auditor of justice"⁸³.

130. The other way of entering the magistracy is extraordinary and only takes place where there is a shortage of magistrates. It does not involve the completion of any formal initial training programme.

c. The selection process for admission to the training

131. The judicial recruitment process is provided exclusively by the NIM. Candidate selection is based on a comprehensive process that assesses professional competence and reputation. The professional competency examination is complex and divided into three stages. The first

⁸² Law no. 303/2004 regarding the status of judges and prosecutors. Decision of the Superior Council of Magistracy no. 127/2007 on approving the Regulation on the National Institute of Magistracy. The official site of the Romanian Ministry of Justice (in the Romanian language) is <http://legislatie.just.ro>.

⁸³ Described as the "ordinary way" in the relevant legislation.

stage consists of 100 multiple-choice questions covering the main branches of civil law, civil procedure law, criminal law and criminal procedure law. For each of these subjects there are 25 questions. To pass the first stage of the examination, the candidates must provide a minimum of 70 correct answers. The weight in the final mark average is 75%.

132. The second stage is a test on logical reasoning with a 100 multiple choice questions assessing: a) logical reasoning, b) analytical thinking, and c) capability to understand a complex written test. The examination's weight in the final mark average is 15%. To pass the second stage, an applicant has to provide at least 30 correct answers. The third stage of the examination involves an interview focusing on a) motivation, b) ethics, and c) verbal and non-verbal communication skills. The weight of the interview in the final mark average is 10%.

133. Candidates pass the professional competency examination in decreasing order of the mark averages within the limit of available judicial places and by obtaining a minimum 5/10 in each subject and a general mark average minimum of 70%. The process is governed by principles of:

- transparency,
- equality between the competitors, and
- confidentiality of the tests.

d. The nature of the training institution

134. The NIM is a public institution with legal capacity. It is not part of the national educational system and is not subject to legislation governing certification of higher education institutions. The NIM exclusively provides initial training for future prosecutors and judges. The training is organised and coordinated at the national level. NIM is also responsible for in-service training of prosecutors and judges and the training of trainers. The activities of the NIM are coordinated by the SCM.

135. The NIM is managed by a Director, two Deputy Directors (specialised in entry-level training and in-service training respectively), and by the NIM Scientific Council. The Scientific Council decides all matters concerning the organisation and functioning of the Institute. It is made up of 13 members, all elected for a term of 3 years⁸⁴.

136. The members of the Scientific Council include:

- a judge from the High Court of Cassation and Justice;
- a prosecutor from the prosecutor's office attached to the High Court of Cassation and Justice;
- a judge from the Court of Appeal;

- a prosecutor from the prosecutor's office attached to the Bucharest Court of Appeal;
- 3 professors representing the most prestigious universities in Romania;
- 4 representatives of the NIM training staff; and
- a representative of the auditors of justice (prosecutorial and judicial trainees).

137. The NIM is partly funded from the state budget and partly from funds provided by international programmes or further to collaboration with a number of partners in Romania and abroad. The NIM budget is distinctly specified within the SCM budget; with approximately half of the entire NIM budget dedicated to initial training activities. Most of this budget represents scholarships for auditors of justice.

e. The trainers

138. The NIM believes the quality of the training it provides depends on the trainers it uses. A document regulating the recruitment, assessment and possible termination of the NIM trainers - *the Statute of the NIM Training Staff* – has been adopted by the Scientific Council and subsequently by the SCM. Trainers are recruited separately by the NIM for initial training and for continuous training. The recruitment, training and assessment of trainers have the following specific goals:

- to implement a transparent, objective and flexible procedure to recruit and assess trainers;
- to train the trainers on substantive and procedural law, as well as on the pedagogical techniques;
- to develop the trainers' network so as to cover all training areas;
- and
- increase the number of full-time trainers, especially with serving prosecutors and judges.

139. In the first stage of the appointment procedure, the trainer selection commission evaluates the application file. After this evaluation, the selection commission categorises the application as 'recommendable' or 'not recommendable'. Only the candidates categorised as 'recommendable' are eligible to move onto the next stage.

