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COMPARATIVE STUDY ON THE WORKLOAD OF PUBLIC PROSECUTORS IN SELECTED COUNCIL OF EUROPE MEMBER STATES

prepared on the basis of expertise by

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ABBREVIATIONS

art.	article
GPP	general public prosecutor
GPPO	general public prosecutor's office
PP	public prosecutor
PPL	public prosecution law
SPOA	Act on the State Prosecution Office
OSPG	Office of the State prosecutor General
SPO	State prosecutors office
SSPO	Specialized State prosecutors office
PG	Prosecutor General
SP	COUNCIL State Prosecutorial Council
ORDER	Order on the number of state prosecutors
SP	Rules State prosecutorial Rules
CPA	Criminal procedure act
DPP	Director of Public Prosecutions
CPS	the Crown Prosecution Service
SFO	the Serious Fraud Office
COPFSS	the Crown Office and Procurator Fiscal Service of Scotland
PPSNI	the Public Prosecution Service Northern Ireland

EXECUTIVE SUMMARY

1. Estimating staffing requirements in the justice sector, and more precisely within the public prosecution service, is not as easy as it might appear. As has been underlined in several research studies “the more uncomplicated methods—using the number of cases handled as a basis, for example—have proven to be highly inaccurate.”¹ For a more precise needs assessment for estimating the staffing needs of any justice sector agency, it is not enough to take into account quantitative data on the number of courts, the total caseload, or the diverse complexity of the cases handled, as for the design of an adequate staffing policy, it has become increasingly relevant to calculate the amount of time the handling of each case actually requires. Such estimates need to be done for each justice sector staff member, as their involvement in each case and the tasks they develop vary greatly. In most methods for estimating the time, even the more accurate, there are also flaws, as most of them do not take into account the time required for non-case related work—that is, the actual workload involved.
2. In increasingly litigious societies with always-restricted budgets, the relevance of the efficiency in the justice sector has become a major challenge. While the focus has been put mainly on studying the caseload and also the workload of

¹ See e.g. the World Bank report “Estimating Staffing Needs in the Justice Sector”, by H. Gramckow, 2011 and the research studies cited there.

judges and courts, and their requirements has drawn wide attention by policy-makers as well as in research studies, until now there has not been a similar interest with regard to the staffing needs and the estimate of workload of public prosecutors separately.

3. The aim of this study is to provide a comparative overview on different national systems for measuring the workload of public prosecutors to provide relevant information and analysis to support the Ukrainian authorities in aligning the public prosecution service with the standards applied in other European democracies in the context of staffing, management, efficient workload distribution, budgetary decisions as well as defining performance indicators and thus also for monitoring performance.
4. The analysis of the information provided in the six national reports is reflected in the annexed comparative table.² All the countries studied have fairly good statistics on the caseload, with separated figures for cases dealt with in the criminal justice system. However, these statistics are mainly aimed at reflecting the clearance rate and the possible delays, based on the total incoming criminal cases (usually upon reported crimes) and cases disposed per year.
5. Statistics do not usually show how many of those cases were disposed after a full-fledged trial or closed without indictment, because the case was dropped for lack of sufficient evidence. The number of cases that will be finally prosecuted will also depend on the structure and principles of the criminal prosecution. If a legal system follows the principle of mandatory prosecution (Spain, Poland, Slovenia and Spain) or discretionary prosecution (Ireland and United Kingdom), this will impact the total number of cases that are effectively investigated, indicted and finally tried. All these details are rarely reflected (Germany, for example, does provide those details).
6. Out of the statistics on the bulk caseload it can be identified how many cases each public prosecutor is on average handling per year (caseload calculation per PP). For example, Poland and Slovenia, offer a similar figure: 200 cases per PP/year. But such calculation provides a ratio that does not aid in assessing the staffing needs and its usefulness for a comparative analysis is also limited.
7. The ratio of PPs per 100.000 inhabitants vary greatly in the countries studied: Germany: 9.5; Ireland: 2.9; Poland: 17.8; Slovenia: 10; Spain: 4.9; England and Wales: 3.7. This ratio does not allow to draw conclusions on the staffing needs or the shortage of workforce in the prosecution service, as has been mentioned above.
8. Save for Germany, none of the countries studied have a fixed ratio for calculating the number of public prosecutors that are needed to face the caseload in a country (thus, showing how many PPs are needed to handle the number of cases). Germany introduced such a system, developed by a private consultancy company in 2005. The so called PEBB\$Y system for calculating personnel requirements is based on the formula for the average processing time, calculated in minutes, for different types of proceedings. Such calculations were obtained after the empirical data collected in representative PP units during six months, which results in the “base number”. The system applies following formula: quantity of

² See Annex 1.

cases x base number ÷ by annual working time (in minutes) = personnel requirements. The standardized value of 100.000 minutes is assumed as the annual working time in minutes for a PP after calculating the total time / per year as average each PP works.

9. The rest of the countries do not have such a pre-established ratio based on such a sophisticated time calculation system. Poland and Slovenia do not inform on a business-intelligence based management system for calculating the staffing needs of the prosecution. The UK uses a system of calculating the average time needed for each of the tasks carried out by the PPs, based on daily or monthly timesheets and the complexity criteria (weighted-case system). Spain has implemented a quite sophisticated system based on monthly-performed tasks per PP and a business intelligence tools, that scores with a certain amount of points each of those tasks (depending on a number of variables, but not exact time measurement). This sophisticated scoring system takes already into account the complexity of the cases/tasks.
10. All of the systems have criteria for identifying complex cases. These criteria, if they are not used for implementing a case-weighted system for estimating the staffing needs, at least it is used for distributing the work among the PPs in each PP unit. Germany does not have separate specific complexity criteria for measuring the time needed and thus the workload, as the PEBB\$Y system is more sophisticated as it is based on the measurement of the time employed for each task (which could be defined as an improved Delphi system). The “complexity criteria” applied in all of the countries are very similar: number of defendants/victims; evidential difficulties; complex legal issues; international elements.
11. Ireland is here the outlier, due to its unique system of handling criminal cases, where a different public prosecutor (or solicitor or barrister), intervenes in the different stages of a criminal case. Thus, the workload calculations that are used in other systems where the same PP handles the case from the beginning until tried, is not applicable here.
12. None of the countries studied sets a fixed number of cases that have to be disposed or handled by each PP per year. The performance indicators are mainly used for detecting deviations from the average. It works as a monitoring tool, in some countries also linked to economic incentives that can lead to inspection or disciplinary measures, when the deviation is significant and not justified.
13. As to the distribution of cases/workload within each PP unit, most countries refer to pre-established rules that ensure a fair and equal distribution of workload. Such rules although for internal management are usually public. Poland seems to be the only country where the allocation of cases is decided by the managing or superior PP, but there is no mentioning of pre-established rules.
14. The decisions on the staffing, as it could not be otherwise, are subject to the budgetary constraints, but in most cases the Ministry of Justice or the Director of the prosecution service make a proposal for increasing the workforce. The PEBB\$Y system in Germany allows for a clear identification of the needs for additional staff or to cover the vacancies, and thus seems to provide clear arguments for the Ministry of Justice of the relevant Land to make a proposal in the budget negotiations. However, in practice, as in all other countries, the final

number of PPs employed, depends on the financial possibilities of each of the countries (and the policy priorities).

15. Estimates on workload of public prosecutors are not in place in every country, but are being increasingly valued and implemented. Public prosecutions, albeit not being a company where managerial criteria should be applied, are more and more aware, that in order to provide the quality and timely service for society, they need to use business-management intelligence tools to calculate their workload and their workforce.
16. The six countries studied present different solutions. Out of them, the time-calculation system developed in **Germany** seems to be the most sophisticated in this regard. Albeit being criticised – for it is based on the empirical data collected by “perfectly” working units – it provides a solid basis to take decisions on the workload and thus the staffing needs.
17. The pragmatic approach of the **Spanish system**, not based on timesheets, but on tasks performed, allocating also a “weight” or score to each of the tasks, has proved to be useful, if not for calculating the estimate workload for PP in terms of time, but for a comparative assessment of the workload. The advantage of this system is that the complexity assessment is already calculated by the software, and it does not need the calculation of time spent in every case/task by each PP, but only the ticking the tasks carried out. The system then calculates the total “score” for the PP and the PP unit, and the support office makes a decision on the needs on a comparative assessment with other PPs or units.
18. Finally, the timesheet system coupled with the complexity criteria used in the **UK**, provides also a good overview of the average time employed by each PP in each task/case, but it requires the continuous update of the timesheets and the reliable assessment of the complexity criteria done by each PP when handling a case. This weighted-case system is useful, if the timesheets are correctly filled.

INTRODUCTION

19. Workload in the context of court management means the amount of a particular type of work which a qualified person can handle within a determined time. Yet only when working according to a defined method and quality standards, following a predetermined process within a specific organisational framework and when a weighted caseload system is used, it is possible to transform the court caseload into the workload of the staff.³
20. There is a considerable variety in methods of evaluating caseloads of judges and prosecutors and in the use of weighted caseloads for assessing the needs of the justice system. Weighted caseload systems are the most common and perhaps the

³ A. Lienhard and D. Kettiger, “Research on the caseload management of courts: methodological questions”, *Utrecht Law Review*, Volume 7, Issue 1 (January) 2011, pp. 63-73.

best method used by court management systems to assess the judicial workload and resource requirements.⁴

21. Case-weighting approach for calculating the workload, albeit its frequent use, takes us to the question on how much time a prosecutor has to devote to a case. The answer will depend on many factors, as the staff support available, ease of access to information, information technology (IT) support, and a range of other factors, including the complexity of the case. The individual prosecutor may be able to process a large number of simple or repetitive cases in one single day, while another, who is handling a very complex case that involves multiple offenders and victims, cross-border issues, and complicated legal matters, may need to focus on just one case for days or even months.
22. Understanding the impact of different workload on staff allocation and process efficiency is essential, but this still does not consider another important element: the fact that many tasks performed by prosecutors, judges, and other justice system personnel are not directly related to a case.
23. A certain amount of non-case-related administrative work, preparatory tasks that may or may not lead to a court case (for example, prosecutorial advice to the police department) and other activities that are not related to individual cases (such as general interdepartmental communications about processing approaches, policies, and so on), or time spent away from the office on non-case-related business (for example, in training sessions) have always been part of justice sector work.⁵
24. In identifying the workload of the public prosecutor's office and the individual public prosecutors, the problem is that there are no separate international indices regarding the performance of prosecution systems, and most of the workload measurement is either referred to the court system – taking into account all personnel, judicial and non-judicial, or to the judges and not specifically to the work of the public prosecutors.⁶
25. For example, according to the CEPEJ Evaluation report for Ukraine for the cycle 2016-2018, the budgetary information refers to functioning courts, not segregating what corresponds to costs/workload of public prosecutors.⁷ As to performance indicators, there were no performance targets defined at the level of the court. Quality and performance indicators applied to courts are the following: number of incoming cases; ^[1]_[SEP]length of proceedings (timeframes); number of closed cases; number of pending cases and backlogs; productivity of judges and court staff.⁸_[SEP] In addition, the judges are subject to quantitative performance indicators.

⁴ St. Stenz, 'Improving Weighted Caseload Studies in Limited Jurisdiction Courts', 1988-1989 *The Justice System Journal* 13, no. 3, p. 379; V.E. Flango et al., *Assessing the Need for Judges and Court Support Staff*, National Center for state Courts, 1996, p. 14.

⁵ World Bank report "Estimating Staffing Needs in the Justice Sector", by H. Gramckow, 2011, p. 15.

⁶ See the CEPEJ Evaluation report of the judicial systems (2016-2018 cycle) for Ukraine, published on 29 august 2018, accessible at <https://rm.coe.int/ukraine/16808d02b1>

⁷ See para. 1.1.2.

⁸ See the replies to questions 77 and 78.

26. Some of the relevant criteria and indicators concerning the judiciary and rule of law in general comprise an evaluation of relevant specific factors, including also the functioning of the public prosecution service. But as will be seen in the national reports, this is not always used or the calculation system differs greatly as to factors taken into account and methods for calculating the time needed for the handling of each case.
27. The comparative study shall provide an overview on the existing national laws, secondary and regulatory framework as well as best practices in six selected countries: Germany, Ireland, Poland, Slovenia, Spain, and the United Kingdom.
28. Practical implementation and criteria for identifying and establishing the workload of public prosecutors in those countries shall also be analysed. By collecting information on the rules and practice of different selected countries, the study shall give an overview on the total workload of public prosecutors, the distribution of tasks among the members of their prosecutions service, and how do the national authorities plan the staffing and resources allocation with regard to the existing/potential workload of the public prosecution.
29. However, it has to be advanced already that, in general, data regarding workload of prosecution services and of each of the individual public prosecutors, is hardly available. This should be taken into account as an “expected difficulty” in the development of the comparative study. As a rule, in all European countries there are publicly available statistics on total caseload per prosecution office out of which the total caseload per prosecutor can be approximately calculated. However, not every country makes available the rules and principles on the measurement and distribution of the workload among them, or the ratio of cases per prosecutor in practice.
30. The questionnaire and the methodological approach contemplate such difficulties and was designed to gather the relevant information despite the existing difficulties. The results show that in some countries there is very detailed information on the workload of public prosecutors available and sophisticated business intelligence management have been implemented; whilst other countries follow a timesheet system whose compliance is monitored by the head of unit. Criteria for distribution of cases among the individual PPs are in place in all studied systems, with diverse degree of detail, flexibility and foreseeability. As for yearly planning and presenting the staffing needs to the Treasury, the approach is also diverse, as will be reflected. Unlike with courts, there is rarely a case-weighting system, making the exception the United Kingdom system.
31. This document has been prepared by Prof. Dr. Lorena Bachmaier⁹ upon the request of the Council of Europe and was developed under the project “Human Rights Compliant Criminal Justice System in Ukraine”, implemented within the Action Plan of the Council of Europe for Ukraine 2019-2021. The comparative study methodology and the questions to be addressed in each of the selected countries was defined in a prior concept paper also prepared by the same expert.

⁹ Professor of Law, Complutense University Madrid, Spain.

32. The country reports have been prepared by Grażyna Stanek (Poland)¹⁰, James Hamilton (Ireland)¹¹, Gaja Štovičej (Slovenia)¹², Catherine Carrie (UK)¹³, and Lorena Bachmaier (Germany and Spain).
33. This study adheres to the general methodological principles of impartiality, objectivity, and confidentiality.¹⁴ The experts carrying out the research have committed to provide truthful and accurate information, preserve the confidentiality of the data and make a declaration of non-conflict of interest.¹⁵

BACKGROUND INFORMATION OF UKRAINE

34. Undoubtedly the Public Prosecutor's Office is an essential institution for the correct functioning of any justice system and consequently national authorities when addressing the needs within the justice sector devote particular attention to it. Taking into account the importance of the public prosecution service for the criminal justice and overall justice sectors, governmental plans for improving the institutional and functional deficiencies seek to ensure a greater institutional independence of the PPO, that allows the prosecution to perform their duties without unjustified interferences, thus striking a balance between autonomy, competence, accountability and efficiency of the PPO, including by introducing changes in the prosecutorial governance system, performance management, and professional and continuous training systems.¹⁶
35. Among the actions and the results to be achieved are that the duties of the PPO and the performance of their tasks are fulfilled in accordance with the recommendations of the Council of Europe, striking a balance between the functions of the PPO and other law enforcement agencies.
36. The underdeveloped performance management tools in the public prosecution office is one of the deficiencies specified in the Strategy's chapter on the state of affairs in Ukraine. This was already highlighted in the Joint Venice Commission and Directorate General of Human Rights 2013 "Opinion on the Draft Law on the Public Prosecutor's Office of Ukraine",¹⁷ where it was recognized that there is a need in Ukraine to implement adequately the performance evaluation system

¹⁰ Prosecutor of the General Prosecutor's Office.

¹¹ Ex-Director of the Irish Prosecution Service, Ex-President of the International Association of Prosecutors, Former member of the Venice Commission in respect of Ireland.

¹² The Deputy Prosecutor Director of Slovenian public prosecution service administration.

¹³ Senior Prosecutor with Crown Prosecution Service Homicide Unit London.

¹⁴ See generally W.D. Crano, M.B. Brewer, A. Lac, Principles and methods of social research, Routledge: New York and London, 2015.

¹⁵ Basic principles on human rights monitoring, available at: <https://www.ohchr.org/Documents/Publications/Chapter02-MHRM.pdf> 18.

¹⁶ See e.g. Venice Commission "European standards on the Independence of the judiciary", CDL-JD (2008)002, of 3 October 2008; Council of Europe Rec(2002)19 On the role of the public prosecution in the criminal justice systems, para.11; United Nations Guidelines of Prosecutors, Havana 1990, para.13.

¹⁷ CDL-AD(2013)025, Strasbourg of 14 October 2013, Joint Venice Commission and Directorate General of Human Rights 2013 Opinion on the Draft Law on the Public Prosecutor's Office of Ukraine and preceding assessments of the (draft) legal framework on the PPO of Ukraine issued by the Venice Commission [SEP]

provided in the Law.¹⁸ It also mentioned the need to advance the performance management in the PPO and recommended that the PPO Law should explicitly rule out that an acquittal of a person accused by a prosecutor could result in disciplinary proceedings against the prosecutor unless the charges were brought due to gross negligence or bad faith.

37. According to the last compliance report of the Fourth Evaluation Round of the GRECO report on “Corruption prevention in respect of members of parliament, judges and public prosecutors”, the profile of a position in a local prosecutor’s office with corresponding competencies and requirements has been approved. More general regulations regarding the human resources and the work of the Qualification and Disciplinary Commission have also been adopted (covering updated procedure for selection, appointment, transfer and dismissals of prosecutors).¹⁹
38. It seems that because of the fear on the negative evaluation and the application in practice of the performance indicators and of the disciplinary proceedings, prosecutors tend to exert pressure upon the judges to avoid acquittals. Currently prosecutors still seem to feel obliged to win all cases where they have filed an indictment to prevent a potential disciplinary action. The idea that in a democratic system under the rule of law, prosecutors are parties subject to the principle of the equality of arms and therefore they will necessarily lose cases, is still not interiorized by most of the public prosecutors, because they are still afraid that this may result in disciplinary action against them.
39. With regard to the performance management and indicators, some of the deficiencies detected in the functioning of the public prosecution service are, for example:
40. Until the amendments introduced to the Law of the Public Prosecution Service on 19 September 2019 members of the Council of Prosecutors, while working in the Council, still remained on their positions in their public prosecution office. It was not foreseen that their workload changed while they fulfilled their obligations in the Council. Since the Council of Prosecutors terminated its activities by September 2021, this problem does not exist anymore, but attention should be paid to similar problems, that is, not calculating adequately the workload of PPs by not taking into account tasks developed different from filing the indictment of presenting the case in court.
41. In the past, the absence of a uniform way of compiling quantitative and especially qualitative criteria on the performance of public prosecutors made it difficult to identify the needs and develop a long-term planning. The amendments to the Law of Ukraine on PPS of 19.09.2019 vests the Prosecutor General with the power to approve prosecutors’ performance evaluation, and the Office of the Prosecutor General shall in the future adopt an order in this area.
42. Statistical data are not always collected with a view to the objectives sought and they are widely reported to be not representative. In addition to the lacking adequate statistical data and strategic analysis, there is no clear understanding of

¹⁸ Under Article 9.1.7-2 of the Law of Ukraine “On the Public Prosecutor’s Office”, the Prosecutor General establishes the procedure for prosecutors’ individual job performance evaluation.

¹⁹ See Greco RC4(2019)8, published on 26 March 2020, para. 137.

the expected performance of a prosecutor by the society, not being available a clear criminal policy.

43. Not all types of tasks the individual prosecutors perform are taken into account for their performance evaluation. Apart from the complications related to the prosecutors tasked with a type of work, all prosecutors have to perform very diverse of work, which does not count in the calculation of workload at all.

Finally the assessment on compliance with the JSRS 2015-20 recognises that a methodology for calculation of prosecutorial workload is to be developed and this should differentiate between: (1) the individual workload of a prosecutor, and, (2) the workload of a territorial public prosecution office or structural unit of the prosecutor general office. The methodology should ensure an equal workload of prosecutors and a fair distribution of tasks.

44. Guidelines are to be developed for the specialisation of prosecutors in criminal proceedings. Such guidelines are to define the specialisation in OPG, territorial PPOs and their units, role of prosecutors-managers in the specialisation, as well as rights and obligations of specialised prosecutors. This will enable increasing effectiveness of criminal prosecution, setting clear rules for workload distribution, development of good practices, creating conditions for more focused training, mitigation of corruption risks. The specialisation structure is to be determined by the level of the specialisation – *a specialised PPO/ a specialised unit/ a specialised prosecutor.*” (Pravo assessment 69 y 70)

45. The report “Organisational analysis of the General Prosecutor’s Office of Ukraine” of June 2019 prepared by CoE and PricewaterhouseCoopers (hereinafter CoE-PWC 2019 report)²⁰ also identifies shortcomings related to the calculation and distribution of the workload of the public prosecutors. The key findings on workload are: “About 25% of working time is spent by procedural supervisors on approval of procedural documents by management and on performing other types of tasks”,²¹ and it is recommended to “provide for regular monitoring and evaluation of workload of the GPO’s employees and take actions for its reduction”^[SEP]

46. With regard to the performance, the CoE-PWC 2019 report states that there are no metrics for performance assessment of the General Prosecutor’s Office (GPO) as a whole and of its organisational units in particular; there are no processes and mechanisms in place for regular performance assessment of GPO as a whole and of its organisational units in particular; and there is no clear interrelation between the performance assessment metrics of GPO as a whole and that of its organisational units and employees, namely – there is no process for top-down cascading of key performance indicators. It is specifically affirmed that:

“The GPO’s employees do not have single and clear understanding of how overall performance of GPO and of its organisational units is assessed, as well

²⁰ The CoE and PricewaterhouseCoopers Report on “Organisational analysis of the General Prosecutor’s Office of Ukraine” of June 2019 “contains key project results, including description of the current state of the General prosecutor’s office of Ukraine (GPO) across five streams of the organisational analysis; recommendations on potential opportunities for enhancing organisational efficiency of GPO; transformation action plan; and required organisational capacities for such transformation; see p. 1.

²¹ See p. 17.

as how such assessment of the GPO's performance is interrelated with performance appraisal of an individual employee". Upon these findings the consultants recommend to: "develop and implement the system for performance assessment of GPO, including quantitative and qualitative metrics for performance assessment as to achievement of strategic goals and priorities of GPO and goals of its organisational units at all levels of GPO."

47. Concerning the performance evaluation, it concludes that there are no approved criteria and performance appraisal procedure for prosecutors: in practice performance appraisal is done informally by the immediate supervisor. In this regard the report recommends to "develop clear performance appraisal criteria and procedure for prosecutors; enhance current appraisal procedure for public servants (in particular through implementation of feedback gathering, etc.).

48. Other recommendations set out in the CoE-PWC 2019 report are:

- Define and approve mission and vision of GPO.²²
- Define requirements to the target maximum headcount of GPO; share of all GPO employees (and prosecutors in particular) in the total headcount of prosecutor's offices; ratio of various types of personnel in the GPO's headcount.
- Define requirements to the target maximum headcount of various types of the GPO's organisational units and to the target maximum headcount of management staff in GPO.²³

AIM OF THE STUDY

49. The aim of the comparative study, as mentioned above, is to assist the Ukrainian national authorities in calculating the workload and defining criteria on its distribution among the individual public prosecutors in each office and also among the different territorial units. Thus, the approach should distinguish between the individual workload of the prosecutors and the workload of the structural unit or territorial office. A system of calculating the workload and the establishing of criteria for calculating the performance indicators are necessary for: defining the strategic planning, taking decisions on staffing, promote the effectiveness in the management and move towards a fair distribution of work of the public prosecutors, which shall contribute to the individual motivation.

50. The comparative study shall provide information both on workload as well as performance indicators of the public prosecution office as an institution and also performance indicators and workload of the individual prosecutor. For the elaboration of this comparative study, the expert has undertaken the needed desk research on the general principles on workload and staffing of prosecution offices (PPO), and individual public prosecutors, as well as on the aim of the study and the methodological tools. There is not much specialised literature on this topic,

²² See p. 15.

