COMPARATIVE STUDY ON INITIAL TRAINING FOR PUBLIC PROSECUTORS

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

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The opinions expressed in this work are the responsibility of the authors and do not necessarily reflect the official policy of the Council of Europe.

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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.

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.

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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 Council on the role of public prosecution in the criminal justice system, various opinions and a study of the Consultative Council of European Prosecutors (the CCPE) and the European Guidelines on ethics and conduct for public prosecutors adopted by the Conference of Prosecutors General of Europe, and the UN Guidelines on the Role of Prosecutors of 1990, the Standards of professional responsibility and statement of the essential duties and rights of prosecutors adopted by the International Association of Prosecutors in 1999, as well as the guide produced in 2014 by the latter association together with the UN Office on Drugs and Crime on the Status of Prosecutors and in the Guidelines for Initial Training of Judges and Prosecutors prepared pursuant to a Leonardo da Vinci Partnership Project ("the da Vinci Guidelines")5.

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.

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4 23 April 1990 ("the VSP Standards"); those were endorsed by the United Nations Conference on Crime Prevention and Criminal Justice (Havana, 27 August to 7 September 1990 ("the United Nations Guidelines").

5 16 October 2000 at the 724th meeting of the Ministers’ Deputies ("Recommendation Rec (2000)19").
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 who demonstrate a high level of integrity and professional responsibility. They are expected to be able to act autonomously and to preserve professional confidentiality. They are also expected to abide by the rules of good conduct and to respect the rights of the defense. They are expected to be aware of the ethical duties of their office, of the constitutional and legal framework; adaptability and flexibility; human attitude; ability to listen; capacity to formalise and explain legal grounds of a decision and to communicate clearly; awareness of local, cultural and social values; respect for the mental and physical health of people; and the ability to maintain a balance between their professional duties and their personal life.

12. Furthermore, they must be able to act in light of the interests of justice, and as such should respect and protect human dignity and uphold human rights, thus contributing to ensuring 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. [\ldots] Licensing, Regulation, and Accreditation of Prosecutors, 2020, para. 11.}

13. 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 (Natunen v. Finland, no. 13470/02, 23 October 2008, [GC], no. 14277/04, 12 February 2008, at para. 70). Moreover, it observed in Natunen v. Finland, case no. 2984/04 and 14277/04, 2 March 2008, that “the independence of the public prosecutor is guaranteed by the fact that the public prosecutor has to hear the case, present it to the court, and act independently”. In addition to the above, the national public prosecution authority or the public prosecutor should have the power to ensure an effective exchange of information in a due manner among themselves, as well as between the public prosecution authority, the courts, the police, the public authorities and other parties (as far as it is possible within the limits of the foreseeable possibilities of mutual advantage). The purpose of such a procedure is to ensure 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 indispensable for ensuring that they can carry out their function without interference, and for ensuring that they can do so in a manner that is fair and just. It is essential for the independence of the public prosecution to be guaranteed by law, so that it cannot be overridden by any other authority. The independence of the public prosecution is also important for ensuring that it can carry out its function without interference, and for ensuring that it can do so in a manner that is fair and just. It is essential for the independence of the public prosecution to be guaranteed by law, so that it cannot be overridden by any other authority. The independence of the public prosecution is also important for ensuring that it can carry out its function without interference, and for ensuring that it can do so in a manner that is fair and just. It is essential for the independence of the public prosecution to be guaranteed by law, so that it cannot be overridden by any other authority. The independence of the public prosecution is also important for ensuring that it can carry out its function without interference, and for ensuring that it can do so in a manner that is fair and just. It is essential for the independence of the public prosecution to be guaranteed by law, so that it cannot be overridden by any other authority. The independence of the public prosecution is also important for ensuring that it can carry out its function without interference, and for ensuring that it can do so in a manner that is fair and just. It is essential for the independence of the public prosecution to be guaranteed by law, so that it cannot be overridden by any other authority.
17. There is recognition that the different ways in which prosecution systems are organised can lead to diverse approaches to the recruitment of public prosecutors.