140. The training staff of the NIM is usually composed of serving judges and prosecutors endorsed by the Scientific Council and seconded on consent. In order to carry out the professional training process, the NIM uses accredited academic staff from graduate law schools, Romanian and foreign experts, and specialist law staff. The candidates for these positions are selected by a board appointed by a decision of the Scientific Council. The board follows a public and transparent procedure, consisting of objective criteria decided upon as a part of trainers' recruiting strategy approved by the SCM.

⁸⁴This term can be renewed except for the judicial trainees, who can only be renewed for 1 year.

141. Following a preliminary examination, the selection board interviews the candidates and applies detailed criteria. The criteria include the ability to communicate and to interact when working with adults; in-depth specialised knowledge; the ability to research various sources, both in the Romanian language and in other commonly-used foreign languages; the ability to plan and organise; knowledge of didactical skills; and the ability to co-operate, contribute and integrate within a team. After the interview, the selection commission classifies the candidates, giving marks from 1 to 10 for each of the criteria indicated above. Only the candidates who get the minimum grade of 8 qualify for the next stage. At the third stage of the selection process, the candidates perform as trainers in a demonstration seminar in front of a group of trainees. This is followed by a further interview of the best candidates. It is a very rigorous process.

142. Once recruited, an end-to-end policy also governs the on-going evaluation of a trainer's performance. All evaluations are recorded on the NIM's central database. The database offers a centralised view of the quality of training provided by the NIM and an individual assessment of each trainer (global, per year or per seminar). The *Statute of the NIM training staff* allows the NIM to have a clear, objective, predictable selection procedure. Rights, obligations and situations when the trainer's position can be terminated are also clearly determined. The database that keeps the evaluation records allows the NIM to use a unitary evaluation process to further improve the quality of the training it offers and the abilities of the trainer. The assessments are the basis of proposals concerning the list of trainers for the following year.

143. The NIM trainers may work full-time (512 conventional hours a year, but no more than 32 conventional hours per month) or part-time (a maximum of 32 conventional hours a month). Trainers are trained every year, based on a programme approved by the SCM. The train-the-trainers programme targets:

- newly-recruited trainers;
- the trainers who express their wish to attend such a programme;
- the trainers the NIM has decided should attend additional training courses, as a consequence of the evaluation they received the previous year.

144. The NIM education sciences expert takes part in the trainers' recruitment, training and assessment. He or she is also responsible for the setting up of a uniform framework to relating to the training of trainers on the pedagogical methods used throughout the training activities.

f. The body determining the curriculum

145. The Pedagogical Council is an advisory body which, at the request of the Scientific Council, submits proposals concerning the NIM's educational policies (mainly regarding curriculum, syllabi and programmes for the Training Department). The members of the Pedagogical Council are:

- the Director and the 2 Deputy Directors of the Institute;
- the coordinators of the training subjects;
- the full professors for each subject-matter; and
- 2 practical training coordinators (one for groups of judges and one for groups of prosecutors)⁸⁵.

g. The length of the training

146. The initial training course is 2 years in length.

h. The nature of the training

147. Initial training has a practical character and does not repeat the knowledge already acquired by the auditors of justice in law universities. The practical character of the initial training is given, on one hand, by the way in which trainees work during their seminars — they are given real "files" to which they are expected to give legal solutions and, on the other hand, by the trainers, who are mainly practitioners (70% are in-service judges and prosecutors).

148. 15% of initial training courses focus on fundamental disciplines, while 85% involve seminars/debates, extracurricular projects and conferences, study visits abroad (to the European Court of Human Rights, the Court of Justice of the European Union, to other European schools or institutions having responsibilities in the field of training), bilateral exchange programmes, internships to various national and international institutions relevant to the profession, academic debates, internal and international competitions and contests for trainees, etc.

149. The first year of initial training is held within the NIM and the second in traineeship within prosecutor's offices or courts of first instance. The first year of study seeks to ensure that future prosecutors and judges learn:

- necessary legal knowledge, without duplicating knowledge already acquired during faculty;
- practical perspectives on the different law institutions;
- the techniques specific to the magistrate profession;
- a logical, structured way of thinking;
- European perspective on law;
- an understanding of the exigencies that result from the direct application of –European Union law and of the jurisprudence of the European Court of Human Rights;
- awareness of the appreciation that they belong to a judicial profession;
- openness to other fields of social life; and
- necessary knowledge of foreign languages and information technology.

⁸⁵ The two representatives of the practical training coordinators are elected annually at a general assembly convened and presided over by the Director of NIM.