²³ See p. 16.

and the publications on management in the justice system, usually tend to focus on the courts in general, as mentioned earlier.²⁴

METHODOLOGICAL PRINCIPLES AND TOOLS

51. The present study will follow the methodology and instruments of comparative law. Comparative legal methodology is a necessary tool in every contemporary legal reform. There is virtually no significant project for legal reform that does not begin with a preliminary comparative research, more or less detailed or ambitious. This is especially true within the European landscape, among other reasons because of the multiple processes of harmonization on-going in Europe at various levels and in different institutions. There are important disparities between European legal systems and nevertheless we can identify even more important similarities that characterize the ensemble of European systems when we compare them with other legal systems around the world.
52. Comparative legal studies may pursue different goals. What is normally called macro-level comparison (i.e., the comparison of the essential features of several big legal traditions or “families”)²⁵ often are permeated by an aim of erudition and intended to facilitate a better intellectual comprehension of the interaction between legal traditions at a global level.²⁶ Conversely, micro-level comparison (i.e., the comparison between concrete norms or institutions) may be also pervaded by a scholarly flavour but, directly or indirectly, ultimately seek inspiration to improve specific areas of existing legal systems. This is definitely the case of this project, whose focus is on advancing the efficiency of the public prosecutor’s service, an adequate staffing policy and the fairness of the workload in the public prosecution service in Ukraine.
53. Once a specific topic is chosen, a comparative legal study begins by the selection of the national legal systems to be analysed. Normally, the selection should include systems that display a significant percentage both of commonalities and differences with regard to the particular object of study. Common features help start a “dialogue” between systems, but differences are also important because they lead to the attempt to find a balance between pros and cons in the legal solutions adopted by the various countries. Sometimes striking differences are especially helpful to that purpose.²⁷
54. The next important step in comparative legal research is the definition of the way or method used for the study. Comparative law uses a variety of methods depending on the scope of the research. Thus, some methods are more appropriate

²⁴ See e.g. the comprehensive study of F. Cabrillo Rodríguez, *La economía de la administración de justicia*, Madrid: Civitas, 2011; or the Study of the Council of Economists in Spa in “Implicaciones económicas del funcionamiento de la administración de justicia”, dic. 2016, and the further publication of the conclusions available at <https://www.cemad.es/wp-content/uploads/2018/03/Conclusiones-Encuentro-UIMP.pdf>

²⁵ See J.H. Merryman, *The Civil Law Tradition. An Introduction to the Legal Systems of Western Europe and Latin America* (2d ed.), Stanford University Press, 1985, pp. 1-5.

²⁶ See generally R. David, *Major Legal Systems in the World Today* (trad. and adapted by J.E.C. Brierkey), Steven & Sons, 1978.

²⁷ See M.A. Glendon, M.W. Gordon & C. Osakwe, *Comparative Legal Traditions* (2d ed.), West Group, 1994, p. 12.

for large-scale comparative studies (macro-comparison). Such is the case of the structural method, in which the observer focuses on the structures hidden within the phenomenon being observed in order to identify the interaction between the elements that form a system.²⁸ Something similar applies to the common-core method, aimed at finding out the common core of concepts, rules and institutions of certain legal systems or legal traditions (depending on the ambition and the scope of the study).²⁹

55. Although those methods may play a limited role in this study, other methods of comparative legal research seem more appropriate here. In particular, the law-in-context method, the functional method, and the analytical method. According to the first, legal data must be interpreted into their context — not only the legal context but also the historical and broadly cultural context, including the so-called “legal formants” that influence the way the law is made, interpreted and handled.³⁰ This is the reason why the national reports firstly address general issues on the prosecution service, its origins and structure, the principles that govern such institution and in which areas the public prosecutors act. General statistical data on population and number of PPs per 100.000 inhabitants is also provided to provide the final users of the study the adequate overview of the context where each of the prosecutions systems studied operate. Calculating the workforce of PPs in a country should be related to the effective or expected workload in total and for each individual PP. However, if certain factors, like the principle of mandatory or discretionary prosecution, are not taken into account in the comparison, it will not aid in providing guidance for adopting solutions or proposals for Ukraine.

56. The second approach puts the emphasis on the function that legal rules or instruments play in a system; in other words, on identifying the particular problems they are intended to solve, assuming that most often societies have to face similar practical problems.³¹ This method applies perfectly to the aim of this study. The third focuses on the analysis of the meaning given to apparently similar — or different — concepts, working on the sub-concepts implied in them, and trying to find their legal opposites and legal correlatives.³² We must note that, as usually occurs in comparative legal research, these three methods are usually used in parallel in practice. Methods are interdependent and complementary if we want to achieve an adequate understanding of the legal subject under study. However, we believe that, from the perspective of this project, the functional method will be particularly useful. This entails understanding the data relating to

²⁸ See G. Samuel, *An Introduction to Comparative Law Theory and Method*, Hart, 2014, pp. 81-82.

²⁹ An interesting example of the application of this method is the “Trento Common Core Project”, aimed at the identification of the common core of European private law. See M. Bussani & U. Mattei, ‘Le fonds commun du droit privé européen’, *Revue internationale de droit comparé* (2000), p. 29-48.

³⁰ See R. Sacco, ‘Legal Formants. A Dynamic Approach to Comparative Law (part II)’, *American Journal of Comparative Law* 1991, p. 386.

³¹ See generally K. Zweigert & H. Kötz, *Introduction to Comparative Law*, Clarendon Press, 1998. Also J. Husa, ‘Comparative Law, Legal Linguistics and Methodology of Legal Doctrine’, in M. van Hoecke (ed.), *Methodologies of Legal Research. Which Kind of Method for What Kind of Discipline?*, Hart, 2011, pp. 209-228.

³² U. Mattei, ‘Le fonds commun du droit privé européen’, *Revue internationale de droit comparé* (2000), p. 29-48. See generally K. Zweigert & H. Kötz, *Introduction to Comparative Law*, Clarendon Press, 1998. Also J. Husa ‘Comparative Law, Legal Linguistics and Methodology of Legal Doctrine’, in M. van Hoecke (ed.), *Methodologies of Legal Research. Which Kind of Method for What Kind of Discipline?*, Hart, 2011, pp. 209-228.

the workload distribution of public prosecutors in the context of their connection with the specific functions and role played by the public prosecution service in each of the legal systems studied.

57. Another important aspect of the comparative methodology in specific research studies involving a determined number of countries is the elaboration of the questionnaire that must serve as the pattern to be followed in each country. This is essential to facilitate an actual “dialoguing process” between the legal systems involved. A questionnaire must be sufficiently precise to make possible a real comparison between legal data, and must be also sufficiently flexible to allow authors to adapt the questions to the particular circumstances of each country. A questionnaire must include quantitative or objective data but also a qualitative assessment of those data, which will permit an adequate “functional” reading of them in the context of their respective legal systems.
58. Multilateral comparative studies are normally more useful than bilateral studies, as they provide neutral elements of comparison, a *tertium comparationis*,³³ which makes possible to avoid one of the worst mistakes in legal comparison: to get trapped in the bias of the preconceptions of one’s own legal system.³⁴ However, when engaging in legal comparative research that involves a number of countries, we must be aware of the limitations on the results obtained through this methodology, especially when the purpose of the study is to seek inspiration for improvement in a particular country. Legal transplants are not possible or even desirable. One thing is to seek *inspiration* in foreign legal experience, and a very different thing is to expect to find the *solution* to one’s own problems in that foreign experience. As indicated above, context and function are of utmost importance. What has worked well in a particular national environment may work differently in a different legal, cultural and political environment. This is precisely the reason why the qualitative analysis of quantitative data is so important, first at the level of the authors of national studies or rapports and later at the level of the person in charge of harmonizing and making sense of those national studies.
59. Once the comparative law methodology has been described, it has to be clarified, that the present study will not undertake a deep comparative analysis of the systems studied, but reflect mainly the differences and analogies encountered with regard to the calculation of the workload measurement and its impact upon the calculation of staffing needs and resources decisions. This short comparative analysis is reflected in the Executive summary and also presented in the comparative table.
60. The comparative study reflects the information provided by experts on the topic of the research in a number of European countries. The selection of countries aims at representing the system in common law as well as civil law countries; countries with large population and small countries; countries with mandatory and non-mandatory prosecution system; finally, countries which have been in the past closer to soviet systems and those which have a longer established

³³ See W.N. Hohfeld, *Fundamental Legal Conceptions, as Applied in Judicial Reasoning*, Yale University Press, 1919.

³⁴ See K. Zweigert & H. Kötz, *Introduction to Comparative Law*, Clarendon Press, 1998, p. 35.

democratic systems. The selected countries for this comparative study are Poland, Slovenia, Spain, Germany and the UK.

61. As required in the concept paper, these countries offer a wide range of systems and possibilities in addressing the staffing needs and the workload calculation of the prosecution systems, as they are representative from the point of view of geographical distribution, belong to different legal traditions and have a diverse democratic development: some Eastern countries with similar problems regarding the organization of the public prosecution service and/or population as Ukraine; countries that have developed thorough systems for analysing and measuring the workload of public prosecutors; and countries with long established tradition of measuring via timesheets the work performed by each civil servant, and thus also by each PP. The selection complies therefore with the comparative law methodology.
62. The research was oriented to the gathering of relevant information regarding the functioning of the public prosecution service, not only from a theoretical perspective, but also, its implementation in practice. The rules, principles and best practices regarding the workload and performance of individual public prosecutors as well as public prosecutors territorial or structural units, should be identified and clearly presented by national experts in a report following the same structure and addressing the set of questions provided to them. Each report should follow as much as possible the defined structure and reply to the questions identified.
63. As mentioned earlier, for a comparative study, uniformity in the country reports is absolutely necessary. The questions shall serve as guidance, as the national rapporteurs may complete the report with issues not addressed in the questionnaire, but that are important in the context of a precise country and the organization of its public prosecution service.
64. In order to ensure the collection of an appropriate range of data, the national experts were requested to apply – as far as feasible – diverse methods for the gathering, analysis and validation of the information. These should be mainly:
 - Information related to the applicable legal and regulatory frameworks, if existing.
 - Statistical information generated by domestic institutions on the workload distribution and performance indicators, if existing.
 - Consultations with public prosecutors to obtain practical information. ^[L]_[SEP]

TOPICS AND COMMON STRUCTURE OF THE COUNTRY REPORTS

65. Country reporters are asked, when responding to the following questions, to indicate also if questions are clearly decided or controversially disputed or not yet dealt with in their country; they should also refer to actual reform projects. If adequate, they should also indicate whether answers to the following questions are based on the wording of the respective laws, constitutional requirements, jurisprudence, literature, present practice (law in action), statistics and/or on their

own evaluation. It would also be helpful if country reporters would underscore the relevant legal provisions/practice in their answers in short.

66. The table of contents and questionnaire was elaborated after studying the main problems identified in measuring the workload of PPs, and the diverse existing methods applied, either related to the court caseload, or upon either weighted case calculation, timesheets or other business management tools. As already stated, when describing the methodology, the initial part of the questionnaire is directed to provide the necessary institutional information to understand the context.

TABLE OF CONTENTS AND QUESTIONNAIRE FOR COUNTRY REPORTS

I. GENERAL PART

1. Introduction. General background on the constitutional and legal framework of the public prosecution service.
 - a. Brief historical background.
 - b. Constitutional principles
2. Structure and functions of the public prosecution within the criminal prosecution and outside the criminal justice system
3. Organizational principles of the public prosecution: hierarchical, territorial, specialisation
4. Status of the public prosecutors, selection, appointment, evaluation and promotion

The introduction should also include information on:

Which body is responsible for defining the criminal policy?

Are there current reforms under way?

Please provide general statistical information on the PPO

- a. Total number of public prosecutors, distribution per courts; rate per inhabitant; total number of criminal cases; rate of resolution; retirement age.

II. WORKLOAD OF PUBLIC PROSECUTORS

5. Are there statistics on caseload of public prosecutors? If yes, comment on the findings/evolution and if possible analysis.
6. Are there statistics on workload of public prosecutors? If yes, comment on the findings/evolution and if possible analysis.
General rules and principles on staffing
7. Is there an established ratio that determines the number of public prosecutors (upon inhabitants, upon number/type of courts; upon number of criminal cases? Who decides on the workload of each of the members of the PPO?
8. Which body is responsible for analysing the needs on the number of prosecutors?
Estimating the workload
9. Are there separated criteria for estimating the workload of prosecutors, different from the ones applicable to the judges?
10. If not, are the criteria applicable for measuring the workload of judges applicable mutatis mutandis to the public prosecutors?
11. The estimate of time required to handle a case by a prosecutor is based upon which criteria? The time is estimated for each stage of the proceedings (pre-trial stage, filing the indictment, prosecution in court, appellate review?
12. What is the method applied to calculate the approximate time in handling a case? Weighted case method, which takes into account: 1) How much

prosecutor time, on average, is required to handle each type of case to disposition; and 2) The amount of time available to a typical prosecutor to handle cases.

13. Which criteria are taken into account to identify the complexity of a case?
14. Is the weighted method complemented with the Delphi method?³⁵

Performance indicators

15. Are there pre-established performance indicators? If yes, please describe. Is there any “quantitative” rule that each of the individual PPs have to comply with (e.g. number of criminal cases handled)?
16. Who evaluates the compliance with the performance indicators? Do they result in economic incentives? Can the non-compliance with the performance indicators lead to disciplinary proceedings?
17. How is the allocation of cases done in practice in each PPO? Is this distribution of workload done objectively? Are there pre-established criteria? Are these criteria made public?

Impact of workload on staffing decisions and budget

18. Who decides on the call for new positions, increase of number of prosecutors/leaving vacant positions when a workload increase is detected?
19. Which body is responsible for cost-assessment and budgetary needs of the PPS?

Others

20. Please, include other relevant information and describe the difficulties encountered in providing the requested information

³⁵ Following the Delphi method each public prosecutor would give an approximate calculation of the time it will take to process a case or certain types of cases. This system allows to provide cost-efficient approximate estimates on the staffing needs, and despite being inaccurate, it might be useful when setting up new courts or public prosecution offices.

COUNTRY REPORTS

GERMANY

INTRODUCTION

1. The aim of this country report is to provide relevant information and analysis on the system of calculating the workload of public prosecutors, the distribution of work among the different prosecutorial units and also the performance indicators.
2. The research shall be oriented to gather relevant information regarding the functioning of the public prosecution service, not only from a theoretical perspective, but also, its implementation in practice. The rules, principles and best practices regarding the workload and performance of individual public prosecutors as well as public prosecutors territorial or structural units.
3. This report shall give an overview both on the regulatory framework and its practical implementation in the German *Staatsanwaltschaft*, as part of a comparative study that shall contribute to support the Ukrainian authorities in the decision making process with regard to the organisation and efficiency of the public prosecution service, as well as to aid in aligning this institution with the standards applied in other European democracies. The calculation of the workload of prosecutors, similarly to other management units, is to be used in the assessment of needs related to resources' allocation and staffing, and thus shall aid in the State's budgetary decisions. The amount of workload – total and per/public prosecutor –, shall inform the management organization of the prosecution service and help in addressing the issues on efficient workload distribution. Performance indicators useful as motivation as well as monitoring tools shall also be described.
4. This report adheres to the general methodological principles of impartiality, objectivity, and confidentiality and in preparing this report, the expert declares her commitment to provide truthful and accurate information, preserve the confidentiality of the data and that there is no conflict of interest, as required by the general ethical standards.
5. In gathering the relevant information for this report, this expert has undertaken desk research, collecting information related to the applicable legislation as well as rulebooks, where available; statistical information generated by the German Public Prosecution Service (*Staatsanwaltschaft*), and also contained in the CEPEJ reports. This information has been completed with academic studies, although those publications do not address specifically the issue on workload calculation or application of performance indicators.
6. Finally, as much of the information requested was not available in the law neither in publications, open-access repositories or websites, the relevant unit of the public prosecution service was contacted to obtain the needed information. Specific obstacles in obtaining all the information will be mentioned below. Finally, in order to check the practical implementation of the rules on workload

calculation, distribution of workload and performance indicators, several members of the public prosecution service were consulted. The selection was randomly made, thus in scientific terms it does not probably meet the qualitative scientific research methodology valid in social sciences. Nevertheless, the public prosecutors consulted, answered in an open way, thus providing a reliable insight.

WORKLOAD OF PUBLIC PROSECUTORS IN GERMANY

I. GENERAL PART

1. Introduction. General background on the constitutional and legal framework of the public prosecution service.

7. Following the French model, the public prosecutors in Germany were regulated for the first time in the early 19th century, initially in 1810 in the provinces of Rheinpreussen, Rheinhessen and Rheinland-Pfalz, together with the whole French legislation. Unsatisfied with their own legal system, other regions of what is now Germany looked at the new French model, keeping such system even after the French invasion had finished.³⁶ With the *Reichjustizgesetzen* (Law of the Justice System) of 1877, the public prosecutor's office was uniformly structured and this institution was accorded increased powers.
8. The question as to which state powers the prosecution should be associated – executive or judicial power – has been debated. As to the requirements, categories, evaluation and promotion, they are assimilated to the judges. With regard to their functions they are, together with the courts, a necessary organ of the criminal justice system, as declared by the German Constitutional Court (BVerG, 9, 223, 228). However, the same Court regards the prosecution as a part of the executive, despite its role within the justice system (BVerfGE, 103, 142, 156). German *Gerichtsverfassungsgesetz* (GVG, Court's Law) provides in its art. 147 GVG that the PPS is a hierarchically structured institution, subject to the law. In accordance with art. 146 GVG public prosecutors are required to follow the professional instructions issued by their superiors. The Ministry of Justice has also the right to give instructions in this regard. Directions can be of general nature or related to an individual case, and can refer to legal and or factual aspects. The right to direct is limited by the principle of legality.
9. Within the powers to issue general instructions, the Ministry of Justice elaborates general guidelines and circulars unrelated to a specific individual case. Those guidelines may refer to the interpretation of certain provisions and/or application of the Criminal Code or the CPC. Here reference must be made to, for example the following guidelines:

Guidelines on Criminal Proceedings, containing in particular detailed instructions on the prosecution of certain criminal offences;

Guidelines on the Youth Courts Act, containing requirements relevant to criminal proceedings in cases against young persons;

³⁶ E.S. Carsten & E.C. Rautenberg, *Die Geschichte der Staatsanwaltschaft in Deutschland bis zur Gegenwart*, Nomos: Baden-Baden, 2012, pp. 49 ff.

10. In this sense, within a system where the principle of mandatory prosecution applies, it could be said that the limited scope for defining a criminal policy falls within the Ministry of Justice.

2. Structure and functions of the public prosecution within the criminal prosecution and outside the criminal justice system.

11. The status and functions of the public prosecution office are laid down by statute, in the GVG (Courts Constitution Act) – in its arts. 141 to 151 – and in the *Strafprozessordnung*, Code of Criminal Procedure (CPC) – mainly, in arts. 158 to 163 CPC –, although these rules do not provide for a comprehensive and detailed regulations and certainly are not conclusive. The provisions in the GVG on the status of the public prosecution office rather tend to have the character, at least in part, of guiding principles or of organizational principles, whereas the important rules on the functions of the PPs in the CPC are largely drafted in the form of general clauses.³⁷

12. Other provisions are to be found in rules on the organization and service operations of the public prosecution office, contained in uniform orders issued by the Ministry of Justice of the relevant *Land*.

13. Art. 141 GVG establishes that there should be a public prosecution office at every court. Hence, there is a public prosecution office at every Regional Court in the *Länder*, meaning a total of 16 public prosecution offices at the Regional Courts. As a rule, these public prosecution offices also carry out public prosecution functions at the Local Courts (*Amtsgerichte*). They are subordinate to a regional public prosecution office established at every Higher Regional Court (*Oberlandesgericht*) (arts. 142 and 147 of the GVG), so there are a total of 25 regional public prosecution offices. The regional public prosecution offices are, in turn, subordinate to the respective ministers of justice of the *Bundesländer*: section 147 of the CCA.

14. The public prosecution office is divided into divisions that are headed by senior public prosecutors. The number and scope of the divisions within a public prosecution office depend on the area of competence of the authority concerned. As a rule, larger public prosecution offices have general divisions and also special divisions geared to specific areas of crime. The general divisions cover cases of “normal” everyday crime such as, for instance, theft, offences of infliction of bodily harm, criminal damage to property and fraud.

15. Structured in the same way as the courts, the public prosecution is responsible for leading preliminary investigations, presenting the case for the prosecution in criminal cases, and enforcing convictions. Except when there is legislation to the

³⁷ For general information see e.g. B. Elsner, J. Peters, „The prosecution Service Function within the German Criminal Justice System“, in J.M. Jehle & M. Wade (eds.), *Coping with Overloaded Criminal Justice Systems*, Springer: Berlin-Heidelberg, 2006, pp. 208-236. See also https://e-justice.europa.eu/content_legal_professions-29-de-maximizeMS-en.do?member=1

Prosecutor (*Staatsanwalt*)

contrary, the public prosecution service is also responsible for conducting prosecutions for administrative offences (*Ordnungswidrigkeiten*).³⁸

16. The public prosecution service has an obligation to act whenever there is an offence that can be prosecuted, provided there are sufficient grounds (mandatory prosecution system) (art. 152.2 CPC), which implies that there is an obligation to investigate all reported or detected crimes, and press charges against every suspect when there is sufficient evidence and the rest of the legal conditions are fulfilled (art. 160.1 CPC). However, during the trial stage there is the possibility to decide on the discontinuing of proceedings and dropping the charges under certain conditions and for certain types of crimes without court ruling.³⁹ When conducting investigations within the criminal proceedings, the public prosecutor shall ascertain not only incriminating but also exonerating circumstances, and shall ensure that evidence, the loss of which is to be feared, is secured or practiced (art.160.2 CPC).
17. The public prosecutor's office will be assisted by the police, tax investigators and customs officers and other public authorities and offices (art. 161.1 CPC). All of them must follow the PPs instructions. Nevertheless, in practice it is most frequent that the police carry out all the investigation and the PP intervenes in the last stage by preparing the indictment.
18. If the public prosecution office considers it necessary for the court to carry out investigation measures, it will file an application prior to lodging of the indictment.
19. The court proceedings in which the public prosecution service plays a part are essentially criminal proceedings. This applies to both first instance and appeal proceedings. Before a criminal case can be tried a charge must be brought against a defendant (*Akkusationsprinzip*). With a few exceptions concerning petty offences, the charge must be brought by the public prosecutor's office. A public prosecutor participates in the subsequent trial to represent the prosecution.
20. The German public prosecution does not have functions in civil, administrative or insolvency cases.

3. Organization of the public prosecution: hierarchical, territorial, specialisation

21. According to data of 2018, the number of PPs (including *Amtsanwaltschaften*, which may be covered by practising PPs) at the *Landsgerichten* were 7.905 PPs, out of them 5.275 men, and 2.630 women. At the PPOs of the

³⁸ The sanctioning of certain administrative offences in the German system is subject to a specific procedure for misdemeanours, according to the *Ordnungswidrigkeitengesetz* (OWiG) of 24.5.1968. These offences are sanctioned only with fines, and usually dealt with by penal orders. Some of these administrative offences are, e.g. giving false identification (art. 111); unauthorised gatherings (art. 113); inadmissible noise (art. 117) or the unlawful use of coats or official flags (art. 124).

³⁹ On the powers to discontinue a case without a court ruling see *inter alia* art.153.1.2 CPC (petty offences); art.153c CPC (offences committed abroad); art. 153d CPC (political grounds); and art. 153f CPC (crimes under the Code of Crimes against International Law), the public prosecution office can discontinue the proceedings without a court ruling.

Oberlandesgerichten the total number of PPs was 625, out of them 459 men and 166 women.⁴⁰ In comparison, the total number of judges during the same year were 21.338 (16 at the Constitutional Court), 15.487 serving in the first instance courts (*Ordentliche Gerichte*, courts with jurisdiction in civil and criminal cases).

22. Germany's prosecution offices as well as its court system are organized on the federal state or *Länder* level and are subsumed within the state-level Ministries of Justice. While the Minister of Justice at the state level is a political appointee, appointed by the state's Minister-President, prosecutors are career civil servants, who are protected from arbitrary dismissal after they complete a period of probationary service. An exception to that rule exists in four states, where the position of General Public Prosecutor (*Generalstaatsanwalt*) is a political appointee who is closer to the Minister of Justice. Regardless of that fact, all prosecutors at the state level are members of a hierarchically ordered bureaucracy.
23. As mentioned above, the public prosecution offices are hierarchically structured, independent organs of the administration of criminal justice. Pursuant to art. 147.3 GVG they are headed by a "first official". The heads of the authority at the public prosecution offices at the Higher Regional Courts, who have the official title of "Public Prosecutor General"; the heads at the public prosecution offices established at the Regional Courts have the official title of "Chief Senior Public Prosecutor".
24. The public prosecution offices are on an equal level with the courts. What this means in detail is easier to understand when one knows how public prosecution offices are structured in Germany. The Federal Republic of Germany is a federal state, and the Judicial Power lies with the individual *Bundesländer* – 16 in all – there are independent *Land* public prosecution offices in each *Bundesland*.

Public Prosecutor's Office at the federal level

25. The federal public prosecutor's office (*Bundesanwaltschaft*) is structured as follows:
26. The Prosecutor-General at the Federal Court of Justice (*Generalbundesanwalt beim Bundesgerichtshof*) is the highest-ranking prosecution authority in Germany in the field of national security. The federal Ministry of Justice proposes the Federal Public Prosecutor General with the approval of the *Bundesrat* to the President of Germany for appointment. The office of the Public Prosecutor General is located in Karlsruhe.
27. The Prosecutor General acts as counsel for the prosecution in all cases of serious crimes against the state that significantly compromise the internal or external

⁴⁰ These are the data published in the German website on judicial statistics for the year 2018 available at https://www.bundesjustizamt.de/DE/Themen/Buergerdienste/Justizstatistik/Personal/Personal_node.html

CEPEJ data for 2016, reflect a total number of public prosecutors of 5.505, out of them 2.976 men and 2.529 women. The differences might be explained upon the fact that the data reported to CEPEJ excluded the trainees during the educational stage (Refendariat) who discharge duties of PPs under the supervision of a senior public prosecutor, and referred only to appointed as career PPs. These PPs were serving at first instance level 4.986; at appeal courts 403, and at the Supreme Court 116. See the CEPEJ Evaluation round for 2016-2018 for Germany, available at <https://m.coe.int/germany/16808d0261>.

security of the Federal Republic of Germany (i.e. politically motivated offences, particularly acts of terrorism, treason or espionage). The Federal Prosecutor General is also responsible for prosecuting offences against the Code of Crimes Against International Law (*Völkerstrafgesetzbuch*) and acts in appeal and complaint proceedings before the criminal division of the Federal Court of Justice (*Bundesgerichtshof*). Besides its role in the criminal prosecution, the federal Prosecutor General also represents Germany in certain civil and administrative cases.