18. However, it is considered that the process should lead to the recruitment of persons who are properly qualified and that all selection decisions should be based on objective criteria that are formally established and applied in a process that is transparent and reasoned.

19. The objective criteria should include professional qualifications, ability or competence, performance and experience.

20. Moreover, such criteria should not be discriminatory.

21. The selection process should usually entail a competitive examination and an interview.

22. Furthermore, it is considered that the selection process should not be handled exclusively within the public prosecution service and that the selection process should be subject to judicial control.

2.5. Ensuring that the selection process leads to the appointment of properly qualified persons

22. The need for initial training is only alluded to in the Bordeau Declaration but it is recognised in more other standards.

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 rights, professional identity and an understanding of the context in which they work, as well as some more practical matters relevant to the work of public prosecutors.

25. In addition, the topics which have been seen as necessary for training to cover include: information technology; the media; management; some specialisation (notably as regards juvenile justice); new challenges; social sciences; foreign languages; and some focus on aspects of international cooperation, even if that might generally be more a matter for further training after appointment.

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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”50.

27. 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 form51.

28. Furthermore, there is seen to be a need for expertise in the formulation of the planning of the training that is to be undertaken52.

29. The Venice Commission envisages the body responsible for training being “independent from other state bodies”53. 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 Declaration54. 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 one55.

30. It is considered important that practitioners should be involved in the training but that it should not be restricted to them56. However, only the da Vinci Guidelines emphasise the need for all trainers — whether full-time, part-time or occasional — to be trained57.

31. However, there is also recognition that there can be diverse approaches to training58 and that joint training with judges can be beneficial59.

32. Furthermore, there has been some emphasis on the need for the effectiveness of any training to be evaluated60, as well as on the need for those being trained to be paid61.

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.
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

2.1 Overview

Bulgaria’s latest Judicial Reform Strategy 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 motivation. Bulgaria has comprehensive legislation — Judiciary System Act (“the JSA”) — regulating all aspects of its judicial system, including the initial training programme for prosecutors and judges. The first step for those seeking to become prosecutors through an initial training process is to achieve success in an annual, centralised competition. 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.

2.2 Pre-requisites for appointment and entry to the training

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 magistrates.

c. The selection process for admission to the training

Applicants participate in annual centralised competition. The Supreme Judicial Council (“the SJC”), on the advice of the Prosecutor General, determines the available positions for junior prosecutors for each upcoming year. 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.

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 commissions 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.

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.

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.

The commission on proposals and the performance appraisals of judges, prosecutors, and investigating magistrates. The name 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)\(^2\). 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 NJ 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 examination\(^2\). 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 EJTN\(^2\).

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.
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 noted23 — 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 reviews24. 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 methods25. 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 judiciary26.

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.

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23 See para. 47 above.
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 master 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 months.

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 2009 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.
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 Board 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.

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.
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 always 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 of and 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 legislation. 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”.

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
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 years.

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.

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

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.

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.

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.

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).

The nature of the training

The initial training course is 2 years in length.

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).

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.

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.

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

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 under-age, 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 2014.86 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.

86 Implementation of the Pilot Project – European Judicial Training - Lot 1 “Study on Best Practices in training of judges and prosecutors” April 2014. With the exception of resolutions relating to i – iv above, management board resolutions...
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 studied.

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.

b. Admission requirements

164. In all 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.

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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.

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 them.

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 level. 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 systems.
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 assessment.

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.

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 law. 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 interview. 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”.

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 Prosecutors.

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.
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.

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.

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.

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.

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.

Consideration should thus be given to the use of interviews at the admission stage and, if necessary, seeking legislative reform to permit this.

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.

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.

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.

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.

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.

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.

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.

The assessment methods used should thus be both continuous and summative but those acting as tutors/mentors should not also act as assessors.

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.

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.
Continued support to the criminal justice reform in Ukraine

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