150. The NIM's first year of general training is mandatory, but trainees can also follow some facultative modules of training. At the end of their first year, the trainees chose the profession they wish to follow (prosecutor or judge). During their second year, the trainees receive specialisation according to the profession they have chosen. A pragmatic training approach continues in the second year of initial training. It is almost exclusively devoted to practice in courts and the offices of prosecutors. In order to give trainees a complete education, periods of practical work are also organised in other governmental agencies involved in the judiciary or in the dispensation of justice, such as the Constitutional Court, the Court of Audit, penitentiaries and rehabilitation centres for the underage, the Institute of Forensic Medicine, the National Institute of Criminology, and law firms. In addition, tutors are assigned in the second year at the NIM and practical training in each prosecutor/court's office is mentored by two practice coordinators who guide, supervise and assess the performance of the auditors of justice.

151. During initial training, future prosecutors take courses on:

- Comparative Judicial Systems
- Comparative Law
- European Law and Proceedings
- Psychology
- Philosophy and Ethics
- Economics
- History
- Foreign Languages

152. The following general professional skills are taught:

- Communication
- Information technology
- Management
- Forensics
- Methodology of Justice Act
- Administrative Law
- Commercial Law
- Constitutional Law
- Family Law and Justice of Minors
- European Convention of Human Rights
- Intellectual Property Law
- Competition Law
- Environment Law
- Consumption Rights' Legislation
- Fiscal Law
- International Cooperation in Civil and Criminal Matters
- Penology

153. 20% of the topics included in the initial training curriculum are in non-legal disciplines.

i. The method of assessment

154. After completing the 2-year period of initial training courses, the auditors of justice are required to pass a theoretical and practical capacity exam to ascertain whether they have acquired the knowledge necessary to discharge the duties of a prosecutor or judge. The auditors who pass the exam are usually appointed, pursuant to the law, in the profession (judge/prosecutor) they chose after the first year of study within the NIM. The auditors of justice who do not succeed in the graduation examination may sit for it once more, in the next session held by the NIM. If the auditors of justice unjustifiably fail to appear for the examination or in case they do not pass the examination in the second session, they cannot be appointed as judge or prosecutor and shall be obliged to reimburse the scholarship and the tuition expenses.

155. Junior judges and prosecutors are appointed by the SCM, based on their general average marks, obtained by summing up the three average marks from the end of each year of study and from the examination for graduation of the National Institute of Magistracy. Upon appointment the length of probation/traineeship is one year.

156. The NIM graduates are required to serve for a period of 6 years as judges or prosecutors. If a graduate of the NIM is released from office before the expiry 6 years, either at the graduate's initiative or for reasons imputable to the graduate, she/he is obliged to reimburse her/his judicial training scholarship and the tuition expenses paid for her/his training.

157. The Romanian training programmes for prosecutors and judges are held in high regard. At the initiative of the European Parliament, a project to identify good practice in training of judges and prosecutors in Europe was completed by 7 experts from the European Judicial Training Network in 2014⁸⁶. The study was conducted on the basis of a questionnaire distributed widely to all national training institutions in the EU and to three academic institutions.

158. The following training practices submitted by the NIM were commended as good or best practices by the project:

- training needs assessment,
- innovative teaching methods,
- innovative curricula or training plans,
- training tools to improve knowledge of EU law,
- international cooperation; and
- trainee and trainer assessment.

D

A COMPARATIVE ANALYSIS

1. Introduction

159. This section of the Study first identifies both the common features of the initial training to be found in the four country studies and certain aspects of them where the approach can be seen to differ. In the latter regard, it is important to bear in mind that the initial training of public prosecutors ought to reflect the characteristics of the justice system in which they will serve upon graduation and this can, therefore, be a factor behind such differences of approach.
160. The section then reviews various training methods that have been recommended as particularly effective in the EJTN Handbook and which are used in some or all of the four countries that have been studied⁸⁷.

2. The four countries

a. The training body

161. In all four of the countries studied the initial training for intending public prosecutors begins with an element that is undertaken in common with intending judges. Generally this for the whole of the first period of the training but in the case of the Netherlands and Poland it is only for several days each month as much of the time trainees are based in prosecution offices or in other institutions connected with law enforcement.
162. The fact that there is some common training for judges and lawyers does not seem to be of any significance since this covers matters which are relevant for both their functions and in all cases the preponderance of the training for intending public prosecutors is focused on practical aspects of the prosecution role. Moreover, the use of the same institution for the initial training of judges and public prosecutors in some instances can be a reflection of their common status as magistrates in the country concerned and/or a matter of economy of scale.