28. The Federal Prosecutor General heads the public prosecutor's office in the Federal Court of Justice and supervises and directs the federal public prosecutors (*Bundesanwälte*), senior public prosecutors (*Oberstaatsanwälte*) and the lower public prosecutors. The work of the Federal Prosecutor-General is supervised by the Federal Minister for Justice. The Minister does not exercise supervisory rights over the public prosecutors of the *Länder*, and cannot give them instructions.

Public prosecutors' offices in the Länder (Staatsanwaltschaften der Länder)

29. All other cases (ordinary offences) are prosecuted by the public prosecutors' offices in the *Länder*. The Federal Prosecutor-General and the public prosecutors' offices of the *Länder* are distinct and separate, and operate at their own levels. There is no hierarchical link between the national level and those of the *Länder*.
30. Each of the sixteen *Länder* has its own public prosecution service, organised as follows:
 31. Each regional court (*Landgericht*) has its own public prosecutor's office, which also assumes responsibility for the local courts (*Amtsgerichte*) within the judicial district of that regional court. Each of the public prosecutor's offices in the regional courts is subordinate to the prosecutor-general's office in the corresponding higher regional court (*Oberlandsgericht*), which in turn answer to the respective ministry of justice of the *Land*.
 32. The prosecutor-general's offices (*Generalstaatsanwaltschaften*) are responsible for appeals on points of fact or law in the higher regional courts. If such proceedings fall within the jurisdiction of the Federal Court of Justice, the prosecution is conducted by the Federal Prosecutor-General.
 33. The public prosecution office is organized parallel to the courts, which means that the territorial competence of public prosecutors is governed by the territorial jurisdiction of the court where the public prosecution office has been established: art. 143(1) GVG.
 34. PPOs are usually structured as follows: there is a series of units (general and specialised) which are served by a single prosecutor. Three units form a department, the head of which is a senior PP (*Oberstaatsanwalt*). In larger PPOs made of several departments, they form a Main Department. Above the head of department there is the head of office or directing senior prosecutor (*leitender Oberstaatsanwalt*).
 35. The specialisation criterion also plays a role within the PPOs organization. In the special divisions of the PPOs cases are processed falling within closely defined fields of crime. Those are mainly:

corruption,
organized crime,
capital crimes (i.e. particularly homicide crimes),
political crimes, criminal offences against press laws,
economic crimes,
environmental crimes,
drug-related offences,
juvenile crimes and those relating to the protection of juveniles,
sexual crimes,
road traffic crimes

4. Status of the public prosecutors, selection, appointment, evaluation and promotion

36. Both, judges and public prosecutors are civil servants, who have undergone a very demanding and lengthy education and examination process to be qualified for the legal profession.⁴¹
37. Recruitment of judges and prosecutors are subject to the same requirements and follow the same path. The professional qualification to hold judicial office is regulated in section 5 of the (federal) German Judiciary Act. Section 5 states that in order to qualify to become a judge or a prosecutor you have to study at university, pass a first exam (*erstes Staatsexam*, with an approx. 25% of failure rate), do an apprenticeship and pass a second state examination. The (first) state examination is held by a state-administered examination office, and examiners are university professors, judges, prosecutors and – occasionally – other practising lawyers. The duration of preparatory service (*Refendariat*) is 2 years, and it entails various different stages of training in courts, PPO, research and law offices.
38. The professional qualification to hold the office of a judge as laid down in art. 5 of the German Judiciary Act (*deutsches Richtergesetz*), a qualification which is finally acquired by passing the second state exam, is at the same time the professional qualification necessary to be admitted to the Bar or to be employed as a lawyer in the civil service.
39. The second and final examination is again held before a state office that is usually attached to the Ministry of Justice of the *Land*. Those who are successful are qualified to hold any position as a lawyer (i.e. judge, prosecutor, barrister). By that time, the average age of a student is about 28 to 30 years. Their chance of being appointed as a judge or employed as a lawyer in the civil service, however, depends not only on their passing these two law examinations but also on how well they have passed them. Only a better than "average" performance in the examinations, for example, may open the opportunity to becoming a judge; in spite of the meaning of the word "average", only about 15 % of all students receive marks that are called "above average". The rate of failure in the final

⁴¹ See, J. Riedel, „Recruitment, professional evaluation and career of judges and public prosecutors in Germany“ in G. di Federico (ed.) *Recruitment, professional evaluation and career of judges and public prosecutors in Europe*, LoScarabeo: Bologna, 2005 pp. 69-126, available at <http://www.difederico-giustizia.it/wp-content/uploads/2010/09/recruitment-evaluation-and-career.pdf>.

exam lies around 15 % with an additional rate of failure of about 30 % in the first exam.

40. The process of promotion is quite formalised. It resembles the process of initial recruitment and selection. Invariably, positions for higher positions in the *Länder* are publicly offered by job advertisement in the official gazette. PPs who apply are evaluated by their respective superior on the occasion of their application, who will report to the Chief *leitender Oberstaatsanwalt* and so up to the Ministry of Justice.

II. WORKLOAD OF PUBLIC PROSECUTORS

5. Are there statistics on caseload of public prosecutors? If yes, comment on the findings/evolution and if possible analysis.

41. Yes, there are very detailed statistics on the caseload of PPs and they are easily available online. In 2016 there were 6.372.526 reported crimes, and out of those 3.584.167 were discontinued by the PP. The number of criminal cases tried in 2018 was 738.909; out of those, 606.728 ended up in a conviction. The vast majority of criminal cases were tried before the local courts (*Amtsgerichte*).⁴² The statistical data are segregated for each Land and within each *Land* for each court.
42. In each *Land* central statistics are kept on the number of incoming, pending and completed proceedings. The number of cases each individual PP has dealt with can only be determined from the statistics conducted on site at the individual public prosecutors' office. From the statistics mentioned, the average burden on public prosecutors (central) or individual public prosecutors (on site) can be calculated.

6. Are there statistics on workload of public prosecutors? If yes, comment on the findings/evolution and if possible analysis.

43. The statistics measure the caseload, not the workload. The workload calculation is used for calculating the staff needs. The program for calculating the staff needs in the justice system, PEBB§Y (*Personalbedarfrechnungssystem*, personnel needs calculation system), which will be described below, does not provide statistical data on the real work carried out by each of the members of the PPO.

General rules and principles on staffing

7. Is there an established ratio that determines the number of public prosecutors – upon inhabitants, upon number/type of courts; upon number of criminal cases? Who decides on the workload of each of the members of the PPO?

⁴² Data are available at:

https://www.bundesjustizamt.de/DE/Themen/Buergerdienste/Justizstatistik/Personal/Personal_node.html

44. Yes, the number of public prosecutors is calculated upon the formula used by PEBB§Y, based on number of cases (caseload) and average time calculation for processing each of the cases or carrying out certain activities, as will be shown below.

8. Which body is responsible for analysing the needs on the number of prosecutors?

45. The Ministry of Justice of the *Land*.

Estimating the workload

9. Are there separate criteria for estimating the workload of prosecutors, different from the ones applicable to the judges?

46. The calculation of the personnel requirements of both the judges and the public prosecutors is based on the personnel requirements calculation system PEBB§Y and follows the same system. The official name is: Development of a system for calculating personnel requirements for the judiciary, the public prosecution and non-judge judicial staff in the ordinary jurisdiction.

47. In 2003, the authority responsible for the functioning of the justice system and in particular, the one responsible for staff needs calculation moved for a more detailed workload and time estimate system. The PEBB§Y system was created on the basis of an expert opinion by the business consultancy Arthur Andersen Business Consulting GmbH. In 2004, data for the staff needs calculation based on PEBB§Y was collected. PEBB§Y has been the current system for personnel planning in the state judicial authorities in Germany since 2005. The calculation is carried out in such a way that the incoming proceedings are multiplied by the average processing times relevant for the respective types of proceedings.

48. The system for calculating personnel requirements in accordance with PEBB§Y is based on the formula for the average processing time, shown in minutes, for the different types of proceedings, as determined by the consultancy company, which is referred to as the “base number”. The personnel requirements are calculated by using the following formula:

49. $\text{Quantity} \times \text{base number} \div \text{by annual working time (in minutes)} = \text{personnel requirements}$. The annual working time based on the assumption that a public prosecutor works 1000.000 minutes per year. The standardized value of 100.000 minutes is assumed as the annual working time in minutes for a PP after calculating the total time / per year as average each PP works. To this end, all days off – such as vacation, public holidays, sickness, maternity leave – are already statistically taken into account. The annual working hours are standardized in all federal states, although different parameters are used (for example the number of holidays and the number of hours worked per week – between 38 and 42 hours in the different *Länder* – differ).

50. The base-number can be used to estimate the rating number of activities each PP needs to fulfil per year:

51. $\text{Rating number} = \text{annual working time (in minutes)} \div \text{by base-number}$

10. If not, are the criteria applicable for measuring the workload of judges applicable mutatis mutandis to the public prosecutors?

52. PEBB§Y is applied to calculate the judges' as well as the public prosecutor's and the judicial administrative staff needs, however the criteria and estimated times are specific for each of the professionals.

11. The estimate of time required to handle a case by a prosecutor is based upon which criteria? The time is estimated for each stage of the proceedings (pre-trial stage, filing the indictment, prosecution in court, appellate review)?

53. As a result of the calculations shown above, basic figures (minute approaches) have been defined for the individual activities of prosecutors. The following are examples of the estimated times for public prosecutors to handle the diverse activities/proceedings.

- *Processing of a procedure in which the police were unable to identify a suspect (review of files for investigative approaches, further decision): 4 minutes.*
- *Political criminal matters (politische Straftaten, including writing the indictment and participating in the main trial in court): 120 minutes.*
- *Investigation of fraud, economic crime, theft, embezzlement, assault and personal injuries (including writing the indictment and participating in the main trial in court): 70 minutes.*
- *Investigation of road traffic crimes such as drunk driving, road traffic hazards, offences of coercion (including writing the indictment and participating in the main trial in court): 47 minutes.*
- *Investigation of robbery, extortion and taking hostages (example: bank robbery), (including writing the indictment and participating in the main trial in court): 180 minutes.*
- *Sexual offenses, such as rape or child sexual abuse (including writing indictment and participating in the main trial in court): 200 minutes.*
- *Proceedings for violations of the Narcotics Act (including writing the indictment and participating in the main trial): 49 minutes.*
- *Crimes under the Asylum Act and Aliens Act, (including writing the indictment and participation in the main trial): 39 minutes.*
- *Criminal cases against minors (up to 18 years old) and juveniles (up to 21 years old) (including writing the indictment and participating in the main trial): 49 minutes.*

12. What is the method applied to calculate the approximate time in handling a case? Weighted case method, which takes into account: 1) How much prosecutor time, on average, is required to handle each type of case to disposition; and 2) The amount of time available to a typical prosecutor to handle cases.

54. The average processing times shown above are not based on abstract estimates, but on representative empirical assessment carried out in selected representative public prosecution offices. Nationwide prosecutors and courts were selected upon suitable criteria, and the prosecutors and judges of those offices and courts were requested to write down the time they employed for each activity during over half a year. All phases of a procedure are taken into account. Average

processing times for various types of proceedings are then calculated upon the basis of these empirical data. These surveys are carried out at regular intervals, in order to keep the average processing times used to measure the workload and thus calculate staff needs updated.

55. By comparing the results of the PEBB§Y as to the needed staff with the actually deployed personnel, it is shown whether some office is understaffed or on the contrary, the number of PPs is higher than it would be necessary, according to the estimated calculation of PEBB§Y. The Ministry of Justice determines any additional personnel requirements and, if necessary, registers additional jobs to be included in the budget of the Land. It is then up to the authorities competent to approve the budget to decide whether these additional jobs can be created or not.

13. Which criteria are taken into account to identify the complexity of a case?

56. There are not such defined criteria in the law. The system is based upon the DELPHI method, measuring the average workload of the public prosecutors to handle each type of cases. It could be affirmed that the calculation is much more detailed, because it differentiates many more types of proceedings, and not just complex or not-complex cases, as shown under question 11 above.

14. Is the weighted-case method complemented with the Delphi method?⁴³

57. PEBB§Y is based upon the empirical study of the time calculation of each of the public prosecutors, selected as representative to elaborate the average time needs for each type of procedure/activity. It goes beyond the DELPHI method, as the PPs do not provide an approximate calculation of the time they spend with each case, but the real time they devoted during half a year to each of those cases. The accuracy of the time calculation and in consequence the workload estimates, of course depends on how reliable the notes taken by those public prosecutors are and how representative the selected prosecution offices are.
58. The system, despite being quite rigorous and professional, based on business management programmes and business intelligence tools developed by the international consultancy company hired to that end, is not exempt of criticism. Judges and prosecutor's associations have voiced out their concerns, as they affirm that the time estimates for each type of activity and proceeding are not adequate, and they point out that public prosecutors as well as judges, whose working hours are not measured but determined by the estimates of PEBB§Y, would need to work between 60 and 100 hours a week to perform the tasks assigned to them by the workload estimate of the programme.
59. Another point which is criticised is that PEBB§Y treats the proceedings as "products", and calculating an average time for each type of proceedings does

⁴³ Following the Delphi method each public prosecutor would give an approximate calculation of the time it will take to process a case or certain types of cases. This system allows to provide cost-efficient approximate estimates on the staffing needs, and despite being inaccurate, it might be useful when setting up new courts or public prosecution offices.

not reflect the reality. It happens that the same type of proceeding takes on ly a minimum time, if the claim is not contested or the defendant pleads guilty, while the same procedure involves much more time where the defence lawyer introduces a vast amount of defences. The same can be affirmed with regard to investigations that require collecting evidence abroad. In other words, the system does not take into account the difficulties in gathering the evidence or other factors that turn a case into a complex case.

60. The backlogs in the judiciary and the excessive lengthy proceedings can also be explained by an unrealistic calculation of workload by PEBB§Y. It is claimed that the time is measured upon already overloaded systems,⁴⁴ thus the average time resulting from the notes taken by the prosecutors is in fact a “minimum time”, or the time spent on each case when working upon pressure. In sum, the system does not provide an answer to the question what would be the necessary time estimate for processing adequately each of the cases.⁴⁵
61. It is held that those time calculations do not take into account the real time needs,⁴⁶ and it is also questioned whether these new public management are able to be transferred to the work carried out in the justice system as many of these principles – based on efficiency – may conflict with their professional values on quality and in depth study for being certain of the processing cases especially in the criminal justice area.

Performance indicators

15. Are there pre-established performance indicators? If yes, please describe. Is there any “quantitative” rule that each of the individual PPs have to comply with (e.g. number of criminal cases handled)?

62. There are no predefined performance indicators or quantitative rules (such as the number of acts or cases that every prosecutor has to handle).

16. Who evaluates the compliance with the performance indicators? Do they result in economic incentives? Can the non-compliance with the performance indicators lead to disciplinary proceedings?

63. As there are no performance indicators as such and no incentives linked to them, this question is not applicable. Not handling in due time the cases allocated to each of the PPs according to the fair distribution system in a relevant office, as a

⁴⁴ Critical with these systems of time measurement, see also, T. Bunjevac, “From individual judge to judicial bureaucracy: the emergence of judicial councils and the changing nature of judicial accountability in court administration”, vol 40 (2), *UNSW Journal*, pp. 806-841.

⁴⁵ See R. Franzen, “Pebbsy“, in *Neue Richtervereingung* 22.4.2015, <https://www.neuerichter.de/details/artikel/article/pebbsy-408.html>; see also

“Pebbsy”, in ARV (Amtsrichterverband) <https://amtsrichterverband.net/themen/pebbsy.html>.

⁴⁶ For similar criticisms, although with regard to the Dutch system, see P. M. Langbroek, “Organization Development of the Dutch Judiciary, between Accountability and Judicial Independence”, (2010) 2(2) *International Journal for Court Administration* pp. 21, 28 (average time needed in 49 types of proceedings, minutes per judge and staff to handle each type of case).

rule unless there is negligence, shall not lead to a disciplinary procedure. The head of the relevant office will discuss with the individual PP on the problems in order to identify the sources of the delays.

17. How is the allocation of cases done in practice in each PPO? Is this distribution of workload done objectively? Are there pre-established criteria? Are these criteria made public?

64. The distribution of the incoming cases at the public prosecutor's offices among the individual public prosecutors takes place on the one hand via generally described internal responsibilities and on the other hand via individual assignments by the head of the PP office or the head of the department. This enables the individual workload to be fairly distributed and introduce adjustments to the general criteria for work distribution.

Impact of workload on staffing decisions and budget

18. Who decides on the call for new positions, increase of number of prosecutors/leaving vacant positions when a workload increase is detected?

65. The Ministry of Justice of each *Land*, upon the data obtained from PEBB§Y, although consultations with the relevant PPO at the *Landgerichte* and at the *Oberlandesgerichte* are also carried out. One of the criticisms expressed in Germany is that even when according to PEBB§Y, a certain office is understaffed this does not mean that increase of the number positions will be approved. For example, where PEBB§Y with estimates of staff needs elaborated upon public prosecutors working already under pressure, shows that in a certain public prosecution office there is need for 13 PPs, in practice it is covered by only 10 PPs, and this situation will not necessarily lead to an increase of the number of PPs, if there are other budgetary priorities.

66. 19. Which body is responsible for cost-assessment and budgetary needs of the PPS?

67. The Ministry of Justice of the *Land*.

Others

68. 20. Other relevant information and any difficulties encountered in providing the requested information

IRELAND

I. GENERAL PART¹

1. Introduction. General background on the constitutional and legal framework of the public prosecution service.

a. Brief historical background.

1. Ireland has a common law legal system which was introduced following the English conquest of Ireland and which replaced the earlier native Irish system of Brehon Law. The Irish common law was broadly similar to that of England characterised by an adversarial system using jury trials. However, Ireland as a conquered nation was subject to sporadic rebellion and chronic political and social unrest and the suspension of normal legal procedures was a frequent occurrence during the period of English rule.
2. Following the establishment of the independent Irish state in 1922, the system of common law was retained and the courts structure remained similar except that the final arbiter of Irish law became the Supreme Court in Dublin, not the House of Lords or the Privy Council in London. At the lowest level of courts where most minor crimes are dealt with the system of lay magistrates was replaced by a District Court fully staffed by professional judges.
3. The adoption of the Constitution of Ireland in 1937 enshrined enforceable human rights in Irish constitutional law and led to a strong element of constitutionalism affecting every aspect of the legal system including criminal law. As a result, important aspects of the recent legal experience of Ireland have more in common with the United States than with England.

b. Constitutional principles

4. Article 30.1 of the Constitution of Ireland establishes the office of Attorney General “who shall be the adviser of the Government in matters of law and legal opinion, and shall exercise and perform all such powers, functions and duties as are conferred or imposed on him by this Constitution or by law.”
5. Article 30.2 provides that “*All crimes and offences prosecuted in any court constituted under Article 34 of this Constitution other than a court of summary jurisdiction shall be prosecuted in the name of the People and at the suit of the*

¹ This report has been written by Mr. James Hamilton, Ex-Director of the Irish Prosecution Service, Ex-President of the International Association of Prosecutors, Former member of the Venice Commission in respect of Ireland.

Attorney General or some other person authorised in accordance with law to act for that purpose.”

6. The Prosecution of Offences Act 1974 establishes the office of Director of Public Prosecutions. Section 3(1) of the Act provides as follows:

“Subject to the provisions of this Act, the Director shall perform all the functions capable of being performed in relation to criminal matters and in relation to election petitions and referendum petitions by the Attorney General immediately before the commencement of this section and references to the Attorney General in any statute or statutory instrument in force immediately before such commencement shall be construed accordingly.”

7. The effect of this provision was to transfer virtually all of the functions of the Attorney General in relation to criminal matters to the Director of Public Prosecutions. Some functions were reserved to the Attorney General. One effect of the Act is that the monopoly over the prosecution of indictable offences created by Article 30.2 of the Constitution now applies to the Director. The Act contains detailed provisions regarding the appointment, status, terms and conditions of employment, and removal from office of the Director.

2. Structure and functions of the public prosecution within the criminal prosecution and outside the criminal justice system

Legal framework

8. As has been seen the constitutional and statutory provisions confer all the powers of criminal prosecution in indictable offences (i.e. serious crime triable before a jury) on the Director. Of course, no single individual could possibly personally exercise all these powers. So, the Act confers a power of delegation on the Director in the following terms:

“A law officer may direct any of his professional officers to perform on his behalf and in accordance with his instructions any particular function of the law officer in relation to a particular case or cases or in all cases in which that function falls to be performed.” ((section 4.(1)(a)).

9. Section 1 of the Act defines a professional officer as “an officer who is a barrister or a solicitor.” This effectively provides a definition of what is meant by a prosecutor who may therefore be defined as a Civil Servant of the State employed in the Office of the DPP who has the professional qualification of being either a barrister or a solicitor which are the two branches of the legal profession in Ireland.
10. As can be seen this model is an extremely hierarchical one in which in principle every prosecutorial act is that of the Director but may be delegated to one of her officers.

11. It should be noted, however, that not all of the functions which would in most systems be performed by prosecutors are in fact performed by professional officers of the Director. The professional officers of the Director exercise the functions of making decisions in relation to prosecutions and ensuring that the prosecutions are properly conducted. In addition, professional officers of the Director who are qualified as solicitors carry out summary prosecution in the lower courts and provide a solicitor service for cases heard in the indictable courts in Dublin. The advocacy function of conducting the cases in indictable courts is exercised by barristers engaged on behalf of the Director who conduct the cases in accordance with the Director's instructions which are conveyed either by the Director or her professional officer responsible for the case.

Structure of the DPP's Office

12. The Office of the DPP is organised in four divisions, three legal and one administrative.

13. **(1) Directing Division** – this consists of prosecutors who examine criminal investigation files and decide whether or not to take a prosecution and what charges to bring. It consists of 26 lawyers divided into three units of about 7-9 lawyers in each.

14. **(2) Solicitors Division** – this consists of prosecutors and legal executives who prepare and conduct cases on behalf of the Director in all courts sitting in Dublin. The division is organised into five sections according to the court system or the function as well as the Special Financial Unit.

15. The **District Court Section** represents the DPP in Dublin at summary hearings (hearings by a judge of less serious crimes) in the District Court and appeals to the Circuit Court. It also advises the Garda Síochána (police force) about legal issues. District Court Section prosecutors also prepare Books of Evidence for cases that will go on to a higher court (such as the Dublin Circuit Court, Central Criminal Court or Special Criminal Court). A Book of Evidence includes all witness statements and exhibits relating to a case. The District Court prosecutors decide what evidence (witness statements and exhibits) is needed for the Book of Evidence. There are 22 lawyers in the section.

16. The **Circuit Court Section** deals with more serious offences than those dealt with by the District Court Section. Every case starts in the District Court but can be sent to the Circuit Court if:

- the DPP directs that the case be dealt with in the Circuit Court;
- a District Court Judge decides the case is too serious to be dealt with in the District Court and must be moved to the Circuit Court;
- an accused person wants their case dealt with in the Circuit Court (this only applies to a small number of offences, for example burglary, robbery, theft, and sexual assault).

The section employs 18 lawyers.

17. The **Superior Courts Section** deals with:

- charges that are prosecuted in the Central Criminal Court (also known as the High Court). This includes murder, attempted murder, rape and aggravated sexual assault. The cases may come from anywhere in the State. Approximately six judges are assigned to deal with Central Criminal Court cases, most in Dublin and one in Munster;
- charges that are prosecuted in the Special Criminal Court. This court sits without a jury and has three judges, usually one each from the High Court, the Circuit Court and the District Court. The Special Criminal Court deals with terrorism-related offences such as membership of an unlawful organisation (for example IRA or INLA), firearms offences and explosive offences and gangland-type charges when there is a concern that a jury may be interfered with;
- cases investigated by the Competition and Consumer Protection Commission which are prosecuted in the Central Criminal Court before judges with commercial expertise sitting with a jury. This Commission enforces competition law (including such offences as bid-rigging and cartel activity) and protects consumer protection law in Ireland in relation to a range of areas.

There are 20 lawyers in the section.

18. The **Appeals Section**, consisting of 4 lawyers, manages the DPP's role in the Court of Appeal (criminal cases) and the Supreme Court. The Court of Appeal takes appeals from the lower courts (except the District Court). Broadly speaking, appeals fall into three categories:

- appeals taken by the convicted person against either their conviction or the severity of their sentence;
- appeals taken by the DPP against unduly lenient sentences (where a judge made a mistake on a legal point) and on some other points of law;
- appeals to the Supreme Court on points of law in cases of special legal importance. The Supreme Court looks at two things before deciding whether to hear the appeal: whether the appeal asks the Supreme Court to answer questions of general public importance, or whether the Supreme Court, in the interests of justice, should hear the appeal.