163. The body generally enjoys a degree of independence from the executive branch of government, whether because it is established under the auspices of professional self-governance bodies or has a discrete legal status and is only indirectly funded by the Ministry of Justice. However, in the case of Poland the body is effectively subordinated to the Ministry of Justice despite being separately established by law.

b. Admission requirements

164. In all four countries intending public prosecutors must have a degree in which law was at least the predominant element. Only in the Netherlands is there an additional requirement that a period of relevant work experience be undertaken before being admitted to the initial training.
165. In all the countries except the Netherlands, the selection process involves an examination. For Poland and Romania this examination focuses on both knowledge of law and its application in a practical context whereas in Bulgaria the examination takes the form of a case study and an oral. In the Netherlands there is no examination but a series of interviews, although there may be a requirement to do a case study. The primary concern is to establish the competences of an applicant and the nature of his or her personality, both being considered of particular importance for fulfilling the prosecutor's role.

c. Length of the training

166. The duration of the initial training varies in the four countries. However, there is some similarity between that required in Bulgaria, Poland and Romania in that there is first a period spent in the training institution that ranges from 9 months to a year and then a practical stage that lasts between a year and two and a half years.

167. The approach in the Netherlands is quite different in that the period varies according to the background of the person concerned and the type of public prosecutor he or she seeks to become. Even for those intending to become full public prosecutors the duration can vary between 18 months and 4 years, reflecting an approach to training that is highly individualised.

d. The trainers

168. The trainers in all four countries are predominantly drawn from judges and public prosecutors but the training institutions also all draw upon university teachers in law and other disciplines, as well as others with relevant skills.
169. Those trainers who provide courses in the training body vary from those who work there full-time to those who do so part-time or just occasionally. However, those providing the training in the practical stage will be public prosecutors and other law enforcement professionals.

⁸⁷ For a review of the approach training in all European Union Member States, see *Implementation of the Pilot Project – European Judicial Training – Lot 1 "Study on Best Practices in training of judges and prosecutors"*, April 2014

170. In Bulgaria and Romania those who provide courses in the training body are required to undertake training in adult education techniques. Although this is not obligatory in the Netherlands and Poland, such training for trainers is available and is encouraged. Moreover, in the latter two countries this training is made available not only to those who provide courses in the training body but also to those who undertake training in prosecution offices. The public prosecutors in Bulgaria who supervise junior prosecutors will also be ones with good pedagogical skills and have received extensive training on how to perform this role.

171. Romania is notable for having arrangements to undertake an on-going evaluation of those who do the training.

e. The training and its assessment

172. In all four countries the training provided in the training body involves a combination of providing knowledge and developing practical skills, with the emphasis always being on blending theory with practice. Only in Romania does there seem to be some effort made to cover substantive areas of law but this is still combined with other courses designed to facilitate working as a public prosecutor.

173. In all four countries the courses taken in the training body are mandatory but in the Netherlands and Poland the more practical part of the first stage of the training allows for an individualised programme to be devised by trainees. In both the latter countries, some of the first stage is likely to be spent in bodies other than in prosecution offices and in the Netherlands this will also be the case for the second, exclusively, practical, stage.

174. The detailed content of the training programme in Bulgaria, Poland and Romania is set or recommended by a Programme Board or Pedagogical Council within the training body. In the case of Bulgaria and Poland these bodies are not restricted to public prosecutors but also contain prominent specialists of legal theory and practice (Bulgaria) and professors (Poland).

175. The approach to assessment varies considerably in the four countries. Thus, in Bulgaria the only assessment comes after the 9-month course and is by examination whereas in Poland there is continuous testing based on case files during the first stage of the training and a written examination at the end of the whole training cycle. However, in Romania there is only a theoretical and practical capacity examination at the end of the two-year programme and in the Netherlands there are no examinations but an assessment based on the trainee's portfolio based on work and assignments over the course of the entire training.

f. Evaluation of the training

176. There is no provision for formal outside evaluation of the training programmes in the four countries. In Bulgaria, Poland and Romania the training programme is kept under review and updated by the Programme Board or Pedagogical Council whereas in the Netherlands it is based on cooperation between the prosecution service and the training body, relying essentially on feedback. However, a more formal visitation in the case of the Netherlands is envisaged at some point.