19. The **Judicial Review Section**, consisting of 6 lawyers, has six core areas of responsibility:

a) Judicial Review

A Judicial Review is where the High Court reviews the decision of a lower court to see if the decision-making process was lawful.

b) Habeas Corpus Cases

These are applications to the High Court claiming that a person is unlawfully detained.

- c) **Cases Stated**
These are cases to which judge refers to either the High Court (from the District Court) or the Court of Appeal (from the Circuit Court) to clarify a question of law that arose during the prosecution of an accused.
- d) **Bail cases in the High Court**
Most bail applications are made to the District Court. However, in cases where the accused is charged with a serious offence (such as murder or conspiracy to murder), the District Court has no power to grant bail. These applications must be made to the High Court. The Judicial Review Section deals with such bail applications in the High Court.
The section also processes all bail appeals to the High Court from the lower courts. These may be appeals against the refusal of bail in the lower courts or applications to vary the terms of bail which were set in the lower courts.
- e) **Costs Recovery and Payment**
The Judicial Review Section has a Costs Unit which processes orders for costs made in criminal cases either in favour of or against the Director.
- f) **Civil actions in which the Director is named as a defendant.**

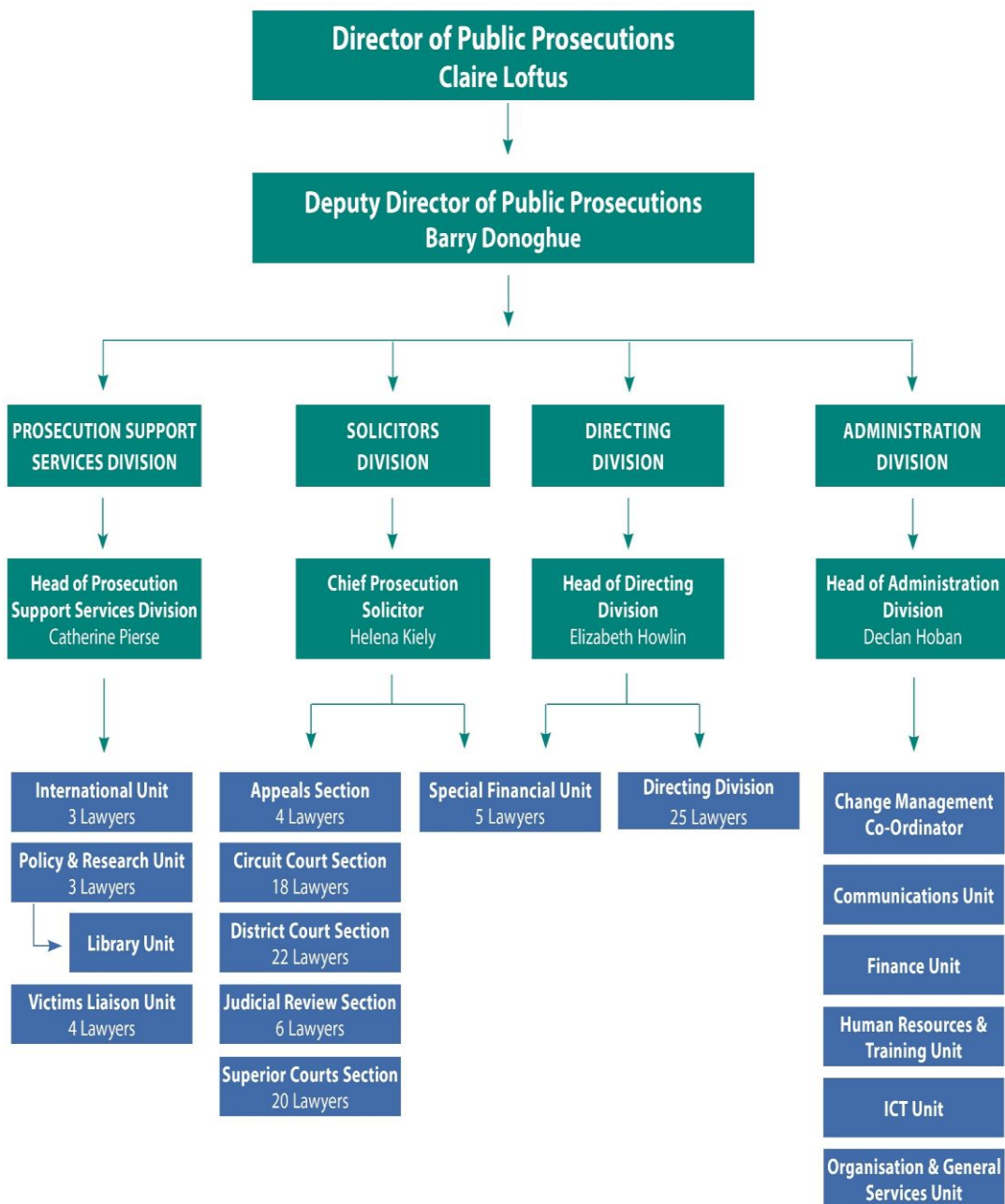
20. The **Special Financial Unit** deals with large-scale financial or corporate cases. It works primarily on cases investigated by the Garda National Economic Crime Bureau and the Office of the Director of Corporate Enforcement.

21. **(3) Prosecution Support Services Division** – this incorporates the International Unit, the Prosecution Policy and Research Unit (including the library, information and knowledge management services) and the Victims Liaison Unit.

22. **(4) Administration Division** – this consists of general civil service grades and provides human resources, IT and other support services to the three legal divisions.

The Superior Courts Section, the District Court Section represents the DPP in Dublin at (hearings by a judge of less serious crimes) in the District Court and appeals to the Circuit Court. This division also includes the Special Financial Unit which deals with large-scale financial or corporate cases.

Organisation Chart showing total number of lawyers employed in each section (together with named managers)



Local State Solicitors.

23. Indictable prosecutions take place in the Circuit Court outside Dublin. The solicitors' work involved in handling these cases is carried out by local State Solicitors. These are solicitors in private practice who handle these cases on behalf of the Director on a contract basis. When vacancies arise, the positions are advertised and filled by a competition. There is outside representation on all interview panels. They are not employees of the Director. Their contracts are for a period of 10 years. There are 25 counties in the State outside Dublin. In 21 of these there is a single State Solicitor, in each of four, Galway, Kildare, Limerick and Tipperary there are two State Solicitors and in Cork there are four making a total in all of 32.

Barristers

24. As already mentioned, most of the advocacy work in the jury courts are handled by barristers in private practice who are engaged on behalf of the Director. There are panels of barristers for the different courts' kinds of work and one barrister is assigned to prosecute in each area for which a local State Solicitor is appointed. When vacancies arise on these panels a competition is advertised, and selections are made. Selection of barristers, and of solicitors to provide services outside of Dublin, is handled by selection panels established by the Director. These always contain at least one member from outside the Office.

25. In principle barristers work on a case by case basis and as a matter of Irish law their relationship with their instructing solicitor is not regarded as one of contract.

26. The legal work of individual lawyers is also reviewed by the managers on an ongoing basis. This includes local state solicitors and barristers appointed to panels.

Functions of the Director of Public Prosecutions: criminal justice system

27. As already stated above the Director is responsible for prosecuting all indictable crime in Ireland.

28. So far as concerns minor offences, i.e. those prosecuted in the District Court, most crimes are prosecuted by the Garda Síochána (police force). However, under section 8 of the Garda Síochána Act 2008 any member of the Garda Síochána may institute and conduct prosecutions in a court of summary jurisdiction, but only in the name of the Director of Public Prosecutions. The Director of Public Prosecutions may give, vary or rescind directions concerning the institution and conduct of prosecutions by members of the Garda Síochána. Directions may be of a general or specific nature and may, among other things, prohibit members of the Garda Síochána from— (a) instituting or conducting prosecutions of specified types of offences or in specified circumstances, or (b) conducting prosecutions beyond a specified stage of the proceedings.

29. There are also a large number of regulatory offences which may be prosecuted in the District Court by a variety of State agencies- for example, building

regulations, planning and environmental regulations. In practice the Director is not involved in such cases except where serious breaches are involved and there is a power to prosecute on indictment.

Functions outside the criminal justice system

30. As already referred to above the Director has inherited the Attorney General's function in respect of election and referendum petitions. That function is to represent the public interest at the hearing. Such petitions have been extremely rare in recent times.

3. Organizational principles of the public prosecution: hierarchical, territorial, specialisation

31. By way of preliminary comment, it will be noted that the structure of the DPP's office is very unusual, probably unique, in having different lawyers, including barristers in private practice, to handle different functions in the same case. The reasons for this are historical and to do with the evolution of the office from a small section within the Attorney General's Office to the much bigger institution it is today, as well as to the distinct functions of solicitors and barristers in a divided profession. It is beyond the scope of this short paper to give a more detailed account of this.

Hierarchical

32. As already stated above in principle the organisation is very hierarchical since every prosecutorial act is in principle that of the Director. In practice there is a general delegation order in force enabling professional officers to act in the Director's name and appropriate instructions are in place specifying what matters should be brought to the Director's attention.

33. Where a file is sent up the line for a decision the practice is for the professional officer to minute his or her recommendation on the file. The senior officer will indicate agreement with the recommendation on the file or if the recommendation is not accepted the reason for disagreeing.

Territorial

34. The preceding section has described the system in operation in Dublin where the bulk of the cases are dealt with, and the different system in operation in the 32 territorial units outside Dublin in each of which a State Solicitor is assigned.

Differentiation of functions

35. Unlike the system in virtually every prosecution system in the world Ireland does not operate a system in which a single prosecutor handles every aspect of each prosecution from start to finish. Instead a team of prosecutors are responsible for different functions arising at different stages of each case. These will be the different stages of a typical case (using as an example a murder case).
36. A murder is committed and is investigated by the Garda Siochana (Police force). They identify a suspect and gather evidence which they think is sufficient to justify a charge. They then contact the Office of the DPP to seek a direction to charge. In most cases the direction is sought by submitting a file which is assigned to a member of the Directing Division who makes the decision whether to charge and with what offence. However, in some cases a direction is required urgently because a suspect is too dangerous to release or is a flight risk and in many murder cases this would be likely to arise. For this reason, an officer of the Directing Division is always available on a 24-hour basis.
37. The file is then assigned to a professional officer in the District Court Section of the Solicitors Division to prepare the Book of Evidence and to attend the hearing at which the District court will be asked to return the accused for trial. This is the formal statement of the evidence proposed to be given at the trial with a list of witnesses proposed to be called and exhibits which will be put in evidence.
38. Meanwhile the accused applies for bail in the High Court. A professional officer from the Judicial Review Section of the Solicitors' Division will attend Court to deal with the application.
39. The case is returned for trial to the Central Criminal Court. A professional officer from the Superior Courts Section of the Solicitor's Division will prepare the case for trial. A barrister will be nominated by the Directing Division to conduct the case in court.
40. At the trial the accused offers a plea to manslaughter. The solicitor will apprise the Directing Division of this and the officer who made the original decision to charge murder will decide whether to accept this plea. In a serious case such as murder it is probable that the Director or a very senior officer in the Directing Division will be consulted about this decision and the views of the barrister conducting the case will be sought and taken into account.

Specialisation

41. The only formal specialisation by subject matter is the Special Financial Unit which deals with economic crime. Informally the experience of officers in particular areas may be taken into account when assigning cases and the more serious and difficult cases will be assigned to more senior and experienced officers. There is no legal requirement for random distribution, but random distribution is the usual practice in the absence of a particular reason to do otherwise.

4. Status of the public prosecutors, selection, appointment, evaluation and promotion

Status, selection, appointment and dismissal of the Director

42. Section 2(1) of the Prosecution of Offences Act 1974 established the office of Director of Public Prosecutions. The Act contains detailed provisions regarding the appointment, status, terms and conditions of employment, and removal from office of the Director. The Director is declared to be independent in the performance of his function (section 2(1)). The Director is defined as being a civil servant in the Civil Service of the State. This term has a particular meaning in Irish law; the expression Civil Service of the State is used in contradistinction to the expression Civil Service of the Government to denote civil servants who work within independent branches of the State which are not controlled by the Government such as the Courts Service or the office of the Attorney General. The purpose of these provisions is to secure the independence and non-political status of the Director.
43. The Director, who must be a practising barrister or a solicitor which is defined to include barristers and solicitors in State service, is appointed by the Government following the selection of a suitable candidate or candidates by a statutory committee. The committee consists of the Chief Justice, the Chairman of the General Council of the Bar of Ireland, the President of the Incorporated Law Society, the Secretary to the Government, and the Senior Legal Assistant in the Office of the Attorney General who is the permanent civil service head of that office and is now known as the Director General of that Office. The Government can decline to appoint any person recommended and can make a further request to the committee for a recommendation. The Government has, however, no power to appoint a person not recommended by the committee. (Prosecution of Offences Act section 2).
44. The Director holds office on terms and conditions determined by the Taoiseach. The first two holders of the office were appointed until age 65 (the normal civil service retirement age); the current holder is appointed for a 10-year term which is non-renewable but pensionable at its termination.
45. The Director may be removed from office by the Government but only after consideration by them of a report into the Director's condition of health, physical or mental, or conduct, whether in the execution of office or otherwise, by a committee consisting of the Chief Justice, a High Court judge nominated by the Chief Justice, and the Attorney General. To date there have been only three Directors in the 46 years of the office's existence none of whom have been removed from office.
46. Section 2(6) of the Prosecution of Offences Act provides that the Attorney General and the Director shall consult together from time to time in relation to matters pertaining to the functions of the Director. This does not, however, amount to a power to give an instruction to the Director. The Director's independence is further guaranteed by a provision making it unlawful to communicate with him or her or the Director's staff for the purpose of influencing

prosecution decisions except by defendants, complainants and their professional advisers. (Section 6.)

Status, selection, appointment, dismissal and evaluation of other prosecutors

Status

47. In Ireland prosecutors are not regarded as a profession distinct from other lawyers. The Prosecution of Offences Act refers to “professional officers” of the Director who are officers who are either barristers or solicitors. These are, therefore, the permanent staff of the Office who may be considered as prosecutors. As officers of the Director they partake of the independence guaranteed to her office and have the same protections afforded to other civil servants of the State. The laws relating to the terms and conditions of employment- including appointment, remuneration, tenure, pension rights, and guarantees against unfair dismissal which are generally applicable to civil servants are also applicable to them.

Selection and appointment

48. All employed lawyers in the Office, with one exception, are recruited through open recruitment competitions. The competencies against which candidates will be assessed are advertised and a selection panel which always includes a member from outside the Office selects the most qualified candidates. The exception to open recruitment is in respect of serving staff who qualify as lawyers while working. Periodically, confined internal competitions are run for such staff.
49. External recruitment of lawyers takes place, in the main, for entry level lawyers who typically start on an annual salary of in the region of €58,000. Recruitment of entry-level staff can be at the level of newly qualified solicitors or barristers but more typically a level of two to four years post-qualification experience is required.
50. Open external recruitment also takes place for the more senior grades in the Office. Posts at other levels are filled through internal promotion competitions. All recruitment and promotion competitions involve publishing the competencies required and are conducted by a panel which includes at least one member from outside the Office.
51. Competitions involve a process of competitive interview and are organised in accordance with relevant codes of practice adopted by the Commission for Public Service Appointments and subject to their supervision. Interview boards are composed of a combination of senior prosecutors and independent outside experts such as judges and legal practitioners. The Commission is the regulator of recruitment and selection in the Irish public service, whose role is to ensure that appointments to the civil and public service are fair, transparent and merit-based. This is a non-political independent agency whose current membership consists of the Speaker of the lower house of Parliament, the Ombudsman, the Secretary General to the Government, the civil service head of the Department of

Public Service and Reform, and the Chair of the Standards in Public Office Commission who is a retired High Court Judge.

52. Outlined below are details of the recruitment competition held in the years 2014 – 2020

Year	Position	Number Recruited
2020	Deputy Chief Prosecutor	1
2019	Deputy Chief Prosecutor	1
2018	Deputy Chief Prosecutor	1
2018	Prosecutor	10
2017	Deputy Chief Prosecutor	1
2017	Prosecutor	15
2016	NIL	
2015	Chief Prosecution Solicitor	1
2015	Prosecutor	3
2014	Prosecutor	8

Promotion

53. Promotions are based on merit and made as a result of an internal competition based on competitive interview, again with independent outside representation. At the rank equivalent to Assistant Secretary and above (Deputy Director, Heads of legal Divisions and the Unit Heads in the Directing Division) appointments are made following a process similar to Top Level Appointments Commission practice in the general civil service. This permits applications from other solicitors and barristers in State employment and private practice. It uses a process of competitive interview with outside representation. However, unlike the Top Level Appointments Commission itself there is no governmental input into the final appointment which would be inappropriate in the light of the DPP's independent status.

54. Outlined below are details of the internal promotion competition held in the years 2014 – 2020

Year	Position	Number Recruited
2020	NIL To Date	

2019	Prosecutor (Internal completion for staff who had completed solicitor apprenticeship)	2
2018	Principal Prosecutor	4
2017	Senior Prosecutor	7
2017	Senior Principal Prosecutor	5
2017	Prosecutor (Internal completion for staff who had completed solicitor apprenticeship)	2
2016	NIL	
2015	Senior Prosecutor	9
2015	Principal Prosecutor	3
2014	Senior Principal Prosecutor	4

Performance Evaluation

55. Performance in and of the Office of Public Prosecution is measured and assessed in a number of ways. Individual performance of directly employed lawyers and that of lawyers engaged under contract is measured and assessed by the organisation. In addition, the performance of the organisation is assessed against agreed targets by the Oireachtas, the Irish Parliament, on an annual basis. Expenditure of the Office of the Director of Public Prosecutions is audited by the Comptroller and Auditor General, the national auditor appointed under the Constitution of Ireland.
56. Once appointed all employed lawyers and lawyers appointed under contract have their performance assessed on an ongoing basis. Employed lawyers are assessed formally under the Irish Civil Service Performance Management and Development System. This system requires the formal agreeing of roles and targets at the start of every year. A formal mid-year review and end of year review against the role and targets takes place. The legal work of individual lawyers is also reviewed by the managers on an ongoing basis. In addition, as part of continuing professional development lawyers must undertake a minimum of 22 hours of professional development training a year.
57. Objective 1 of the Office's Strategy Statement 2019 - 2021 is "Maintain high standards of operating efficiency to achieve independent, fair and effective prosecutions". One of the strategies to achieve this is that State Solicitors and Counsel are appointed by the Office through a competitive process and their performance is monitored annually. Measurement of the performance of State Solicitors and Counsel is led by the two most senior lawyers in the Office after the Director and Deputy Director of Public Prosecutions, i.e., the Chief Prosecution Solicitor and the Head of the Directing Division. The Chief

Prosecution Solicitor meets each local State Solicitor at least once a year at which all aspects of the State Solicitor's work is discussed.

58. Should performance not be at the level expected a range of options are open to Office. Employed lawyers are subject to the Civil Service Disciplinary Code which provides for sanction in the event of underperformance. Lawyers engaged under contracts can have their contracts terminated if performance is not adequate. Performance issues, however, are rare. This is attributed to the detailed selection method, ongoing review of performance and requirements to undertaken annually continuing professional development.

Which body is responsible for defining the criminal policy?

59. The answer to this question depends on what exactly is meant by criminal policy. The Ministers and Secretaries Act 1924 established Departments of State amongst whom the administration and business of public services was divided. The Department of Justice, the predecessor of the current Department of Justice and Equality, was assigned "the administration and business generally of public services in connection with law, justice, public order and police, and all powers, duties and functions connected with the same". While there is a close relationship between the Department and An Garda Síochána (the national police force) the latter is regarded as having an operational independence. With regard to the Office of the Director of Public Prosecutions, however, the Department has no role. The Director is independent in the performance of her functions. There is a relationship of consultation with the Attorney General who although the adviser to the Government is himself an independent officer. The Director's Office is one of a small group of independent offices (including the Office of the Attorney General and the Ombudsman) who are not represented by a responsible Minister of the Government answerable to Dail Éireann (the lower house of parliament) and the Taoiseach (prime minister) takes responsibility to handle the financial vote of these independent offices in parliament.
60. The principal policy issues with which the Director is concerned are dealt with in the published Guidelines for Prosecutors which govern prosecution policy.² These were first drafted and published by the Director in 2001 and have been regularly revised ever since. When first published public comments were invited but few comments were in fact received.
61. The Department of Justice and Equality is responsible for law reform including the criminal law. Through its power to initiate reform of criminal law and procedure the Department can and does exercise a profound effect on criminal policy, but neither it nor the Government has any power to issue any advice or instruction to prosecutors and for it or any Minister of the Government even to communicate with the Director or her staff for the purpose of influencing the making of a decision to withdraw or not to initiate criminal proceedings of a

² These can be accessed at dppireland.ie.

criminal prosecution would be unlawful under section 6 of the Prosecution of Offences Act 1974.

Are there current reforms under way?

62. There are no current plans ongoing to change the systems of recruitment, appointment, promotion or assessment. However, reform in the criminal justice system is a constant and the office is continually responding and adapting to the challenge of new legislation, developing case-law and changing patterns of criminality.

General statistical information on the PPO

a. Total number of public prosecutors, distribution per courts; rate per inhabitant; total number of criminal cases; rate of resolution; retirement age.

63. There are 115 lawyers (both solicitors and barristers and including the Director) employed in the Office of the Director of Public Prosecutions. The number of lawyers employed in each section of the Office in addition to the named managers is shown in the Organisation Chart which follows.

64. In addition, there are 32 local State Solicitors who work on contract for the Director. In principle these are part-time but for many of them work for the Director represents the major part of their workload and for some the bulk of their practice.

65. It is difficult to give meaningful statistics for the numbers of barristers who conduct cases in court for the Office. There are panels in place but some barristers on the panel may conduct cases on behalf of the Director only very rarely. A more useful approach may be to refer to those who earn over a specified amount. In 2019 36 Senior Counsel and 73 Junior Counsel earned over €50,000 each. A further 12 Senior Counsel and 32 Junior Counsel earned between €10,000 and €50,000 each. Most of the barristers who work for the Director also work for private clients. Many of these clients are defendants charged with criminal offences – in other words, as a general rule barristers may do defence work in cases where they are not engaged to act for the prosecution. A small number of barristers have few private clients and work almost exclusively for the Director.

66. It is difficult to give a figure for the rate of prosecutors per inhabitant because the figure will depend on whether barristers prosecuting on behalf of the Director are regarded as prosecutors. Some criminal statistics are provided below as requested by specific questions. More detailed statistics are contained in the Office's Annual Reports published on its website.

67. The Director must retire at the end of her 10 years contract. The retiring age for her staff is set at civil service levels which differ depending on when recruited. It is generally 65 years of age, but an option recently introduced allows civil servants to continue to work until age 70 subject to health conditions. A judge must retire at 70.

II. WORKLOAD OF PUBLIC PROSECUTORS

68. As a general comment it should be noted that it is very difficult to make direct comparisons between the work of the DPP's Office in Ireland and most other prosecution offices. The typical prosecution office employs a single prosecutor who handles all the legal work of each case with which they deal, including directing the investigation, deciding whether to prosecute and on what charges, preparing the case, interviewing the witnesses, preparing all documentation and conducting the trial in court. The diffuse Irish system of prosecution assigns a different prosecutor to each of these tasks for which it is responsible making many direct comparisons of statistics very difficult other than in a very general sense.

5. Are there statistics on caseload of public prosecutors? If yes, comment on the findings/evolution and if possible analysis.

69. The total number of outputs under each of the principal categories of work done by the office for each of the past three years is shown in the following table (the figures given are slightly different from those shown in the latest published Public Service Performance Report 2018 because they have been updated)

Key High Level Metrics – Provision of Legal Services

	2017 Outturn (Target)	2018 Outturn (Target)	2019 Output (Target)
No. of directions made in respect of suspects	12,381 (12,500–13,500)	12,673 (12,500–13,500)	13,256 (12,500–13,500)
No. of new court proceedings to deal with	3,634 (3,000 – 3,500)	3,581 (3,500 – 4,000)	4,164 (3,500 – 4,000)
No. of Dublin District Court prosecution files to deal with	1,000 (1,000 – 1,300)	1,104 (1,000 – 1,300)	1,278 (1,000 – 1,300)
No. of Dublin District Court appeal files to deal with	2,229 (1,700 – 2,000)	2,947 (2,000 – 2,500)	2,870 (2,500 – 3,000)
No. of bail applications to deal with	1,360 (1500)	1,559 (1,000 – 1,500)	1,448 (1,200 – 1,700)

No. of new Judicial Review cases	192 (200 - 250)	172 (200 - 250)	168 (150 - 200)
Requests from victims for reason for decision not to prosecute	637 (500 - 750)	620 (500 - 750)	644 (500 - 750)
Requests from victims for review of decision not to prosecute	221 (150 - 250)	202 (150 - 250)	213 (150 - 250)

70. The first set of figures measures the principal output of the Directing Division whose main task is to review police files and to direct whether to prosecute and for what offence. Cases are generally allocated on a random basis and as equally as possible. Some more difficult cases will be allocated to officers with particular expertise. Cases received in the office are allocated daily either by the Head of the Directing Division or by another senior officer assigned by her to carry out this task. The officer allocating the cases will have to bear in mind the existing caseloads of officers and the need to give some cases priority – for example, cases where a suspect is in custody. The officer allocating cases will try to share the load of difficult cases fairly but a strict mathematical equality is not always possible. Some years ago thought was given to a system of weighting the difficulty of cases but rejected as unduly time-consuming and very difficult to organise in a scientific manner so that the benefits would not justify the time and trouble involved.