3. Effective training methods

a. Introduction

177. A summary of the most recent findings on best European practice in training methodology can be found in the EJTN Handbook and certain points made in it are highlighted here.

178. The EJTN Handbook notes that in the past, prosecutorial (as well as judicial) training has tended to use the same teaching techniques as those commonly employed in universities. These techniques involve a professor or trainer lecturing from the front of the class and students doing their best to record what he or she said. The learning success of those taught in this way was then evaluated by a written examination, which usually indicated more about the trainee's facility in writing examinations than it did about the trainee's mastery of the programme's subject matter.

179. However, the EJTN Handbook stresses that rather than confronting passive and reactive trainee prosecutors with a substantial amount of theoretical knowledge, initial training should facilitate the professional development of future prosecutors in a hands-on, practical way by demonstrating the relevance of the issues taught. It is suggested that such an approach will identify for adult learners the need to sustainably improve their professional capabilities, skills and knowledge. In addition, it is considered that this should also help them realise that this should be understood in a broad sense that goes well beyond legal and judicial questions.

180. Amongst the practices considered to embody such a participant-centred approach were the use of group work, tutor/mentoring, e-learning and blended learning, externships and certain approaches to assessment.

b. Group work

181. Participant centred training makes extensive use of group work which is entirely practice orientated and interactive in nature. As a way of familiarising trainees with the handling of case files, role-playing, mock trials and case studies based on "real" cases are seen as particularly appropriate. In addition, it is considered beneficial to require the trainees to prepare short presentations for their peers, especially on chosen procedural topics.

182. As the active involvement in the process of each and every learning group member is the ideal, the size of the group will have a significant impact on the success of these teaching techniques. Research has suggested that group learning in initial training can only be truly effective if the group is small, with a maximum 20 trainees but a preference for groups of 12 to 18 trainees.

183. Furthermore, as the goal of a stimulating learning environment should primarily be for trainees to focus their attention and energy on learning and not on 'self-maintenance', it will be important for them to feel free and indeed encouraged to indicate what they find difficult and what they want to improve. As a result the person who supervises trainees should not be the one who is (continually) assessing them⁸⁸.

c. Tutor/Mentoring

184. It is recognised that a future prosecutor going through initial training will be particularly inclined to adopt best practices from seasoned practitioners, with the internalizing of values and skills that otherwise would not be learned from books. However, in order for such individual internships to prove successful for both the practice trainer and the trainee, it is considered necessary for several requirements to be satisfied:

- only those prosecutors who gain a personal benefit from intense professional contact with a young and necessarily inexperienced colleague should be selected since not every experienced practitioner is also a good tutor or mentor;
- the tutor or mentor must have the didactical skills to motivate and encourage the trainee, (i.e., to ensure he or she actively works on files without fearing personal, negative, demoralising feedback, even if mistakes occur, as they inevitably will);
- a prosecutor already struggling to handle his or her "normal" workload is not a suitable tutor or mentor. It needs to be borne in mind that guiding the trainee over several weeks, or even several months, demands significant investment in time and in reflection. Furthermore, remuneration for tutoring or mentoring should never be the main incentive for providing this kind of training; and
- a good tutor or mentor in initial training should be able to objectively assess the performance of the trainee in a written report at the end of the internship.

d. E-learning and blended learning

185. It is considered that well-designed e-learning can be a useful methodological tool in initial training but it is also recognised that web-based training can never replace residential learning in groups and peer-to-peer initial training. Nonetheless, good introductory e-learning modules may result in a more uniform standard within a group of trainees before the actual group training starts. These points to the need for blended learning, with web-based learning and residential learning being combined.

186. Certainly, basic information on procedural rules, the proper handling of a case file and conduct rules can be effectively delivered by e-learning tools where the programme makes proper use of the advantages of modern technological content management systems. Tests and exercises (multiple choice and track and drop, etc.) with self-assessment mechanisms may usefully round out the programme. Certificates awarded on having successfully taken one stage of the e-learning programme can be made a requirement for the trainee's continuing with the entire training curriculum.