71. Other categories measure the main output of the various sections of the Solicitors' Division.

72. The work of the Solicitor's Division is driven by the demands of the various courts which they service. In the District Court Section, for example, a large number of District Courts are serviced. Solicitors are assigned to the various courts as required and so far as practicable each solicitor will deal with the workload in that court on that day. The number of cases each solicitor will deal with on any given day will depend on what cases are before the court. It would be pointless and impractical to attempt an artificial equality in the number of cases handled by each individual and the system demands a great deal of flexibility on the part of the solicitors concerned.

73. It should be borne in mind that decisions on listing cases are made by the judges, not the prosecutors. Bail cases and applications for habeas corpus, for example, must be heard at the earliest opportunity and the prosecutor must be in court and ready to deal with them no matter what other work is on hand.

6. Are there statistics on workload of public prosecutors? If yes, comment on the findings/evolution and if possible analysis.

74. The following chart indicates the time within which directions on files are complete. They show that more than half of all files are directed upon within two weeks and about 90% within three months. Each officer's caseload is reviewed on a regular basis by the Unit Head and the Head of the Directing Division in order to ensure that there is no unreasonable delay in dealing with cases.

Average time within which directions per suspect are issued on prosecution files received	2017	2018	2019
Zero – Two Weeks	5,669 49%	6,449 55%	6,640 54%
Two – Four Weeks	1,923 17%	1,762 15%	1,820 15%
Four Weeks – Three Months	2,592 23%	2,187 19%	2,313 19%
Three Months – Six Months	915 8%	800 7%	947 8%
Six Months -	342 3%	367 3%	231 2%
More than Twelve Months	65 1%	71 1%	13 0%
TOTAL FILES DISPOSED	11,506 100%	11,636 100%	11,964 97%
Under Consideration	12 0%	32 0%	357 3%
TOTAL	11,518 100%	11,668 100%	12,321 100%

General rules and principles on staffing

7. Is there an established ratio that determines the number of public prosecutors (upon inhabitants, upon number/type of courts; upon number of criminal cases? Who decides on the workload of each of the members of the PPO?

75.No. Decisions on staffing levels are made by the Department of Public Expenditure and Reform in response to a case made by the Director for additional staff. Such staff may only be employed once money is voted by Dail Eireann for the payment of their salaries.

8. Which body is responsible for analysing the needs on the number of prosecutors?

76. See answer to previous question.

Estimating the workload

9. Are there separated criteria for estimating the workload of prosecutors, different from the ones applicable to the judges?

77. The workload is demand led. Essentially it depends on the number of Garda investigations which lead to the submission of a file to the DPP. Once the accused is charged the case comes before the court and the timetable for hearings is set by the court, not by the prosecutor. The most the prosecutor can do is seek more time to prepare but such applications have to be grounded on real need for more time, for example, because of the large number of documents or witnesses in a case which may mean that the book of evidence takes longer to prepare than usual. The prosecutor's workload is not a ground for seeking extra time from the court. Once the book of evidence is served the case will be set down for trial and the length of time it takes to be heard depends on how busy the court list is, not on the workload of the prosecutor.

10. If not, are the criteria applicable for measuring the workload of judges applicable mutatis mutandis to the public prosecutors?

78. The workload of the judges in criminal courts in effect depends on the activities of the police and the prosecutors. For example, all criminal trials held in Dublin in either the Circuit or Central Criminal Court are listed for hearing before the senior criminal judge in the court having jurisdiction on each hearing day. Usually a substantial number of cases result in a plea of guilty. The presiding judge assigns each case listed for hearing which is contested to him or herself or to another available judge. Assignments will take into account such factors as which judges are available, for how long, and how long each case is expected to last. If no judge is available a case will be put back to the next available sitting. Once a hearing is commenced the practice is for a trial to continue on successive days until finished. The judge does not have a quota of cases but is expected to work each day during fixed hours and to deal with such matters as writing judgments or research outside this time. Outside Dublin in most areas a single judge is assigned to deal with all cases within his or her jurisdiction. It should be borne in mind that in common law systems the judge's involvement in a case prior to the actual trial itself is relatively limited and certain preliminary or ancillary matters such as applications for bail, or to authorise searches or to extend periods of arrest or to consider applications for habeas corpus, will not necessarily be dealt with by the judge who ultimately presides at the trial. Because of this common law method of working the question is not very meaningful and the work of prosecutor and judge in any given case is not really comparable.

11. The estimate of time required to handle a case by a prosecutor is based upon which criteria? The time is estimated for each stage of the proceedings (pre-trial stage, filing the indictment, prosecution in court, appellate review)?

79. The premise on which this question is largely based (i.e. a single prosecutor handling all stages of the case) does not apply in Ireland. It will be normal in fixing a date for hearing for the judge to seek an estimate from both prosecution

and defence as to how long a trial is likely to take. Such estimates are usually made by the barristers in the case, are not binding and are frequently not accurate.

12. What is the method applied to calculate the approximate time in handling a case? Weighted case method, which takes into account: 1) How much prosecutor time, on average, is required to handle each type of case to disposition; and 2) The amount of time available to a typical prosecutor to handle cases.

80. This is only done in response to court requests (see reply to previous question). Any estimate will be based on the number of witnesses and the length it is likely to take to hear their evidence as well as the likely length of submissions which will depend on the complexity of a case.

13. Which criteria are taken into account to identify the complexity of a case?

81. Number of witnesses, length of their statements, number and nature of documentation, length it will take to peruse documents, existence of technical and expert evidence, issues of law arising and research which may be necessary where complex issues arise, whether forensic tests are required, whether additional evidence is required, if so how long it will take to gather this.

82. As previously mentioned, the office considered trying to measure likely complexity of cases some years ago for the purpose of ensuring equal case allocation and abandoned the attempt. A major problem is that any system would have to be open to revision of the estimate in a case if such proved to be wrong. There are many unpredictable factors. An apparently complex case may end quickly when a defendant decides to plead guilty. An apparently simple case may get bogged down in pre-trial applications whose main purpose is to cause delay.

14. Is the weighted method complemented with the Delphi method?[1]

83. Not applicable.

Performance indicators

15. Are there pre-established performance indicators? If yes, please describe. Is there any “quantitative” rule that each of the individual PPs have to comply with (e.g. number of criminal cases handled)?

84. The office has an electronic case management system. This enables each head of division, unit or section to see how many files are assigned to each officer reporting to each manager, how quickly they are dealt with and with what outcome. Figures have been provided for example to show the length of time taken to issue directions in each case. The managers meet the members of their unit on a regular basis to review their cases. Units in the office are quite small and managers (who are also working lawyers taking their share of the workload)

know their staff very well. If an officer appears to be underperforming by comparison with colleagues this will be addressed. However, there may be a perfectly good reason why somebody's figures look worse than those of others. There are not pre-set quantitative targets that each member of staff has to deal with but staff are expected to handle their assigned workload in a timely manner.

85. For lawyers dealing with cases in court (this is the majority of lawyers) they have to be prepared to read the files in advance and be prepared to deal with them in court. Staff frequently have to work outside normal hours to achieve this.

16. Who evaluates the compliance with the performance indicators? Do they result in economic incentives? Can the non-compliance with the performance indicators lead to disciplinary proceedings?

86. See previous answer. There are no economic incentives for achieving performance targets. For disciplinary proceedings see the answer to question 4 above under the heading "Performance evaluation".

17. How is the distribution of cases done in practice in each PPO? Is this distribution of workload done objectively? Are there pre-established criteria? Are these criteria made public?

87. The distribution of cases is dealt with above in the answer to question 5.

Impact of workload on staffing decisions and budget

18. Who decides on the call for new positions, increase of number of prosecutors/leaving vacant positions when a workload increase is detected?

88. See the answer to question 7 above.

19. Which body is responsible for cost-assessment and budgetary needs of the PPs?

89. Each year the Office's Administration Division prepares estimates of the finances it will require for the following financial year. It then discusses these with officers from the Department of Public Expenditure and Reform. Generally, agreement is reached on the Office's financial requirements for the following year and this process will feed into the budget which will be presented to Dail Eireann for approval.

Others

20. Other relevant information and any difficulties encountered in providing the requested information

POLAND

I. GENERAL INFORMATION¹

1. Introduction

a) Historical background.

1. Until 1950, the Public Prosecutor's Office in Poland functioned according to a pre-war model, which means that it was organisationally linked to courts and under the leadership of the Minister of Justice, who at the same time held also the position of the Prosecutor General. Pursuant to the decree of the Polish Committee of National Liberation (PKWN) of 23 September 1944 "Law on the System of Military Courts and Military Prosecutor's Office",² a separate military prosecutor's office was established.
2. The new system and organization of the public prosecutor's office were set in 1950 and modelled upon the soviet prosecutor's office.³ Its aim was to consolidate the role of the socialist rule of law, protect public property and prosecute offences.
3. The public prosecutor's office became a separate national authority headed by the Prosecutor General. It was a three-tier body based on the structure of hierarchical subordination. Within the internal structure, prosecutors were obliged to follow the orders of their superior prosecutors, including the instructions regarding the substance of their activities in legal proceedings. The law declared the independence of the authorities under the Prosecutor General from external institutions.
4. In such a systemic shape the prosecutor's office existed until 1990 under the rule of three consecutive acts governing the system of the prosecutor's office. The Act on the Prosecutor's Office of the Republic of Poland of 20 July 1950 was repealed by the Act on the Prosecutor's Office of the Polish People's Republic of 14 April 1967,⁴ which, in turn, was repealed by the Act on the Prosecutor's Office of 20 June 1985,⁵ effective of 1 September 1985. The last one slightly relaxed the prosecutor's hierarchical subordination to the superior prosecutor.

¹ This report has been written by Grażyna Stanek, Prosecutor of the General Prosecutor's Office.

² Journal of Laws (Dz.U.) of 1944, No. 6, item 29, as amended.

³ Act on the Prosecutor's Office of the Republic of Poland of 20 July 1950, Journal of Laws (Dz.U.) of 1950, No. 38, item 346.

⁴ Journal of Laws (Dz.U.) of 1967, No. 13, item 55, as amended.

⁵ Journal of Laws (Dz.U.) of 1985, No. 31, item 138, as amended.

5. It is worth mentioning that the Act on the Prosecutor's Office of 1985 was in force until 3 March 2016 and was amended 54 times.
6. During the period under the rule of the three above-mentioned laws, until 1990, the public prosecutor's office was shaped as an institution separated from the division of three branches of powers. Until 7 April 1989, through its chief body, it was connected with the Council of State, and from 8 April 1989, for a short period of time, until the end of 1989, the functions of the Council of State were taken over by the President of the Republic of Poland.
7. Starting from 1952 and even until 7 December 1992, the systemic place of the prosecutor's office was set up on the basis of the Constitution.
8. Pursuant the Constitutional Act on Mutual Relations between Legislative and Executive Powers in the Republic of Poland and Territorial Self-government of 29 December 1989,⁶ the prosecutor's office was incorporated into the structure of the executive power, namely into the Ministry of Justice. Nearly 3 years later, another constitutional act⁷ did not contain provisions about the prosecutor's office. Also, the Constitution of the Republic of Poland of 2 April 1997⁸ did not list the prosecutor's office among the national authorities, although its competence in the protection of the rule of law was not assigned to any other body.
9. Therefore, the concepts of the tasks and system of the prosecutor's office were implemented by ordinary laws, in the beginning, as amendments to the Act on the Prosecutor's Office of 20 June 1985,⁹ and then in the Law on the Prosecutor's Office of 28 January 2016.¹⁰
10. Until 2010, the legislature, while keeping the prosecutor's office within the structure of the Ministry of Justice, introduced new amendments to the law on the prosecutor's office and gradually relaxed the subordination of the subordinate prosecutor to the superior prosecutor. From 31 March 2010, it was required that the decision of the superior prosecutor changing or repealing the decision of the subordinate prosecutor be made in writing and included in the case file.
11. Despite the fact that the subordination of the prosecutor to the superior prosecutor was continued to be gradually relaxed, the organizational structure of the prosecutor's office was expanded. Initially, it was a two-tier structure consisting of district prosecutor's offices and provincial prosecutor's offices (later circuit offices), and from 1993 – when the appellate prosecutor's offices were established – it was transformed into a three-tier model.¹¹ In 1996,

⁶ Journal of Laws (Dz.U.), No. 75, item 444.

⁷ Act on Mutual Relations between Legislative and Executive Powers in the Republic of Poland and Territorial Self-government of 17 October 1992. Journal of Laws (Dz.U.) of 1992, No. 84, item 426.

⁸ Journal of Laws (Dz.U.), No. 78, item 483.

⁹ Journal of Laws (Dz.U.) of 2011, No. 270, item 1599, uniform text.

¹⁰ Journal of Laws (Dz.U.) of 2017, item 1767, uniform text.

¹¹ The appellate prosecutor's offices were established under the Act of 15 May 1993 Amending the Law on the System of Common Courts, the Law on the Prosecutor's Office, the Law on the Constitutional Court,

the National Prosecutor's Office was established as the fourth level of the organization in the hierarchical structure of the public prosecutor's office.¹²

12. After 1990, the legislature shaped the prosecutor's office so that it was similar to the pre-war model where the Minister of Justice held the position of the Prosecutor General, but the organizational structure was kept independent of courts and highly hierarchized.
13. Material systemic changes were introduced by the amendment of 9 October 2010 to the Act on the Public Prosecutor's Office.¹³ The amendment separated the positions of the Minister of Justice and the Prosecutor General and did not directly reflect the solutions from the period of the Polish People's Republic because, as opposed to those solutions, it decentralized prosecutor's decisions in the legal proceedings conducted on the basis of the act of law.
14. The hierarchical subordination of the subordinate prosecutor to the superior prosecutor was based only on the principles of devolution and substitution which were supplementary to the principle of personal disinterest. The heads of the organizational units at all the levels of the prosecutor's office were appointed for a period specified in the law, and they could be dismissed from the position before the lapse of that period only in strictly defined situations.
15. The appointment to the first or any following prosecutor's position was based on the contest conducted by the National Council of the Prosecutor's Office. The Council was modelled as a state body upon the National Council of Judiciary and took place of the former Council of Prosecutors for the Prosecutor General which was an internal body of the prosecutor's office fulfilling advisory and consultancy functions. The effectiveness and quality of the prosecutors' work was monitored on an ongoing basis and evaluated in 4-year cycles.
16. In such a systemic form the prosecutor's office existed until 3 March 2016, that is until the moment when the Law on the Prosecutor's Office of 28 January 2016¹⁴ entered into force.

b) Constitutional and legal framework of the prosecutor's office

17. Currently, the system, structure and tasks of the prosecutor's office are regulated by the provisions of the Law on the Prosecutor's Office of 28 January 2016 (hereinafter referred to as the Law on the Prosecutor's Office or the Act). Pursuant to Article 1 § 1 of the above law, the public prosecutor's office consists of the Prosecutor General, National Prosecutor, other deputies of the Prosecutor

the Law on the National Council of the Judiciary and on the Establishment of the Appellate Courts. Journal of Laws (Dz.U.) No, 47, item 213.

¹² The National Public Prosecutor's Office was established by the Act of 10 May 1996 Amending the Law on the Prosecutor's Office, the Law on the Supreme Court, the Law on the Constitutional Court and the Law on the System of Common Courts and the Law on the Bar. Journal of Laws (Dz.U.) No. 77, item 367.

¹³ Journal of Laws (Dz.U.) No. 213, item 1802.

¹⁴ Journal of Laws (Dz.U.) of 2016, item 177, as amended.

General and Prosecutors of the common units of the public prosecutor's office and Prosecutors of the Institute of National Remembrance – the Commission for the Prosecution of Crimes against the Polish Nation.

18. The position of the Prosecutor General is again held by the Minister of Justice (Article 1 § 2 of the Act). This is not a simple return to the solutions applicable before 2010, as the Prosecutor General is not only authorised to give orders regarding the substance of the activities in legal proceedings in cases handled by the prosecutor on the basis of the act of law, but he is also conferred with other procedural rights, for example a right to disclose the secrecy of preparatory proceedings. Consequently, the person appointed to the position of the Minister of Justice has to meet certain criteria required to be appointed to the position of prosecutor. For example, the candidates are required to have master's degree in law.
19. The common organizational units of the prosecutor's office also employ prosecutors for military matters. The division of the military prosecutor's offices was closed down.
20. The status of the prosecutors in the Institute of National Remembrance – the Commission for the Prosecution of Crimes against the Polish Nation is regulated, in addition to the above-mentioned law, by the Act on the Institute of National Remembrance – the Chief Commission for the Prosecution of Crimes against the Polish Nation of 18 December 1998.¹⁵
21. The task of the prosecutor's office is to prosecute offences and protect the rule of law (Article 2 of the Law on the Prosecutor's Office).
22. The Constitution of the Republic of Poland¹⁶ still does not regulate the system and principles of operation of the prosecutor's office. Article 191(1) of the Constitution mentions the Prosecutor General only in the context of certain competence, i.e. the right to turn to the Constitutional Court with the motion to determine if the laws or international agreements are compliant with the Constitution.

2. Structure and activities of prosecutors

a) Structure of the prosecutor's office

23. The prosecutor's office consists of prosecutors who are in employment relationship with individual organizational units. The prosecutor's office is a structure with hierarchical subordination. It is headed by the Prosecutor General. The tasks of the Prosecutor General stipulated by law can also be performed by his deputies. The National Prosecutor is the first deputy of the Prosecutor General. The Law on the Public Prosecutor's Office requires that there are three different deputies of the Prosecutor General, that is:

¹⁵ Journal of Laws (Dz.U.) of 2019 item 1882, uniform text, as amended.

¹⁶ Journal of Laws (Dz.U.) of 1997, item 483, uniform text, as amended

- Deputy Prosecutor General for Organized Crime and Corruption;
 - Deputy Prosecutor General for Military Matters;
 - Deputy Prosecutor General for the Prosecution of Crimes against the Polish Nation.
24. Further deputies of the Prosecutor General may be appointed if this is necessary to ensure the proper performance of the tasks of the prosecutor's office. Currently, the Prosecutor General has seven deputies.
25. The prosecutor's office has two divisions. The primary division consists of the prosecutors from common organizational units and prosecutors for military matters. The special division consists of the prosecutors of the Institute of National Remembrance.
26. The common prosecutor's office is composed of the following four levels:
- the National Prosecutor's Office;¹⁷
 - regional prosecutor's offices¹⁸ – 11 units;
 - circuit prosecutor's offices – 45 units;
 - district prosecutor's offices – 357 units.
27. The National Prosecutor's Office is based in Warsaw. Its structure encompasses the Departments for Organized Crime and Corruptions which are located outside Warsaw, in the cities where regional prosecutor's offices are based.
28. Due to specificity of the area, some district prosecutor's offices have local branches. At present, there are local branches in five district prosecutor's offices.
29. Prosecutors for military matters operate in the Department for Military Matters in the National Prosecutor's Office and divisions for military matters functioning in some circuit and district prosecutor's office.
30. The prosecutors in the Institute of National Remembrance operate in two organizational structures: the Commission for the Prosecution of Crimes against the Polish Nation and the Vetting Office. Each structure is composed of two levels. Accordingly, the Commission for the Prosecution of Crimes against the Polish Nation consists of the Chief Commission based in Warsaw and 11 Branch Commissions for the Prosecution of Crimes against the Polish Nation based in the cities which at the same time are seats of appellate courts, and six Local Offices of the Institute of National Remembrance – Investigative Units in other cities. The Vetting Office consists of the Vetting Office (as a central unit) and 11 Branch Vetting Offices based in other cities – similarly to the Branch Commissions for the Prosecution of Crimes against the Polish Nation.

¹⁷ The National Prosecutor's Office is the equivalent of the General Prosecutor's Office existing before 4 March 2016

¹⁸ Regional prosecutor's offices are the equivalent of appellate prosecutor's offices existing before 4 March 2016

b) Activities of prosecutors aimed at performance of statutory tasks of the prosecutor's office

31. The prosecutors from the common organizational units fulfil the tasks of the prosecutor's office mainly by personally handling criminal cases or supervising preparatory proceedings conducted by other authorities (e.g. the Police) and by assuming the role of public prosecutor in courts. Prosecutors bring actions in civil cases and cases connected with labour law and insurance matters if this is necessary to protect the rule of law, public interest, ownership or rights of citizens. By bringing an appeal or taking other legal measures they strive for proper and uniform application of the law in court proceedings, administrative proceedings, petty offence cases and in other proceedings prescribed by law.
32. In addition to their activities in legal proceedings, prosecutors have also obligations of different nature, such as giving opinions on bills of law, conducting research in the field of criminal activity and how to combat and prevent it, etc. The prosecutors from the units at higher level perform also duties such as supervision of lower-level units and organization of work. There are special departments within these units which are mainly focused on non-litigation responsibilities.
33. In the cases under jurisdiction of courts-martial, the above-listed tasks are performed by prosecutors for military matters from the common organizational units in the prosecutor's office. Prosecutors for military matters carry out also responsibilities in other cases which are not under jurisdiction of courts-martial.
34. The Prosecutors of the Institute of National Remembrance and Branch Commissions for the Prosecution of Crimes against the Polish Nation conduct preparatory proceedings and handle cases in courts which involve offences against Polish nationals or Polish citizens of other nationalities committed from 8 November 1917 to 31 July 1990, such as Nazi crimes, communist crimes and other crimes against peace, humanity and war crimes.
35. The prosecutors of the Vetting Office of the Institute of National Remembrance prepare documents and materials in proceedings regarding vetting declarations stipulated in the Act on the Disclosure of Information about Documents of National Security Authorities from the period 1944-1990 of 18 October 2006.¹⁹

3. Organization of the prosecutor's office, principles of hierarchical subordination, geographical and legal jurisdiction

36. The Polish prosecutor's office, despite a complex organizational structure, is a uniform institution based on the principle of hierarchical subordination. The hierarchy in the prosecutor's office is developed on the superior prosecutor – subordinate prosecutor relation. The Prosecutor General is a superior prosecutor for the prosecutors from common organizational units of the prosecutor's office and the Institute of National Remembrance. The National Prosecutor is in charge

¹⁹ Journal of Laws (Dz.U.) of 2020, item 306, uniform text, as amended.

of the prosecutors from the National Prosecutor's Office and the prosecutors from other common organizational units of the prosecutor's office. The regional prosecutor, the circuit prosecutor and the district prosecutor are superior prosecutors for the prosecutors of the units at the given level and the prosecutors of the units at a lower level within the geographical area of the given prosecutor's office.

37. Every superior prosecutor has the right to issue orders, guidelines and instructions to his subordinate prosecutors. The instructions regarding the substance of the activity performed in legal proceedings are issued in writing by the superior prosecutor, and upon the request of the subordinate prosecutor they are also justified in writing. In case there is an obstacle to deliver the instruction in writing, oral instructions are permitted, but the superior prosecutor is obliged to immediately confirm them in writing. The instruction should be incorporated into reference case file.²⁰ (Article 7 § 1 and 3 of the Act).
38. The right to give orders mentioned above is also conferred upon other prosecutors who are not superior prosecutors, e.g. directors of departments and heads of sections of the National Prosecutor's Office are entitled to give orders to subordinate prosecutors performing their activities in these departments and regional, circuit and district prosecutors respectively, while heads of sections and managers of departments in lower-level units can give orders to prosecutors working in these organizational entities.
39. The superior prosecutor is entitled to change or repeal the decision of his subordinate prosecutor. Any such change or repeal of the decision should be made in writing and placed in case file (Article 8 § 1 and 2 of the Act). On the basis of the principle of substitution, the superior prosecutor can delegate activities within his scope of action to his subordinate prosecutors unless the law imposes certain responsibilities exclusively on him (Article 9 § 1 of the Act). The superior prosecutor may take over cases handled by subordinate prosecutors and perform their activities unless the law provides otherwise (Article 9 § 2 of the Act, principle of devolution). The rights of the superior prosecutor are also conferred upon the deputies of the Prosecutor General, regional prosecutor, circuit prosecutor and district prosecutor in the scope of their responsibilities.
40. The principles of substitution and devolution in the organization of the prosecutor's office co-exist with the principle of personal disinterest. Changing the prosecutor conducting the proceedings, even during a pending activity in legal proceedings, does not affect the validity of the activities that have already been completed. Jurisdiction of individual bodies of the prosecutor's office is an internal matter of organization and distribution of work in the prosecutor's office and, as such, it is practically insignificant for the legal proceedings. There are only exceptions when particular legal provisions require that certain activities be performed by the prosecutor of certain level in hierarchy. For example, only prosecutors from the National Prosecutor's Office are entitled to handle cases in the Supreme Court and the Supreme Administrative Court.

²⁰ Reference case file is not available for parties and participants of the proceedings.

41. Also, the geographical jurisdiction of the prosecutor is a matter of the organization of work in the prosecutor's office rather than a procedural requirement. The geographical area of individual prosecutor's offices is defined by the Minister of Justice by an ordinance creating the given organizational unit of the prosecutor's office. The supreme prosecutor, within his geographical jurisdiction, may delegate the case to another organizational unit.
42. The Polish law does not stipulate any declared specialization of prosecutors, however, such specialization exists in a limited scope and results from legal and factual reasons. For example, prosecutors of the Institute of National Remembrance try only cases under the jurisdiction of the Commission for the Prosecution of Crimes against the Polish Nation and the Vetting Office and do not conduct any other proceedings. Prosecutors for military matters conduct proceedings in the cases under the jurisdiction of courts-martial, but they can also try other cases.
43. The currently applicable principle in the prosecutor's office is that the proceedings are conducted at every level of the structure.
44. In the National Prosecutor's Office, the Local Branch of the Department for Organized Crime and Corruption is mainly responsible for conducting and supervising preparatory proceedings in the cases involving organized crimes and the most serious corruption and terrorist activity as well as for assuming the function of public prosecutor in court in such cases (Article 20 § 3 of the Act).
45. Another organization entity of this unit, the Division of Internal Affairs, is a competent body in preparatory proceedings in cases involving the most serious offences committed by judges, judge's assessors, prosecutors and prosecutor's assessors, and prosecutors employed there act as public prosecutors in court in such cases (Article 19 § 4 of the Act).
46. Regional prosecutor's offices conduct and supervise preparatory proceedings in prosecution of the most serious financial, economic and tax crimes and offences against property of significant value (Article 22 § 2 of the Act).
47. Circuit prosecutor's offices, on the other hand, conduct and supervise preparatory proceedings in serious criminal, financial and tax offences, and the units which have divisions for military matters in their structures conduct also cases under the jurisdiction of circuit courts-martial (Article 23 § 2 of the Act).
48. The fact that certain prosecutors operate in certain units has an influence on the specialization of those prosecutors. However, it is worth mentioning that the criteria of selection of cases for higher-level units are not clearly defined and that it does not mean that every case will be considered as "most serious" or "serious". Other cases are handled in district prosecutor's offices.
49. Besides, the Minister of Justice can define, by way of an ordinance, the jurisdiction of the common organizational units of the prosecutor's office in cases involving different types of offences, irrespective of the place where they were committed, and in civil, administrative and petty offences cases as well as other proceedings conducted on the basis of acts of law, irrespective of the general

jurisdiction of the common organizational units of the prosecutor's office, to ensure effective prosecution of crimes and smooth functioning of legal proceedings (Article 35 § 3 of the Act)

50. At present the Minister of Justice, pursuant to Article 35 § 3 of the Act, defined special jurisdiction only for one prosecutor's office: the Circuit Prosecutor's Office in Warsaw in cases involving offences listed in the ordinance, irrespective of the place where they were committed, i.e. the offences against stock exchange and financial instruments.²¹ Because a particular category of cases is delegated to only one organizational unit, the prosecutors trying such cases acquire this particular specialization while other prosecutors do not gain any experience in the methodology of handling such cases.

4. Status of the prosecutor, appointment procedure, assessment and promotion.

a) Status of the prosecutor

51. The employment relationship of the prosecutor is a service. The prosecutor, both on duty and off duty, is obliged to protect the image of his position and avoid anything that could affect the dignity of the profession or decrease the trust in his impartiality. The prosecutor during his term of office is not allowed to be a member of a political party or take part in any political activity. The prosecutor is obliged to constantly improve his qualifications, including participation in training and other forms of professional development. The work time of the prosecutor is defined by the volume of his tasks. The prosecutor cannot take additional jobs, apart from teaching or scientific positions.

52. The prosecutor is also not allowed to take up any other activity or gainful employment which would impair his professional duties, decrease the trust in his impartiality or affect the dignity of the profession. The prosecutor is not allowed to be a member of a board, a supervisory council or an audit committee of a company, to be a member of a board, a supervisory council or an audit committee of a cooperative, to be a member of a board of a foundation running economic activity, to hold shares in a commercial company (more than 10%), to run business solely or with other persons, to manage such business or to be a representative or attorney-in-fact for such business. The prosecutor is obliged to file annual statements on the assets he owns. From 14 February 2020, the prosecutor has an obligation to disclose his membership in associations, his function in a foundation which does not run economic activity and his membership in a political party prior to his appointment as a prosecutor and during his term of office before 29 December 1989.

53. The prosecutor bears disciplinary responsibility.

54. For many years, the prosecutor's disciplinary responsibility has been based on professional misconduct, including obvious and gross breach of legal provisions

²¹ Ordinance of the Minister of Justice on the Jurisdiction of the Circuit Prosecutor's Office in Warsaw in Cases Involving Particular Types of Offences, Irrespective of the Place where They Were Committed of 1 September 2016 (Journal of Laws (Dz.U.) of 2016, item 1484)

and impairment of dignity of the profession. Similarly, the abuse of freedom of speech when performing professional duties which would be considered as insult to the party, attorney or defence council, curator, witness, expert witness or interpreter and for which one could be sued in a private prosecution brings only disciplinary responsibility for the prosecutor. The prosecutor is also liable to disciplinary action for petty offences unless he accepts a fine.

55. The prosecutor from a common organizational unit of the prosecutor's office may be seconded to another organizational unit for a period of up to six months even without his consent. In justified cases, due to staff shortage in common organizational units of the prosecutor's office, the Prosecutor General or the National Prosecutor may second a prosecutor without his consent for a period of 12 months in a year to a prosecutor's office located in a city where the seconded prosecutor resides or in a city where he is employed in a prosecutor's office.
56. The prosecutor is entitled to an additional annual leave: 6 working days – after 10 years of service, 12 working days – after 15 years of service.
57. The prosecutor is entitled to additional remuneration based on seniority and jubilee bonus after 20, 30, 35, 40 and 45 years of service.
58. In the above-mentioned scope, the regulations applicable to the status of prosecutor and judge are partially similar, except for secondment regulations which do not permit secondment of a judge without his consent.
59. Prosecutors may receive rewards and distinctions granted by the Prosecutor General or National Prosecutor. The reward may have a form of a promotion before the date defined in the provisions regulating remuneration and promotion of prosecutors.
60. Pursuant to Article 7 § 1 of the Act, the prosecutor is independent when performing the activities set forth by the law. At the normative level, the prosecutor's independence is not limited in relation to other public authorities. However, it is worth noticing that the Prosecutor General holds at the same time the position of Minister of Justice and is a member of the Council of Ministers, so he carries out political functions by the very nature of this position. The present Prosecutor General Zbigniew Ziobro is also a member of the parliament (deputy of Sejm – the lower chamber of the Polish Parliament) and the leader of the party forming a governing coalition.
61. At the same time, within the structure of the prosecutor's office, the Prosecutor General is a superior prosecutor for all the prosecutors. He is entitled to give instructions, including those pertaining to the substance of activities in legal proceedings in particular cases. Due to such a position of the Prosecutor General, other authorities or political powers are likely to have an influence on his decisions in legal proceedings. Within the structure of the prosecutor's office, the prosecutor's independence in undertaking activities prescribed by the law is limited by: orders, guidelines and instructions of the superior prosecutor and by the principles of devolution and substitution described in point 3 above.

62. Orders and guidelines are elements of professional pragmatics and usually apply to organizational matters and aim at the unification of practices in different categories of cases. The instructions applicable to the substance of activities in legal proceedings, issued in writing, pursuant to Article 7 § 3 of the Act, and issued with justification upon the prosecutor's request, are rarely used in practice.
63. They tend to be replaced with informal oral instructions, or the subordinate prosecutor is supposed to perform activities or make decisions according to the superior prosecutor's expectations. A failure to meet those expectations may result in disciplinary proceedings and long-term secondment to another city or a lower-level unit. On the other hand, submissiveness may bring a reward, faster promotion, managerial function or secondment to a higher-level unit and higher remuneration.
64. The report of the Association of Polish Judges Iusticia²² shows that in the period of 2015-2019 different repressions were directed against 34 judges and 99 prosecutors in connection with their decisions and opinions. These circumstances have significant influence on the status of the prosecutor.

b) Appointment to the position of prosecutor

65. The prosecutor is appointed to the position, however, according to the labour law, it is an employment relationship "by nomination" and not "by appointment". When taking the first position in the prosecutor's office, the prosecutor takes an oath whose content is defined by the law (Article 92 § 1 of the Act). The employment agreement should be concluded within the time limit defined in the nomination letter for an indefinite period of time. The prosecutor has the right to terminate the employment relationship, while the nominating body has a limited right to do so, which can be exercised only in the circumstances specified by the law, such as final and binding disciplinary decision to expel the prosecutor from service, final and binding court judgment to apply a punitive measure in the form of deprivation of public rights.
66. Before the appointment to the position of prosecutor, the candidate has to pass the prosecutor's or judge's exam and complete an internship on the position of assessor.
67. The law permits exemption from the exam and assessor's internship for candidates with degrees in legal sciences of Ph.D. and higher and certain lawyers with at least three years of professional experience.
68. Candidates can be selected in the contest procedure only for the positions in the district prosecutor's office (the lowest level). However, it is possible to resign from the contest and select the candidate specified in the motion of the National Prosecutor (Article 80 of the Act).

²² The report is published on the website <https://www.iustitia.pl/79-informacje/3723-raport-wymiar-sprawiedliwosci-pod-presja-lata-2015-2019>

c) Promotion to higher prosecutor's positions

69. The criteria for the promotion to the position of Prosecutor of the National Prosecutor's Office, Prosecutor of the Regional Prosecutor's Office and Prosecutor of the Circuit Prosecutor's Office are very obscure (Article 76 § 1, § 2 and § 3 of the Act respectively) and only define a minimum requirement of years of service on the positions of prosecutor, judge or other positions which give access to higher prosecutor's positions. In this context, it is worth mentioning Article 133 § 2 of the Act stipulating that promotion may be granted as a reward earlier than it is prescribed in legal provisions regulating the appointment to a higher position.
70. In 2010-2015, appointments to all prosecutor's positions were based on contests. As regards to higher positions, the candidates were assessed on the basis of at least several dozen proceedings, considering the nature of those cases and the workload of the prosecutor. These contest procedures were equivalent to procedures for judge's positions. In case of judges, contests are still maintained.

5. Current directions of reform in the prosecutor's office.

71. For over a decade, the legal system in Poland has been showing little stability. Laws are frequently amended. Concepts and bills of law implementing those concepts are often prepared by the bodies of executive power and brought before Parliament as if they were governmental or deputies' bills. Maintaining the fiction that a bill prepared by the efforts of the governmental administration is put forward as a deputies' bill makes the legislative procedure faster and simpler.
72. A governmental bill has to go under public consultations and include the analysis of economic, financial and social effects of the proposed legislation, whereas other bills are not subject to such requirements. In 2015-2020, certain bills, even those regulating important areas of social and economic life, were processed in Parliament in a very fast legislative procedure. Sometimes, the whole process between the submission of a bill in Parliament and the adoption of a legislation takes only 2 days.²³ Such a short legislative process, lack of consultations and assessment of the effects of a regulation cause a great risk of enacting bad laws.
73. The current Law on the Prosecutor's Office was prepared in a similar manner. As regards this law, the process from the submission of the deputies' bill (Sejm paper No. of Sejm of the 8th term) to the adoption of the law took only a little over a month. The law cancels the reform of the prosecutor's office of 2010 and returns – with certain modifications – to the system of the prosecutor's office existing in Poland before 1950.
74. The Law on the Prosecutor's Office entered into force on 4 March 2016 and from that moment it has already been amended 15 times. Currently, there are 7 new bills in Parliament which would amend the Law on the Prosecutor's Office. Among them are two deputies' bills amending the Law on the Prosecutor's Office

²³ For example, a deputies' bill amending the Act on Public Broadcasting connected with the reform of the Polish public media (Sejm paper No. of Sejm of the 8th term) was proposed on 28 December 2015 and adopted on 30 December 2015.

of 28 August 2019 which propose separation of the positions of the Minister of Justice and the Prosecutor General.²⁴

75. Recently, it has been announced by the press²⁵ that the National Prosecutor's office prepared a draft of a serious improvement of the prosecutor's office reform. The key change assumed that a range of the most important issues which now come within the competence of the Minister of Justice holding the position of the Prosecutor General would be delegated to the National Prosecutor who is one of the most trusted associates of the minister. The newspaper publishing this information refers to a particular bill of law. The new regulations are supposed to be included in the fourth anti-crisis package (the packages which aim at combating consequences of the COVID-19 epidemics). So far, the bill has not been brought before the Parliament.
76. In this social and legal situation in Poland, it is hard to predict the directions of development of the prosecutor's office in the nearest future. The analysis of the systemic regulations of the prosecutor's office shows that after 1990 no coherent concept of the prosecutor's office was created. Gradual increase of the prosecutor's independence within the internal structure of the prosecutor's office was accompanied by adding new levels of the prosecutor's office and increasing bureaucracy. The systemic reform of 2010-2015 which introduced the rules of transparency of decision-making process, promotion of prosecutors, security mechanisms against political influence on prosecutors' decisions in legal proceedings, system fixing the number of employees, workload measurements and work quality measurements was revoked.

6. Penal policy and responsible bodies.

77. The penal policy understood as one of the elements of the criminal policy, which includes shaping criminalization of certain behaviours by turning them into punishable prohibited acts and determining limits of penal sanctions, is a domain of an executive branch. The bodies vested with legislative initiative: the President of the Republic of Poland, the government, a group of deputies, commissions in Sejm, Senate and a group of at least 100 000 citizens have an influence on penal policy by proposing relevant bills of law.
78. The Prosecutor General does not have a right of legislative initiative, so he does not shape penal policy as such. However, due to the fact that in the current system of the prosecutor's office the Prosecutor General is a member of the government and a deputy to Sejm, he may initiate penal policy because of these functions. The penal policy in the meaning given in the Polish doctrine of criminal law comprises also application of penal sanctions in judicial decisions. In this scope, the competent authorities include the court making the decision and the prosecutor requesting the punishment within the statutory limits of the sanction. The motion of the prosecutor is a procedural activity undertaken by the prosecutor individually as part of his independence unless he is given an

²⁴ Sejm papers No. 139 and No. 3820 of Sejm of the 9th term.

²⁵ Gazeta Prawna of 19 May 2020 published in electronic version on <https://prawo.gazetaprawna.pl/artykuly/1477482,kolejana-reforma-prokuratury.html>

instruction under Article 7 § 3 of the Act from a superior prosecutor to file a specific motion.

7. Number of prosecutors in Poland in relation to the general population, workload, case resolution indicator, retirement age

Number of prosecutors

79. The population of Poland at the end of 2019 was 38383 thousand, that is by nearly 29 thousand less than at the end of 2018. The demographic course in 2019 did not change in comparison with the one observed for the previous seven years. The population has been decreasing since 2012 (except for slight growth – less than 1 thousand – in 2017).²⁶
80. The Polish legislation does not define the number of prosecutors' jobs for the whole country or for individual organizational units of the prosecutor's office. The number of such positions depends on the budgetary funds granted to the prosecutor's office for the remunerations of prosecutors. The number of positions and the number of prosecutors employed constitute public information, but currently, for four years, it has not been disclosed in public releases of the prosecutor's office and not very eagerly shared when requested in the procedure of access to public information. On the other hand, the number of employees in the organizational units of the prosecutor's office is variable and changes even from month to month. The situation results from the following factors: vacancies after prosecutors leaving their positions, vacancies remaining open and system of secondment due to which a lot of prosecutors operate in another unit than their original unit for long-term periods, often for many years. Therefore, the number of prosecutor's jobs is a good measure to describe the structure of the prosecutor's office, but it will not reflect the factual workload, which will be explained in the further part of this study.
81. The overall number of prosecutor's positions in Poland is 6794 and similarly to the general population it does not vary significantly in comparison with previous years. It means one prosecutor for ca. 5,650 citizens.
82. The last publicly disclosed data on the limit of positions and actual number of prosecutors come from the report of the Prosecutor General for Sejm on the annual activity of the prosecutor's office for the year 2015²⁷ (since 2016, the Prosecutor General has not been any longer required to prepare such a report). According to this report:
- total number for all the common organizational units of the prosecutor's office – 6553, including:
 - General Prosecutor's Office (currently the National Prosecutor's Office) – 87;

²⁶ <https://stat.gov.pl/obszary-tematyczne/ludnosc/ludnosc/ludnosc-stan-i-struktura-ludnosci-oraz-ruch-naturalny-w-przekroju-terytorialnym-stan-w-dniu-31-12-2019,6,27.html>

²⁷ <https://pk.gov.pl/wp-content/uploads/2016/04/5f91c9c0cd19252090da5820b78a1301.pdf>

- appellate prosecutor's offices (currently regional prosecutor's offices) – 382;
 - circuit prosecutor's offices – 1599;
 - district prosecutor's offices – 4485.
- total number for all the military organizational units of the prosecutor's office (currently incorporated into the common organizational units) – 114, including:
 - Supreme Military Prosecutor's Office – 15;
 - circuit military prosecutor's offices (2 units) – 40;
 - military garrison prosecutor's offices (8 units) – 59.
 - total number for the Institute of National Remembrance – 127, including:
 - Chief Commission for the Prosecution of Crimes against the Polish Nation – 8;
 - Branch Commissions – 86;
 - Vetting Office – 5;
 - Branch Vetting Offices – 28.

83. For the purpose of this study verification of the data on the number of positions in the common organizational units with the data from the subsequent documents²⁸ and speeches of the National Prosecutor²⁹ where undertaken, so that they can be considered up-to-date.

Number of cases, case flow and processing, closed cases rate

84. In 2019, the common organizational units of the prosecutor's office in the whole of Poland received 1,122,076 criminal cases. There are 122,558 criminal cases from the previous reporting periods. Thus, altogether there were 1,344,634 criminal cases.³⁰ This figure includes only cases in which the prosecutor makes the decision about the initiation or denial to initiate preparatory proceedings, conducts or supervises preparatory proceedings or decides to end that stage of criminal proceedings. During the same period, 1,119,768 were closed. Hence, 224,666 outstanding cases were moved to the next reporting period, which amounts to 16.72 % of the cases brought in 2019 and outstanding cases from the previous reporting periods

85. All the closed cases include:³¹

²⁸ Number of positions in regional, circuit and district prosecutor's offices as on 31.12.2017 in the response of the National Prosecutor to the deputy's interpellation published on: <http://www.sejm.gov.pl/sejm8.nsf/InterpelacjaTresc.xsp?key=13D35502>

²⁹ National Prosecutor Bogdan Świączkowski in the publication: *Wyzwania i sukcesy – prokuratura 2019 r. (Challenges and successes – prosecutor's office 2019)* states that as on 31 may 2019 the limit of decision-making positions in the common organizational units of the prosecutor's office (excluding the sections for military matters) was 6,553 which means that it was the same as in 2015 <https://pk.gov.pl/wp-content/uploads/2019/08/PROKURATURA-2019-1.pdf>

³⁰ <https://pk.gov.pl/wp-content/uploads/2020/03/PK-P1K.pdf>

³¹ The present analysis lists only the most frequent ways to close the case at the stage of the prosecutor's office.

- 250,453 cases in which the indictment was submitted to court (22.4 % of all closed cases);
- 36,167 cases in which the motion pursuant to Article 335 § 1 of the Code of Criminal Procedure was submitted to court to convict the defendant without a trial (18.62 % of all closed cases);
- 13,727 cases in which the motion to conditionally discontinue the proceedings was submitted to court (3.2 % of all closed cases);
- 2,220 cases in which the motion pursuant to Article 334 of the Code of Criminal Procedure was submitted to court to discontinue the proceedings and apply preventive measures (1.2 % of all closed cases);
- 406,770 cases in which the preparatory proceedings were discontinued (36.3 % of all closed cases);
- 283,330 cases in which prosecutors refused to initiate preparatory proceedings (25.3 % of all closed cases);
- 57,855 cases in which the preparatory proceedings were suspended (5.1 % of all closed cases).

86. In addition to the above, in the pragmatics of the Polish prosecutor's office, the following examples are treated as separate cases:³²

- cases and prosecutor's activities in civil cases, economic cases in the area of labour law and insurance and family-law cases (in 2019 – 91,842 cases);
- cases and prosecutor's activities in administrative cases (in 2019 – 47,687 cases);
- participation of the prosecutor in appellate proceedings in criminal cases (in 2019 – 40,975 cases);
- participation of the prosecutor in the proceedings for damages and compensation for an unfair conviction and unfair application of coercive measures (1525 cases).

87. Other activities in the scope of internal administration are also treated as cases, such as management of the unit, professional supervision, HR and IT tasks.

Retirement age

88. Prosecutors who reached the retirement age do not retire, but they are placed on inactive status. Transferring to inactive status occurs when the prosecutor reaches the age of 65. Upon the prosecutor's request the Prosecutor General may give him a permission to further practice as a prosecutor. The prosecutor in an inactive status is still in service, but he is exempt from the duty of work. He has the same rights and obligations as the prosecutor in active service unless the law precludes

³² According to the ordinance of the Prosecutor General on the organization and scope of operation of secretariats and other administrative departments in the common organizational units of the prosecutor's office (internal law document – unpublished), the case is understood as the task which is registered in recording devices and generates activities for the prosecutor.

certain obligation or right. After the reforms of pension scheme in Poland, the rights of prosecutors acquired in the previous periods were maintained. Thus, the woman may transfer to an inactive status at the age of 55 if she worked on the prosecutor's position or an equivalent position for at least 25 years, and the man is eligible to transfer to an inactive status at the age of 60, provided that he worked on the prosecutor's position or an equivalent position for at least 30 years.

II. WORKLOAD FOR PROSECUTORS

8. Statistical reporting

89. There are two types of statistical reporting in the prosecutor's office. The first one is public statistics gathered pursuant to the Act on Public Statistics of 29 June 1995.³³ Pursuant to Article 18(1) of the above Act, the programme of statistical research for public statistics is introduced by the ordinance of the Council of Ministers. Usually these programmes are similar and include the record of cases and procedural activities in the common organizational units of the regional, circuit and district prosecutor's offices in the National Prosecution and Local Branches of the National Prosecution's Office and the procedural activities of the prosecutor in preparatory proceedings or court proceedings in criminal, civil and administrative cases.³⁴ These data are gathered and published in the system for interim and annual basis.

90. The second type of reporting is prepared for the purposes of internal use of the prosecutor's office. The Prosecutor General decides about the scope, type and frequency of sharing the data. These data – in addition to those resulting from the public statistics – are used for the purposes of management of the work in the prosecutor's office. The statistics for the purposes of work and performance monitoring may also be gathered by the head of the unit for the relevant area.

91. The prosecutor's office does not gather statistics by the qualification of an offence for which proceedings are conducted.

9. Rate of cases per prosecutor

92. In Poland, there is no specified number of cases that should be handled by one prosecutor. Any generalized data would not reflect the real average workload for the prosecutor. A rate resulting from the number of preparatory proceedings conducted or supervised in district prosecutor's office divided per annum by the number of positions (1,344,558 / 6794) gives 205 cases per one prosecutor a year, 17.1 cases per prosecutor a month. This rate does not reflect the workload whatsoever. The majority of preparatory proceedings are conducted at the level

³³ Journal of Laws (Dz.U.) of 2020, item 443, uniform text, as amended.

³⁴ Public statistics does not include cases handled by the prosecutors from the Institute of National Remembrance.

of district prosecutor's offices, and the rate does not include other duties (vide point 7 of this study), such as those which are not covered in public statistics.

93. In the Polish prosecutor's office, statutory and other tasks are distributed at individual levels. This system is partially based on the decisions of superior prosecutors (vide point 2b and 3 of this study). Within a single level, the number of organizational units of the prosecutor's office³⁵ (which has not changed for over a decade) depends on the case flow from a particular area and needs of effective work management. The higher-level units and bigger district offices contain organizational departments for certain cases. It is only possible to compare the workload for the prosecutor, considering the same type of cases and the same unit level.

94. The number of cases assigned to one prosecutor depends on the decision of the prosecutor managing the unit where this prosecutor is employed. The head of the unit may delegate this decision to his deputy or a head of the organization department in the unit. Prosecutors holding executive positions and responsible for direct supervision know the number of cases assigned to each prosecutor.

10. Number of prosecutors

95. In Poland, there are no parities of the number of prosecutors in relations to the population. There is also no limit of prosecutors at individual levels. As mentioned before, the number of prosecutors depends on the budgetary funds allocated to remunerations of prosecutors. Up to the amount of budgetary allocation, the Prosecutor General may close a position, move it to another unit or open a new position.

11. Staffing policy in the prosecutor's office

96. The staffing policy comes within the competence of the heads of the units: the Prosecutor General, the National Prosecutor, regional and circuit prosecutors (in the scope of their responsibilities). These levels of the prosecutor's office comprise HR departments. On the basis of statistics, they analyse the workload for prosecutors, tendencies regarding the receipt and closing of cases, actual number of employees on the positions assigned to a given unit. Using these data, they decide to maintain, decrease or increase the work force. Most frequently staffing needs are met by seconding prosecutors from one unit to another. By nature, it should be a form of response to short-term shortage of staff. Because some secondments last more than a decade or even a few decades, this turns out to be a permanent solution for imbalance in the workforce, rather than a crisis mechanism.