187. It should also be noted that all the institutions from the four countries are members of the Council of Europe's HELP Network. HELP is the European Programme for Human Rights Education for Legal Professionals, which exists to support the Council of Europe member States in implementing the European Convention on Human Rights and other human rights treaties at the national level⁸⁹. HELP provides high-quality and tailor-made training tools to all European legal professionals. These are made available through its e-learning platform that has both distance learning courses and self-learning resources in the national languages of member States. These courses and resources are designed according to a methodology that takes account of the heavy time pressure to which all legal professionals are subject.

188. The Network is the only peer-to-peer pan-European human rights training network and the four institutions covered by the Study, as well as representatives from national training institutions for judges and prosecutors and bar associations in the member States, are not only able to make use of the resources on the platform but also to contribute to the development of those to be added to it.

e. Externships

189. In order to be effective, it is important that a prosecutor not only knows the organisation in which he or she will work but also the legal environment and the way of working of other practitioners who cooperate with the prosecutorial authorities. The EJTN Handbook thus suggests that it would be a valuable initiative if the initial training included mandatory training periods at external institutions, such as courts, prisons and the offices of private lawyers and the legal departments of private enterprises. Such externships might even extend to spending time in other legal systems⁹⁰.

f. Approaches to assessment

190. The assessment of trainees is of vital importance. The aim should be to exclude persons who are not only unprepared and insensitive to the need to continuously update their disciplinary, procedural and experiential knowledge but also those who are temperamentally and ethically unfit to perform delicate tasks that the state confers upon public prosecutors.
191. In order to measure learning in initial training programmes, it is first necessary to identify what will be evaluated, namely, knowledge, skills and attitudes. Furthermore, these ought to be measured both before and after training.
192. All assessment should reflect the participant-centred learning activities and should be both continuous and summative.
193. Continuous assessment examines participants continuously over most of the duration of their education. In other words, one will be assessed right through the learning process and not only after the learning process. Continuous assessment can track the improvement of the learner, and more support and guidance can be given. The learner will thus have more opportunities to improve.
194. Summative assessment takes place after the learning has been completed and provides information that sums up the learning process. No more formal learning is taking place at this stage, other than incidental learning that might take place through completion of assignments. Rubrics, often developed around a set of standards or expectations, can be used for summative assessment. Rubrics can be given to the intending public prosecutors before they begin working on a particular project so they know what is expected of them for each criterion. Grades are an outcome of the summative assessment⁹¹.
195. It should also be borne in mind that peer and self-assessment can foster a number of skills, such as reflection, critical thinking and self-awareness — as well as giving trainees an insight into the assessment process.



SOME CONCLUDING OBSERVATIONS FOR THE REFORM OF INITIAL TRAINING IN UKRAINE

196. The formal requirements for becoming a public prosecutor in the Law of Ukraine "On the Public Prosecutor's Office" can be seen as at least consistent with those found in European and international standards.
197. Thus, candidates for appointment must have the higher legal education degree and at least two-year work experience in the field of law⁹². Furthermore, selection is to be competition-based pursuant to a proficiency test and is subject to judicial control, although there is no provision for an interview⁹³. In addition, there is a requirement to undergo a year's training at the National Academy of Public Prosecutors of Ukraine "to obtain knowledge and practical skills of a public prosecutor as well as study legal drafting and the rules of prosecutorial ethics", at the end of which there is "an examination consisting of an anonymous testing and practical assignment"⁹⁴.
198. However, no further details are specified about the content of this initial training since the curriculum, the training and methods of its assessment are left to be approved by the Qualifications and Disciplinary Commission of Public Prosecutors⁹⁵.
199. Nonetheless, the existing legal framework generally provides a satisfactory basis on which to ensure that the initial training provided to intending public prosecutors fulfils European and international standards and does so in a way that takes account of the approach and practices followed in other Council of Europe member States, such as those discussed in the country studies and in the EJTN Handbook.

⁹¹ Article 27. For the purposes of this provision a higher legal education degree is "a degree obtained in Ukraine (or in the former USSR before December 1, 1991) at the education qualification level of the Specialist or Master, as well as higher education degree in the field of law at the respective education qualification level obtained abroad and recognised in Ukraine in the manner prescribed by law" and work experience in the field of law is "work experience in the field after obtaining a Specialist's or Master's degree in Law".