12. Criteria of workload for prosecutors and judges

³⁵ Units are created and closed down by the Minister of Justice – the Prosecutor General by an ordinance

97. Similarly to judges who are appointed to the positions in a particular court of a particular geographical jurisdiction, prosecutors are appointed to the positions in a particular organizational unit of a particular area of activity. The cases coming from this particular area are distributed in court among judges, and in the prosecutor's office – among prosecutors in a given unit. But this is where the similarities end.
98. The assignment of cases to judges is on a random basis, according to the division of activities, through an ICT system based on the random number generator, separately for each register, record or another recording device.
99. In the prosecutor's office, the decision about the assignment of a case to a prosecutor is made by a direct superior prosecutor or a head of the unit department expressly vested with this right.
100. The judge tries a case until it is closed. If the judge cannot bring a criminal case to an end, it is necessary to start the case over. As regards to prosecutors, the case can be taken from one prosecutor and assigned to another – according to the above-mentioned principles of substitution and devolution.
101. In judicial practice, only in extraordinary situations, a case can be tried by a different court than a court of competent legal and geographical jurisdiction. In the prosecutor's office, a case can be moved to another organizational unit. It transpires from the principle of uniformity of the prosecutor's office.

13. Measurements of the prosecutor's work time spent on one case, methods of estimating time for one case

102. The work time necessary for preparatory proceedings is estimated by taking into account the deadlines defined in the Code of Criminal Procedure (hereinafter referred to as the Code). Investigation in ordinary offences should not exceed 2 months (Article 325i of the Code) and in most serious offences should not exceed 3 months (Article 310 § 1 k of the Code). In both cases the time of preparatory proceedings can be extended. There is no maximum time limit for preparatory proceedings. Cases in the prosecutor's office which take more than 3 months are considered "old", and this means that a superior prosecutor would start to analyse the efficiency of such proceedings. There were 85,435 of such "old" cases at the end of 2019, including 353 lasting over 5 years.³⁶
103. The prosecutor's work time is estimated on similar basis in other cases where deadlines are specified in procedural provisions. As a rule, the prosecutor commences his activities immediately. Pursuant to Article 99 of the Act, the prosecutor's work time depends on the volume of his tasks. It means that the prosecutor cannot refuse to perform an activity only because he would have to work over hours.

³⁶ Source – as in footnote 30, the figures in the analysis apply to procedural time of proceedings, periods counted from the moment when a case was first registered show much more old cases.

104. If one prosecutor is excessively loaded with cases, the head of the unit may temporarily suspend the flow of incoming cases to this prosecutor. A pending case may be referred to another prosecutor from the same or different organizational department (e.g. from the ordinary offences investigation department to the serious offences investigation department). A head of the lower-level unit may request that a higher-level unit take over the case if it is so complex and time-consuming that it is impossible to handle concurrently with other cases at this level.
105. If the prosecutor has too many cases or proceedings in a given case take too long in the light of the above listed parameters, a direct superior prosecutor requests a report on the status of cases or reads case files personally. If it is determined that the subordinate prosecutor fails to act or propose a concept of handling the case, he may suffer a punishment in a form of a reprimand (which leads to financial consequences and limiting promotion) or a disciplinary punishment. The direct superior prosecutor strengthens the supervision over the case or applies for consulting supervision of a prosecutor from a superior unit if the case is difficult.
106. There are no fixed criteria for the evaluation of the case's complexity. In practice the cases considered complex include e.g. cases with several lines of inquiry, cases involving the areas of several organizational units of the prosecutor's office, cases with extensive evidence (many suspects, many witnesses, many expert opinions).
107. As the above-mentioned measurements of prosecutors' work time show, Delphi method is not applied in the staffing policy of the prosecutor's office.

14. Efficiency measures

108. The Polish prosecutor's office does not have fixed efficiency measures, both in regard to the number of cases as well as the course and outcome of cases. In the aspect of quantity, the principle is that the number of incoming cases in a unit (per prosecutor) should balance the number of closed cases. In the substantive aspect, the Prosecutor General encourages to raise activity in particular fields by issuing guidelines. Other superior prosecutors would recommend desired directions or exert influence on individual cases by orders and instructions (see points 3 and 6 of this study).
109. Because there are no efficiency measures, there are no direct effects of reaching or failing to reach a "target". The decision to grant a financial reward or promotion is made by the superior prosecutor on the basis of a subjective opinion (vide point 4 b of this study). These criteria are not available publicly or internally in the prosecutor's office. The reward or promotion is not announced, however, the fact itself is not classified.

15. Impact of workload on staffing decisions.

110. As mentioned above (vide point 4 b), only the appointment of a prosecutor to the first prosecutor's position is initiated by application of a candidate for an announced vacancy, but even here it is possible to depart for the contest procedure. In other situations, the promotion is granted by the decision of the Prosecutor General upon the request of the superior prosecutor of a candidate for promotion.

16. Prosecutor's office budget for remunerations

111. The remuneration of prosecutors, consideration paid to prosecutors in an inactive status and other payments connected with work are determined by the Law on the Prosecutor's Office and implementing acts based on the said law. As regards military prosecutors and prosecutors in the Institute of National Remembrance, some ingredients of their remuneration result from the laws regulating the work of soldiers and the functioning of the Institute of National Remembrance.

112. The costs of remuneration are estimated on the basis of the number of positions and the cost of prosecutor's work for a given year. As for the common organizational units of the prosecutor's office, this is the Prosecutor General who requests allocation of certain funds and acts as the first-degree budget administrator. The staffing plans for the purpose of the prosecutor's office's budget for the following year are prepared in the Bureau of the Prosecutor's Office for Budget and Assets in the National Prosecutor's Office.

17. Other thoughts and conclusions

113. The work management system in the prosecutor's office based on hierarchical subordination, using the instruments of orders and instructions and the principles of substitution and devolution has been functioning in the prosecutor's office for about 70 years now. In 2012-2015, there was an attempt to reform the system. The legislature introduced new provisions which enabled to conduct periodical assessments of the work of prosecutors in terms of such qualities as correctness, rationality, speed, efficiency and effectiveness of the prosecutor performing his tasks and functions.

114. The criteria and methods of assessment were included in the special questionnaires. The assessment was based on the 360 degrees method and on 4 assessing bodies, including self-assessment and workload measurements. The results for a given prosecutor were compared with average results in the unit. After the new Law on the Prosecutor's Office was enacted, this system was withdrawn and the prosecutor's office returned to the discretionary assessment of work carried out by the superior prosecutor. But interestingly, the system of discretionary assessment is not contested probably because of deep-rooted habits developed for many years and insufficient knowledge about new management methods. The system is relatively effective in controlling the quantity of cases received by the prosecutor's office and providing superior prosecutors with information on the cases they want to analyse.

115. Changes of lead prosecutors in pending cases, system of instructions from superior prosecutors and recommendations from supervision of higher-level units has caused the situation when no prosecutor feels responsible for the final outcome in the case. Other drawbacks of such a work management system include: excessive complexity of the prosecutor's office's structure, involvement of a high number of prosecutors in bureaucratic tasks rather than substantive work.

SLOVENIA

Abbreviations

SPOA – Act on the State Prosecution Office
OSPG – Office of the State prosecutor General
SPO – State prosecutors office
SSPO – Specialized State prosecutors office
PG – Prosecutor General
SP COUNCIL – State Prosecutorial Council
ORDER – Order on the number of state prosecutors
SP Rules – State prosecutorial Rules
CPA – Criminal procedure act

I. GENERAL PART¹

1. Introduction. General background on the constitutional and legal framework of the public prosecution service

a. Brief historical background.

1. With the population of a bit over 2 million inhabitants and with a bit over 21.000 square kilometres area, Slovenia is one of the 50 world's smallest countries. Slovenia is independent country since 1991. From the end of the Second World War Slovenia was one of the republics in new federal Yugoslavia. In 1990 the referendum was held, and vast majority of population voted for independence from Yugoslavia. The Republic of Slovenia was accepted as a member of the United Nations in 1992, and on 1 May 2004 it became a member of the European Union.
2. In the post war period, the political system was socialism and the only political party was the Communist Party. But even as early as in 1948, Yugoslavia began a process of decentralisation, moving towards some independence of republics. In 1974 Slovenia adopted its own Constitution.
3. In 1948 the first Criminal Procedure Act was adopted in new Yugoslavia and it gave big powers to the public prosecutors. Prosecutors were authorised to initiate the procedure and they were also responsible for carrying out investigations,

¹ This report has been written by Gaja Štovičej, the Deputy Prosecutor Director of Slovenian public prosecution service administration

meaning they oversaw the work of the investigating authorities. The prosecutors could even order detention of a person against which there was no appeal. In 1953 new Criminal Procedure Act was adopted and it limited the public prosecution service to representation of charges in criminal cases; the newly established investigating judge was responsible for conducting the investigation, while the public prosecutor was responsible for the criminal prosecution. Pre-criminal and criminal procedures were strictly separated.

4. A completely new Federal Criminal Procedure Act was adopted in Yugoslavia in 1977 and it was a modern law. Courts gained a status of socio-political institution, responsible for protection of human rights.
5. After becoming independent, Slovenia adopted its own Criminal Procedure Act (CPA) in 1995, as well as other laws, including the State Prosecutor's Office Act the same year, that was replaced with a new State Prosecutor's Office Act in 2011. There is constant debate on necessary adoption of a new CPA, but it never comes past changing parts of CPA. Those changes, for example, introduced different forms of summarised and simplified procedures to the criminal procedure, set grounds for establishing joint investigation teams (JIT), and some adopted changes were necessary to bring CPA in line with the legislation of the European Union.

b. Constitutional principles

6. Constitution of the Republic of Slovenia (Constitution)² has a special section about public prosecution, that follows the section on judiciary, both of which are included in chapter IV. Organisation of the State. The part about public prosecution is entitled "The State Prosecutor's Office" and the article 135 with title "State Prosecutor" says: "State Prosecutors file and present criminal charges and have other powers provided by law. The organisation and powers of state prosecutor offices are provided by law."
7. Article 136 with title "Incompatibility of the Office of State Prosecutor" states that being a state prosecutor is not compatible with office in other state authorities, in local self-government authorities, and in bodies of political parties, and with other offices and activities as provided by law.
8. Our Constitution clearly separates the organisational and functional elements of the public prosecution. The function of criminal prosecution is a function of the individual prosecutor and not of the prosecutorial organisation.
9. The Constitutional court of the Republic of Slovenia passed several rulings regarding the state prosecutors office and the state prosecutors. At present, the independence of the state prosecutor is well respected for its vital importance in supporting the rule of law and independent criminal procedure. As far as the organisation of the state prosecution offices goes, the Constitution gives the legislative branch a power to determine organisation and powers of it. In its opinion the Constitutional Court wrote, that the State Prosecutor's Office is a

² Official Gazette of the Republic of Slovenia Nos. 33/91-I, 42/97, 66/2000, 24/03, 69/04, 68/06, 47/13, and 75/16

system of independent state bodies, within which state prosecutors perform their function of filing and presenting criminal charges, as a special function of state power and carry out other tasks according to law.

10. The first paragraph of Article 135 of the Constitution stipulates the principle of functional independence of state prosecutors when performing prosecutorial duties, which implies also the independence of state prosecutor's offices as state bodies as well. Independence must be granted to state prosecutors in carrying out their function in individual cases, because state prosecutor's office is not such a part of the executive power that may in concrete cases be given any instructions from the Government or any ministry. Therefore, the state prosecutor's office, that is a part of the executive branch of power, is also entitled to limit and survey that branch of power. As stated by the Constitutional Court, state prosecutor's offices shall therefore be organised as independent state bodies. The independence of state prosecutors shall be guaranteed by the law regulating the state prosecutorial service and the prosecutorial function³.

11. The law, regulating the prosecution service, is the State Prosecutors Office Act (SPOA)⁴, that came into force in November 2011. SPOA regulates the state prosecutorial service, its competences and the incompatibility of the function of the state prosecutor with other functions or jobs, the regulation and jurisdiction of state prosecutor's offices, state prosecutorial and justice administration, and the composition, jurisdiction and functioning of the State Prosecutorial Council, the relationships between the state prosecutor's offices, and other issues relevant for the work of state prosecutors and state prosecutor's offices.

2. Structure and functions of the public prosecution within the criminal prosecution and outside the criminal justice system

12. The Article 19 of SPOA lists competences of state prosecutors:

“Within the general function of filing and representing a criminal charge, a state prosecutor shall perform all the procedural acts of an authorised prosecutor, provide guidance to the police and other competent bodies, apply deferred prosecution and mediation procedure and perform other tasks in accordance with the statute regulating criminal procedure.

A state prosecutor shall file motions and legal remedies in minor offence procedures, if so determined by law.

A state prosecutor shall file procedural acts and perform other tasks in civil and other judicial proceedings and in administrative proceedings, if so determined by law.”

13. State prosecutors do have some functions outside the criminal justice system, but they are limited mostly to protecting the public interest in those procedures.

³ The constitutional court decision No. U-I-42/12-15 of 7. 2. 2013.

⁴ Official Gazette of the Republic of Slovenia No. 58/2011 and next.

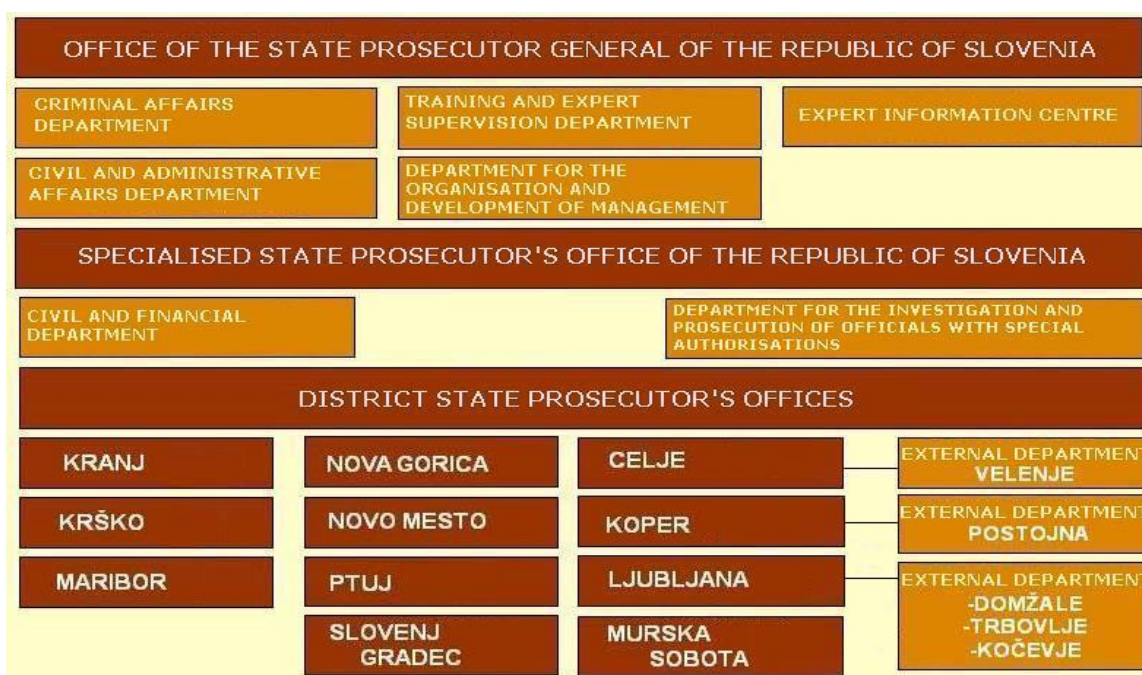
14. State prosecutors perform their duties at the state prosecution office (SPO) to which they have been appointed, transferred or seconded. Main duties and rights of state prosecutors are defined in the Criminal Procedure Act (CPA)⁵.
15. The state prosecutor decides on whether to reject the criminal complaint or pursue prosecution of a criminal offence before the courts, but he can also use alternative methods of out-of-court resolution of cases (which are settlement or deferred prosecution). State prosecutors are also authorized, under predetermined conditions, to dismiss a criminal charge if there is the disproportionality between the minor relevance of a criminal offence and the consequences caused by criminal prosecution (for example because the damaging consequences are insignificant).
16. Since 2012 Slovenian state prosecutors are authorised for the plea-bargaining procedure and for making an agreement on the confession of guilt. When the case is not dismissed, the state prosecutor is authorised to file a request for an investigation with the investigating judge, if there is well-founded suspicion that certain person has committed a criminal offence. The state prosecutor that was in charge of the case at first instance also decides whether to appeal against the judgement or not. In the appellate court state prosecutor with a rank of local or district prosecutor can only appear together with a state prosecutor with a rank of higher prosecutor and under the authority of the head of the office for particular case.
17. If the value of assets acquired unlawfully exceeds EUR 50,000 state prosecutors conduct financial investigation proceedings in procedures for recovery of those assets. The litigation procedure for the forfeiture of assets of illegal origin starts with a lawsuit by a state prosecutor from the Specialized SPO.
18. State prosecutors have some competences in civil and other court and administrative procedures. These competences that are performed only by the supreme state prosecutors are to file requests for the protection of legality against some final court decisions that were issued in civil proceedings (e.g. insolvency and compulsory dissolution proceedings, in enforcement and securing of civil claims proceedings). A request for the protection of legality is an extraordinary legal remedy in the public interest, which is decided on by the Supreme Court of the Republic of Slovenia.
19. Outside the criminal procedures the district state prosecutors perform their duties with the position of a party in some non-litigious civil procedures, e.g. in the procedure on the loss of contractual capacity, procedure for the declaration of death of a person and similar.
20. Supreme state prosecutor is authorised, in order to protect the public good, to file some initiatives against decisions of administrative bodies or to initiate some procedures, like prohibition of functioning of association that is involved in illegal activities.

⁵ Official Gazette of the Republic of Slovenia No 63/94 with further amendments.

3. Organizational principles of the public prosecution: hierarchical, territorial, specialisation

21. In the Republic of Slovenia, there is the Office of the State Prosecutor General (OSPG), also called Supreme State Prosecutor's Office, 1 Specialised State Prosecutor's Office (SSPO) and 11 District State Prosecutor's Offices (SPO). There are no Higher state prosecution offices. State prosecutors at SPO perform their function before all first instance courts and before the appellate courts in criminal matters. At every SPO there are some state prosecutors with the rank of higher prosecutor, usually the head of the office and his/her deputy. Prosecutorial policy regarding the appeals is coordinated at regular meetings at the OSPG.

22. *Organogram: Functional and territorial organisation of the State Prosecutor's Office*



23. The OSPG and the SSPO are based in Ljubljana, the capital of Slovenia. The map of the territorial jurisdiction of the District State Prosecutor's Offices follows the court map, namely its district courts (there are 11 district courts and 44 local courts in Slovenia). There are no local prosecution offices, but some of the SPO have the external departments that cover the proceedings of the local courts.

24. The map of the territorial jurisdiction of District State Prosecutor's Offices:



25. OSPG is at the top of Slovenian prosecutorial organization, which is not particularly hierarchical. This means that each office is an independent body and each state prosecutor is independent. OSPG implements coordinating, supervisory and training tasks and duties for SPO and SSPO and performs state prosecutorial functions before the Supreme Court.
26. The head of the OSPG is the State Prosecutor General (PG). He/she is appointed by the National Assembly of Slovenia on the reasoned proposal by the State Prosecutorial Council, after obtaining the opinion of the Government of Slovenia. The candidate for the PG must be under 64 years old and must present his/her strategic programme and provide additional clarifications in open-to-public hearing at the National Assembly. The term of office of PG is six years with the possibility of reappointment. PG adopts the prosecution policy⁶ and is authorised to issues general instructions.
27. The PG may issue general instructions on activities of state prosecutors in dealing with cases. General instructions relate to the uniform application of the law, unification of the prosecution policy and to the manner of informing the public about the work of SPO. Also, every head of the district SPO and of the SSPO may issue general instructions for activities of state prosecutors in his/her office on dealing with cases. General instructions must be issued in writing and must be published in the internal gazette of prosecution offices.
28. Under the SPOA, some of the general instruction are obligatory and the PG must adopt them. Obligatory general instructions are issued, for example, regarding the disproportionality between a minor relevance of a criminal offence and the consequences caused by criminal prosecution, deciding on the deferral of criminal prosecution, proposing the type and severity of punishment, security measures and/or motions for issuing court revocation of conditional sentence and

⁶ Prosecution Policy is available in English at: https://www.dt-rs.si/files/documents/PP_01.pdf

other. Obligatory general instructions must be published on the intranet and on the websites of the OSPG.

29. The SSPO was established by the SPOA in 2011 and developed from the former Group of State Prosecutors for the Prosecution of Organised Crime. SSPO has jurisdiction over the entire territory of the state and has the same status as a District SPO. Its jurisdiction is determined by law and includes most serious criminal offences. The state prosecutors at SSPO prosecute, among other, offenders in cases of serious criminal offences against the economy, offences committed within a criminal association, criminal offences involving corruption, the criminal offence of terrorism, and criminal offences entailing establishing slavery relations and human trafficking.
30. The SSPO has exclusive competence for filing and presenting the lawsuit in the procedure for the confiscation of assets of illegal origin and representing the state in a subsequent civil enforcement procedure. With the SSPO is organized a department for investigation and prosecution of officials with special authorisations. This department has exclusive territorial jurisdiction and jurisdiction to handle criminal offences, committed by certain officials (e.g. police officers, military police, etc.).
31. As mentioned, there are 11 SPO in Slovenia's larger towns and the state prosecutors there perform first-instance tasks. Under the SPOA, the head of SPO and his/her deputy have a rank of higher state prosecutor. At the SPO the head of SPO may organize departments in certain narrow fields, so the specialisation can be developed. The head of a SPO assigns state prosecutors to departments or internal organisational units and determines their specific legal fields with the annual work schedule.
32. The State Prosecutorial Council (SP Council) is a self-dependent state body which performs the tasks of state prosecutorial self-governance and participates in ensuring the uniformity of prosecution and safeguarding the self-dependence of state prosecutors. The SP Council is responsible for the appointment and dismissal of the heads of SPO, adopting performance assessment and decide on promotion, transfers, secondments and participation in the appointment procedure of state prosecutors. The SP Council is also responsible to provide its opinions on the policy of prosecution, performance assessment and efficiency of functioning of the state prosecutor's offices.

4. Status of the public prosecutors, selection, appointment, evaluation and promotion

33. State prosecutors perform state prosecutorial service in different state prosecutor's titles, which are local, district, higher and supreme state prosecutor. All titles also have a rank of councillor (for example district state prosecutor councillor). Under the provision of SPOA state prosecutors have the same position as judges in respect of the rights and obligations arising from employment relationship with the state, unless otherwise stipulated by the law. The rights of a prosecutor are, for example, the right to promotion, education and professional training, salary and bonuses same as for judges, pension, disability,

health and social insurance. The office of a state prosecutor is permanent. The mandatory retirement age for state prosecutor is 70 years.

34. General conditions for the position of state prosecutor are stipulated in SPOA and are: citizenship of the Republic of Slovenia, fluent in the Slovenian language, contractual capacity, good general health, at least 30 years old, a law degree, passed state law exam, and he/she is personally suited to carry out a prosecutorial function (meaning also not being convicted for a crime). Specific conditions are from 3 years of work experience as a legal professional after passing the state law exam for the position of local state prosecutor, up to at least 20 years work experience after the state legal exam for the position of supreme state prosecutor.
35. The SPOA regulates in detail the procedures and competences of different authorities regarding the appointment and election of state prosecutors. The call for vacant position of state prosecutor is published in Official Gazette of Slovenia by the Ministry of Justice. The proposal to publish the vacancy is presented by the head of a SPO with the vacancy, but only after obtaining the preliminary approval of the PG.
36. At the ministry the applications are gathered and after that all documents are forwarded to SPO. The head of the SPO has interviews with candidates and formulates reasoned opinions about the suitability of each candidate. Candidates may submit reasoned comments to that opinion and after receiving them the head of SPO formulates final opinion and sends it to SP Council.
37. The SP Council formulates its opinion after examining the documents received and interviewing the candidates, and candidates and the head of the SPO can give their reasoned comments. The SP Council forms final opinion that is sent to the minister of justice. Minister may request that the SP Council obtain and take into consideration also additional data. During the repeated deliberation SP Council decides again and if they support the candidate by a two-thirds majority vote of all members, the Minister must propose that candidate to the Government for election. Acts on appointments are published in the Official Gazette of the Republic of Slovenia.
38. The data from the *Combined report on the work of the state prosecution offices in Slovenia in 2019*⁷ that was published in April 2020, shows:
39. On the 31. 12. 2019 there were 208 state prosecutors in Slovenia; in the biggest SPO in Ljubljana there were 44 and in the smallest SPO in Slovenj Gradec there were only 5 state prosecutors.

SPO office (based at the same location as district court)	Number of state prosecutors
SPO Celje	21
SPO Krško	8

⁷ Available only in Slovene at: <https://www.dt-rs.si/files/documents/Letno%20poroc%CC%8Cilo%20DT%20za%20leto%202019.pdf>

SPO Koper	13
SPO Kranj	10
SPO Ljubljana	44
SPO Maribor	26
SPO Murska Sobota	9
SPO Nova Gorica	7
SPO Novo Mesto	10
SPO Ptuj	7
SPO Slovenj Gradec	5
Specialized SPO	30
OSPG	18
total	208

40. On the 1st of January 2020 Slovenia had 2.095.861 inhabitants, which means there were a bit under 10 prosecutors on 100.000 inhabitants. According to the European Commission for the Efficiency of Justice (CEPEJ) study, presented in the 2018, based the 2016 data, in 2016 in Slovenia were 11 state prosecutors per 100.000 inhabitants. According to published data there were 43 judges per 100.000 inhabitants in 2019.
41. The combined report is very comprehensive and detailed and shows, among other the clearance rate at the prosecution offices. Number of cases that were filed against the *known* offenders is slowly rising over the past years:

	2016	2017	2018	2019
Incoming cases	27647	27985	28232	28495
Resolved cases	30011	28638	29025	29043

II. WORKLOAD OF PUBLIC PROSECUTORS

5. Are there statistics on caseload of public prosecutors? If yes, comment on the findings/evolution and if possible, analysis.