⁹² Articles 28-31. Pursuant to Article 31.1 "The proficiency test is administered to verify the level of theoretical knowledge in the field of law, European standards of human rights, proficiency in the state language, analytical and practical skills of candidates and consists of anonymous tests and practical exercises".

⁹³ Article 33.1.

⁹⁴ Article 33.3.

200. In the first place, the work experience requirement, although not one seen in all countries, clearly has the potential to ensure that candidates not only have some maturity but also have a greater appreciation of the operation of the legal system and its impact on individuals and enterprises. This advantage would be lost if this requirement were construed to mean only experience in the criminal justice system, particularly if this was derived from work in law enforcement since this would probably result in candidates having too narrow a vision of the prosecution role.
201. *A wide construction should thus be given to "work experience", with encouragement given to applicants who have not worked in the criminal justice system or who have done so in connection with person who are accused or suspects.*
202. Secondly, the proficiency test provides an opportunity to establish not only the potential suitability of applicants to become public prosecutors but also to establish the extent to which they already meet the knowledge, skills and outlook required for this role and thereby allow their progress during the training to be measured.
203. *The proficiency test should thus be used not just to determine admission to the training but as a tool for measuring progress during the training programme.*
204. Thirdly, the use of interviews to determine a person's suitability to become a public prosecutor has been seen in some of the country studies and certainly it can be a better way of judging character than a formal test.
205. *Consideration should thus be given to the use of interviews at the admission stage and, if necessary, seeking legislative reform to permit this.*
206. Fourthly, the length of training required is relatively short by comparison with that seen in some of the country studies. It is longer than that in Bulgaria but, in substance, the junior prosecutor appointment involves a continuation of the efforts to develop the capacities of those appointed to that position and is thus comparable to the longer practical stages required elsewhere.
207. *Consideration should thus be given to emulating the Bulgarian approach after the completion of the training at the National Academy of Prosecutors of Ukraine and it should play a role in supporting the more senior public prosecutors who supervise the work of the new appointees.*

208. Fifthly, although public prosecutors may form the core of those who do the training, there is a need to ensure that trainees are also exposed to a broader perspective of thinking and experience relevant to the criminal justice system. Moreover, all trainers — including those based in prosecution offices — need to have an appropriate formation in adult education techniques and to be willing and able to act in this capacity. Furthermore, the effectiveness of individual trainers needs to be kept under review.
209. *Trainees should thus be trained by trainers from a wide range of relevant backgrounds and all such trainers should have the necessary skills, time and commitment for this role, with their effectiveness being regularly evaluated.*
210. Sixthly, the training should focus primarily on inculcating the values, outlook and skills required to undertake the role of a public prosecutor, including a sound appreciation of all the responsibilities that this role entails.
211. *The emphasis should thus be on training in a practical context, both through the use of a participatory methodology in the elements taken at the National Academy of Prosecutors of Ukraine itself and through practical stages in prosecution offices and other relevant institutions.*
212. Seventhly, although there is a need for some summative assessment at the end of the training programme, the development of trainees will also benefit from continuous assessment so that they can appreciate what they have achieved and what needs strengthening. The development of trainees is also likely to be assisted by the use of tutor/mentoring over the course of the programme, providing advice that is objective but not judgmental.
213. *The assessment methods used should thus be both continuous and summative but those acting as tutors/mentors should not also act as assessors.*
214. Finally, it is important that the training programme does not become inward-looking and develop a narrow prosecutorial focus. This risk can be mitigated by involving persons from outside the profession in the development and implementation of the curriculum for the programme, as well as by regular external evaluation of the programme's effectiveness in producing well-qualified appointees to the prosecution service.
215. *There should thus be provision for the inclusion of persons other than public prosecutors with relevant experience on a body within the National Academy of Prosecutors of Ukraine that is responsible for curriculum development and implementation. In addition, the programme should be subject to an external evaluation that is both regular and searching.*

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The Council of Europe is the continent's leading human rights organisation. It comprises 47 member states, 28 of which are members of the European Union. All Council of Europe member states have signed up to the European Convention on Human Rights, a treaty designed to protect human rights, democracy and the rule of law. The European Court of Human Rights oversees the implementation of the Convention in the member states.