42. Under the provision of SPOA (articles 148, 149 and 150) annual work reports are prepared for each SPO and also a combined annual report for the whole organization is prepared at the OSPG. In the annual report the head of the SPO evaluates the work of the SPO and analysis of the performance of state prosecutors is an integral part of that report. The report for each SPO is submitted to PG, SP Council and to the Ministry of Justice.

43. Annual reports on the functioning of SPO contain some basic data like the number of state prosecutors who performed service in the previous year and data on the number of prosecutorial personnel, but the main part of the report is data on performance of the SPO. These are, for example, number of transferred pending cases from previous years, number of new cases, total number of caseload of the SPO, and on participation of state prosecutors at a various hearings at courts and other activities.
44. A more detailed form of annual report is prescribed by the Minister of Justice with the Rules on the format of the annual report on the operations of the State Prosecutor's Office. In accordance with provisions of that regulatory act the annual report has the so called "special statistical part" that shows data on the progress of cases for each individual state prosecutor, data on the actual presence of each state prosecutor at the workplace in days and data on the number of cases that were not resolved within the scheduled time. That part of the annual report is sent to the ministry only in the machine-readable form and is not published.
45. For each state prosecutor following data is collected:
- number of cases transferred from previous years, assigned cases, resolved cases with the type of solution, and data on number of pending cases at the end of the year;
 - data on number of attendances of public prosecutors in preliminary hearings and hearings;
 - data on performed procedural activities and filed/ submitted motions;
 - data on the outcome of indictments according to the type of decision and the issued penal sanction;
 - data on court rulings on sanctions by type of criminal sanction;
 - number of filed appeals and other legal remedies in relations to number of judgments;
 - the number of cases in which state prosecutor was released from his further work and the number of cases taken from the state prosecutor;
 - number of all cases that were not resolved in the expected time in the reporting year according to the time standards and the sum of all days of overdraft;
 - number of days of a state prosecutor's presence at his post;
 - other data showing the efficiency of the state prosecutor.
46. Slovenian prosecution service has a rather good information system that supports gathering data on the work and performance of the public prosecution offices and public prosecutors. In that system the heads of SPO can monitor, for example, the number of cases that individual prosecutor has assigned to him/her, for how long, and if the cases are resolved within the prescribed timeframe.

6. Are there statistics on workload of public prosecutors? If yes, comment on the findings/evolution and if possible, analysis.

47. The SP Council is authorised to adopt the regulatory act in which it defines criteria on the quality of work of state prosecutors for the assessment of performance of state prosecutors. The PG is authorised to propose the adoption of that act and its content. The SPOA further stipulates that the adopted criteria for the quality of the work of state prosecutors determine the framework criteria for assessing the professionalism of the work of state prosecutors. The adopted criteria are very detailed and include, inter alia, non-case-related work data on work of the state prosecutor like participation in working groups, attendance to education as participant or as a lecturer and similar.

48. Activities of state prosecutor, that are not directly related to performing the function of criminal prosecution in individual case are counted as part of state prosecutor's workload. However, those activities are not statistically monitored and there is no statistic on that subject.

General rules and principles on staffing

7. Is there an established ratio that determines the number of public prosecutors (upon inhabitants, upon number/type of courts; upon number of criminal cases?) Who decides on the workload of each of the members of the PPO?

49. Under the provisions of SPOA (art. 141) the number of state prosecutors at each SPO, at SSPO and at OSPG is determined with the regulatory act Order on the number of positions of public prosecutors (The Order).⁸ The Order is published in the Official gazette. Order is adopted by the Minister for Justice, upon the proposal of the State PG, in agreement with the Government and following a preliminary opinion of the SP Council.

50. Since in Slovenia live two national minorities, at SPO operating also in the Italian and/or Hungarian language, those SPO have some posts for state prosecutors which have a superior level of mastering one of those languages. Currently, the Order allows for 268 state prosecutors of various titles and ranks. There is no data available on how this number was determined and on which criteria it is based (looking to the orders back from the 90s up to date, one notices the number of prosecutors in the Order slowly and gradually increases).

51. Distribution of cases among individual prosecutors is generally regulated in SPOA, further rules are in the State Prosecutorial Rules (SP Rules)⁹ and further elaborated on in the annual work schedule of each SPO for that SPO. The annual work schedule is adopted by heads of the SPO for every year. In the annual work schedule, among other, state prosecutors are assigned to departments or other internal organisational units at SPO, their specific legal fields are determined, and the heads of departments or internal organisational units are appointed

⁸ Official Gazette of the Republic of Slovenia No 76/11 with further amendments.

⁹ Official Gazette of the Republic of Slovenia No 7/12 with further amendments.

(SPOA art. 142). With the annual work schedule in accordance with the SP Rules the head may determine in more detail the rules for the assignment of cases.

52. SP Rules stipulate that as a rule cases are assigned to state prosecutors following the order of receipt, taking into consideration the organisation of work, specialisation of prosecutors and an even workload of prosecutors. Head of the SPO may reassign cases to another state prosecutor among other also because individual state prosecutor is being burdened with other extensive and legally demanding cases. If the case is more complex, the head of SPO may form a group for working on the case by determining the state prosecutors and personnel members who will cooperate with the state prosecutor to whom the case is assigned under.
53. The head of the SPO can assign cases to prosecutors alone or he/she can authorize either his/ her deputy or heads of departments to do that. Because of handling a more substantive or legally demanding case, which might lead to overburden of the prosecutor, cases are no longer assigned to this individual state prosecutor for a certain period of time.

8. Which body is responsible for analysing the needs on the number of prosecutors?

54. It is the responsibility of the head of the SPO to adopt an annual work programme and follow it through in accordance with the time standards, prosecutorial policy and other documents, regulating the functioning of the SPO. So, it is their responsibility to recognize the need for more state prosecutors in the office to handle the workload of the SPO. If the workload of the OSP requires it, the head can submit substantiated motion to OSPG for consent of the PG to publish a free prosecutorial position.
55. The data supporting the proposal usually are those showing that the number of cases assigned to each state prosecutor has importantly raised, that the number of cases per prosecutor is bigger than in most other OSP, data showing the constant growth of economic and other more demanding cases, and the number of attendance at main hearing and other activities at courts. After receiving the consent of the PG, the head proposes to the Ministry of Justice to publish the position. If the proposal is not exceeding the number of prosecutorial positions in that individual SPO, determined with the Order, ministry publishes the free position in official gazette.
56. In case of extremely increased workload at the SPO, a state prosecutor from another SPO can be seconded, even without consent, to perform duties at another SPO. If such situation occurs, the head of the SPO is authorized to propose to the PG to second a prosecutor to the SPO with increased workload. The PG either approves or declines the motion (SPOA, art. 61). Secondment without consent can last for maximum 2 years.

Estimating the workload

9. Are there separated criteria for estimating the workload of prosecutors, different from the ones applicable to the judges? and

10. If not, are the criteria applicable for measuring the workload of judge's applicable *mutatis mutandis* to the public prosecutors?

57. There are no written criteria in form of a regulatory act, which would be used for estimating the appropriate workload of public prosecutor in Slovenia. There used to be that criteria but has been disused over the decade ago. In some document (from 2001) it is stated that a state prosecutor was expected to handle 200 cases with known criminal offender per year. Based on the data in the combined annual report, the calculation shows that last year state prosecutors at different SPOs solved from approximately 170 to approximately 220 cases with known offenders in a year. But today, the focus is more on the timeliness of work.

58. Basically, all the cases that are lodged at the state prosecution offices must be resolved. So instead on focusing on caseload or workload of state prosecutor, the rules regarding the time for disposition of cases and time for typical procedural actions are in place. There are 3 time limits to be observed by state prosecutors to the maximum possible extend: a) prosecutorial action must be taken within 90 days of the day when the file was given to the prosecutor, b) case must be either dismissed or charges brought to court within 1 year from first receiving the criminal complaint to the SPO and c) the case must be adjudicated within 3 years from the day it was received to SPO. Time when a case is with the police for some additional clarifications, for example, does not burden the prosecutor and is not counted in the 90 days in which the prosecutor must make a prosecutorial decision.

59. However, the workload of state prosecutor is still closely monitored. Within the evaluation of prosecutor's performance, the report on the work done in the period that is being monitored is prepared. This includes detailed data on prosecutors' activities when handling cases¹⁰ as well as his/her activity in courts or at other venues.¹¹

60. To assess the working capability SP Council is presented with the following data gathered from information system and enclosed to the written report prepared by the evaluator:

- number of assigned cases, compared to others at SPO;
- number of all cases, worked on, compared to others at SPO;

¹⁰ e.g. number of: decisions to resolve a case in different way, deviation of case to another state, settlement, deferred prosecution, discharge of the criminal complaint, motion for temporary insurance of a claim for confiscation of material gain from the crime, negotiations, agreement on the confession of guilt, direct indictment, motion to stop the procedure, direct indictment (without the investigation), punitive order, indictment, appeal, motion for protection of legality.

¹¹ e.g. number of: inspection of the crime scene, hearing for the deferred prosecution, hearing for the clarification of the matter, hearing for negotiations at SPO, hearing at court, hearing for the pronouncement of judgement, main hearing, juvenile court attendance, hearing for the cancellation of conditional sentence, hearing at higher or supreme court.

- number of concluded typical process actions, compared to others at SPO;
- number of unresolved cases on three randomly chosen dates during the evaluation period;
- attendance to court hearings and other attendances, compared to others at SPO;
- the outcome of accusation by court decision and by criminal sanctions, determined by court, compared to others at SPO;
- number of cases in which the legal remedy was used and the results of those procedures, compared to others at SPO;
- number of days when the prosecutor was present at work, compared to others at SPO;
- other data, useful for evaluation;
- time it takes to resolve the case, compared to others at SPO;
- possible explanation, if in comparison of data the deviation is detected;
- number of cases in which the deadline to resolve a case was exceeded;
- number of cases in which the 90 days deadline was prolonged for prosecutor by head of SPO.

11. The estimate of time required to handle a case by a prosecutor is based upon which criteria? The time is estimated for each stage of the proceedings (pre-trial stage, filing the indictment, prosecution in court, appellate review)?

61. The SP Council is authorized by SPOA (art. 103) to adopt the quality performance criteria for the assessment of both, the state prosecutors and the SPO. The standards are adopted on proposal of the PG. The criteria for the assessment of state prosecutors' performance include the quality criteria for prosecutors, and the expected time for the disposition of a particular type of cases and for typical procedural actions. The criteria for the state prosecution offices determine, among other, the period of time in which activities should be performed and the time in which the solution is expected to be reached.

62. The time standards in the Criteria for the effective prosecution of SPO are prepared for typical procedural actions. They determine the proportions of different types of cases in which a certain procedural action should be performed within the envisaged time frames.

63. For example, in case where the police file the proposal to conduct an urgent investigative action, the decision at the SPO should be taken:

- in up to 2 days in 75% of those cases;
- in 3 to 5 days in 15% of those cases;
- in 6 to 10 days in 5% of those cases;
- in time above 10 days in 5% of those cases.

64. Such time frames are in place for the following stages of proceedings and are different for cases of insignificant value, cases from local jurisdiction and cases from district jurisdiction:

- time from receiving the criminal complaint to rejecting it;
- time from receiving the criminal complaint to filing a request at court with investigative judge to order the criminal investigation to be conducted or to conduct an individual investigative action;
- time from receiving the criminal complaint to presenting a direct indictment (without court investigation) to court;
- time after the end of criminal investigation to filing an indictment to court;
- the time from receiving the criminal complaint to decide to resolve a case by alternative methods (either settlement procedure or the deferred prosecution).

12. What is the method applied to calculate the approximate time in handling a case? Weighted case method, which considers: 1) How much prosecutor time, on average, is required to handle each type of case to disposition; and 2) The amount of time available to a typical prosecutor to handle cases.

65. As explained in the paragraphs above, the time frames for typical prosecutorial activities are in place and the state prosecutors are expected to handle cases within the determined time frames. When working on more demanding and complex cases, the time can be prolonged by the head of the SPO on the request of the prosecutor handling that case. When a state prosecutor is evaluated, respecting the time frames is taken to consideration by looking at the number of cases in which the deadline to resolve a case was exceeded and at the number of cases in which the 90 days deadline was prolonged for prosecutor by head of SPO.

66. The time standards that were adopted by the SP Council, were prepared and proposed by the PG. The proposal on the time needed for typical action was calculated based on the actual data from the information system from previous years. The data for all SPO was gathered (separately for Specialised prosecution office, because the cases at that office demand specific approach and significantly more time to solve) and the range of time for typical activities was presented. The group of well experienced state prosecutors of different ranks and from different offices examined that data and prepared the proposal for timeframes. Data in the annual report shows that timeframes are rather well respected, getting a bit longer than previous year, which is contributed to the fact that some SPO do not have enough prosecutors (different reasons, like too long procedure for the appointment of a new prosecutor, and state prosecutors being promoted and leave the SPO where they were appointed).

13. Which criteria are considered to identify the complexity of a case?

67. In the criteria for assessing the quality of the work of public prosecutors, adopted by the SP Council, the following factors are considered when assessing the complexity of cases:

- number of the accused in the case is more than 3;
- in the same case more than one criminal offence is prosecuted;
- the evidence for criminal offence is extensive, especially when prosecuting a case in which the covert investigative methods were used;
- the case deals with especially demanding legal or factual questions;
- or in other justifiable cases, if so estimated by the head of the SPO.

14. Is the weighted method complemented with the Delphi method?

68. As previously explained, there is no determined number of cases that a state prosecutor must handle in a certain period of time. However, it would be probably safe to say that rather simplified Delphi method was used, and in a very limited extend, when preparing the time standards for prosecution offices. The time standards have been carefully considered, deliberated and formulated by very experienced state prosecutors, deriving from the data, gathered from the information system.

Performance indicators

15. Are there pre-established performance indicators? If yes, please describe. Is there any “quantitative” rule that each of the individual PPs must comply with (e.g. number of criminal cases handled)?

69. The SP Council is authorised to adopt the Criteria on the quality of work of state prosecutors for the assessment of performance of the state prosecutors. The Criteria is adopted on proposal of the PG. The SPOA further stipulates that the adopted criteria for the quality of the work of state prosecutors determine the framework criteria for assessing the professionalism of the work of state prosecutors, including the determination of the estimated time for resolving individual types of cases and for typical procedural acts.

70. Performance indicators are:

- a) Work capability and professional knowledge, which include high quality of prosecutorial decisions, prosecutorial guidance in negotiations, settlement, deferred prosecution, use of good prosecutorial practice, capability to resolve legal questions, complicated and complex cases, precision and range of legal knowledge, possible written articles in professional publications, respecting deadlines, timeliness at work, respecting the instructive term, the number of attendances in court and the number of decisions taken that is assessed by the comparison to other prosecutors at the department of the PPO or at the PPO that work on similar cases, capability of logical and analytical thinking (based on the examination of conclusions made in cases, assessments of evidence in

cases, and argumentation), capability of good oral and written presenting and expressing and finally the possible extra work done (head of a unit in PPO, being a mentor, participation as a lecturer or attendant in education, international cooperation, etc.)

- b) Personal features which include being responsible, reliable, wise, protecting independency, impartiality, reliability and reputation of SPO both, when performing the duties and in private life, and respecting ethical code of prosecutors.
- c) Social skills such as being respectful, professional to co-workers, parties in procedure, representatives of other institutions, and readiness to help.
- d) State prosecutor that have managerial duties, such as heads of the SPO and their deputies, are also estimated regarding their capacity to perform the duties of managerial post.

71. To assess the working capability of the state prosecutor, following data are gathered form information system and enclosed to the written report prepared by the evaluator:

- number of assigned cases, compared to others at SPO;
- number of all cases, prosecutor worked on, compared to others at SPO;
- number of concluded typical process actions, compared to others at SPO;
- number of unresolved cases on three randomly chosen dates during the evaluated period;
- attendance to court hearings and other attendances, compared to others at SPO;
- the outcome of accusation by court decision and by criminal sanctions, determined by court, compared to others at SPO;
- number of cases in which the legal remedy was used and the results of those procedures, compared to others at SPO;
- number of days when the prosecutor was present at work, compared to others at SPO;
- other data, useful for evaluation;
- time it takes to resolve the case, compared to others at SPO;
- possible explanation, if in comparison of data the deviation is detected;
- number of cases in which the deadline to resolve a case (which is 90 days) was exceeded;
- number of cases in which the 90 days deadline was prolonged for prosecutor by head of SPO.

72. The evaluation criteria do not include a rule on how many cases a prosecutor should handle in a certain period of time. More about what is considered in evaluation is explained at points 9 and 10 above.

16. Who evaluates the compliance with the performance indicators? Do they result in economic incentives? Can the non-compliance with the performance indicators lead to disciplinary proceedings?

73. The state prosecutors that have a rank of a higher or of a supreme state prosecutors are authorised to conduct the evaluation of the work of state prosecutors. The department for training and expert supervision at the OSPG oversees and coordinates the evaluations. Based on the report of the evaluator that must include the assessment of work of state prosecutor, the SP Council adopts the evaluation.

74. Based on the evaluation, state prosecutors' function can be terminated on one hand but also the promotion is possible on the other, depending on the grade. If the assessment of state prosecutor's performance concludes that he/she is unsuitable for the state prosecutorial service, his/ her function ceases on the date when the final negative assessment is served to him/ her.

75. The non-compliance with the performance indicators detected during the evaluation can also lead to disciplinary proceeding. There are 31 different acts that constitute violations of state prosecutor's duties, including those, connected with performance of state prosecutor:

- a) reckless, untimely, inappropriate or negligent performance of the state prosecutorial duties;
- b) acting in conflict with the general instructions;
- c) failure to achieve the expected performance results in terms of quantity, quality or efficiency or failing to perform the actions in expected timeframes for more than three months in a row without a justified reason;
- d) conduct of a state prosecutor in conflict with the self-dependence of a state prosecutor or state prosecutor's office or which is detrimental to the reputation of a state prosecutor's profession.

76. Achieving the requirements of evaluation indicators does not bring the financial benefits *per se*, but it is grounds for the SP Council to decide on the promotion of state prosecutors. The state prosecutor with good evaluation can be promoted to the higher pay grade, higher position or to the position of counsellor.

17. How is the distribution of cases done in practice in each PPO? Is this distribution of workload done objectively? Are there pre-established criteria? Are these criteria made public?

77. As it has been described under the point 7 above, the distribution of a workload is responsibility and power of the head of the SPO. In bigger SPOs the heads give the authority to assign cases to heads of departments of the SPO. Assigning the cases is an important administrative power entrusted to the head of SPO, since he is responsible for functioning of the SOP and attends to the state prosecutorial administration matters, including the timeliness of functioning of the office. When the head of the SPO is evaluated, one of the elements to assess the capacity of the head is the execution of the annual work programme. The head of the SPO

is also authorised to assign other duties to the state prosecutors, such as participating in working groups, being a mentor to a trainee and similar.

78. There are ground rules in place that must be considered while assigning cases to individual state prosecutor and since they are in the SPOA and SP Order, they are public. The annual work programme which can have additional rules for distribution of cases, is published within the SPO. The existing rules still assure the head of the SPO enough space for autonomous organization of work in optimal way. That includes considering “softer” elements, such as capacity, preferences of the state prosecutor for certain legal filed, unforeseen circumstances and similar in assigning the cases.
79. The system is transparent also because every state prosecutor has the right to see the data on the number of cases, participation in hearings and performing on-call duties of every state prosecutor from SPO, where he / she works, as well as other data from which the workload is evident. Once a month statistical reports are prepared from the data in state prosecution information system (managed by OSPG) for each SPO, in which the required data are displayed. Also, on the basis of data in the information system, the head of the SPO assesses the equality of workload of prosecutors in his/her office every three months and takes measures if necessary to assure equal caseload (SP Order, atr. 70). In practice this issue does not raise questions.

Impact of workload on staffing decisions and budget

18. Who decides on the call for new positions, increase of number of prosecutors/leaving vacant positions when a workload increase is detected?

80. The procedure for the appointment of a new state prosecutor has been in detail explained above at the point 8. The head of the SPO proposes to begin the procedure to fulfil the position of state prosecutor to the PG. If the PG agrees, the proposal is sent to the Ministry of Justice that publishes the free position.
81. Increase of number of prosecutors is not only depending on the Order, in which the maximum number of state prosecutors at each SPO is determined, but also on the personnel plan, adopted for the SPO. In the personnel plan the number of state prosecutors for the coming year is planned, but the personnel plan must be in accordance with the adopted budget of the SPO. In case the budgetary funds are insufficient, the new position cannot be filled. So, the increase of the positions must be planned already when the budget for the next period is planned. The OSPG is authorised to draft a combined financial plan for all SPOs and negotiate for additional funds with the Ministry of finance. In case of successful negotiations, the additional budgetary funds are allocated to the SPO that has most urgent need. It is also possible to help one SPO to get new position for a state prosecutor by transferring a position that has emptied at another SPO, because transfer of positions from one personnel plan to another is possible within the prosecutorial organization.

19. Which body is responsible for cost-assessment and budgetary needs of the PPS?

82. According to the Act on public finances the OSPG is responsible for drafting the budget proposal for the whole prosecutorial organization. The OSPG prepares this document based on the limitations on available funds that are prepared by the Government, and on the proposals received from every SPO and SSPO. So, the cost-assessment and budgetary needs are prepared by each SPO, but authority to negotiate on the increase of the funds with the Ministry of Finance is at the OSPG.

20. Other relevant information and any difficulties encountered in providing the requested information

83. The requested information was not difficult to get, because it is publicly available. In addition, this reporter has also been working at the prosecution office or in the justice sector for long enough to have personal knowledge of many facts.

Conclusion

84. Even though the caseload is not prescribed, there is a high work ethic and the number of solved cases is higher than the number of new cases, received in past year. The time standards and caseload / workload are not exactly an issue here, there is much more debate on the appointment procedure for new state prosecutors, which can last even more than 18 months. Such a long procedure makes it hard to appropriately react to changes that affect the workload of SPO, which leads to overburden of state prosecutor at affected office.

SPAIN

INTRODUCTION

1. The aim of this country report is to provide relevant information and analysis on the system of calculating the workload of public prosecutors, the distribution of work among the different prosecutorial units and also the performance indicators.
2. The research shall be oriented to gather relevant information regarding the functioning of the public prosecution service, not only from a theoretical perspective, but also, its implementation in practice. The rules, principles and best practices regarding the workload and performance of individual public prosecutors as well as public prosecutors territorial or structural units.
3. This report shall give an overview both on the regulatory framework and its practical implementation in the Spanish public prosecution service, as part of a comparative study that shall contribute to support the Ukrainian authorities in the decision making process with regard to the organisation and efficiency of the public prosecution service, as well as to aid in aligning this institution with the standards applied in other European democracies. The calculation of the workload of prosecutors, similarly to other management units, is to be used in the assessment of needs related to resources' allocation and staffing, and thus shall aid in the State's budgetary decisions. The amount of workload –total and per/public prosecutor–, shall inform the management organization of the prosecution service and help in addressing the issues on efficient workload distribution. Performance indicators useful as motivation as well as monitoring tools shall also be described.
4. This report adheres to the general methodological principles of impartiality, objectivity, and confidentiality and in preparing this report, the expert declares her commitment to provide truthful and accurate information, preserve the confidentiality of the data and that there is no conflict of interest, as required by the general ethical standards.¹
5. In gathering the relevant information for this report, this expert has undertaken desk research, collecting information related to the applicable legislation as well as rulebooks, where available; statistical information generated by the Spanish Public Prosecution Service (*Fiscalía General del Estado*, hereinafter FGE or Spanish PPS), and also contained in the CEPEJ reports. This information has been completed with academic studies, although those publications do not address specifically the issue on workload calculation or application of performance indicators.
6. In order to check the practical implementation of the rules on workload calculation, distribution of workload and performance indicators, several members of the public prosecution service were consulted. The selection was

¹ Basic principles on human rights monitoring, available at: <https://www.ohchr.org/Documents/Publications/Chapter02-MHRM.pdf> 18.

randomly made, thus in scientific terms it does probably not meet the qualitative scientific research methodology valid in social sciences. Nevertheless, the public prosecutors consulted, answered in an open way, thus providing useful information for this report.

WORKLOAD OF PUBLIC PROSECUTORS IN SPAIN

I. GENERAL PART

1. Introduction. General background on the constitutional and legal framework of the public prosecution service.

7. According to Article 124 of the Spanish Constitution of 1978, which established and legally structured democracy in Spain, the Public Prosecutor's Office (PPO) is entrusted with the functions of promoting the action of justice in defence of legality, the rights of citizens and the public interest protected by law, seeking the satisfaction of the general interest of society before the courts. The Public Prosecutor is conceived as an autonomous institution that, although integrated into the judicial, acts through its own bodies (organic autonomy) and is independent of the General Council of the Judiciary (functional autonomy).
8. The 1978 Constitution put an end to the Public Prosecutor's dependence on the government. Since then, the government can only involve the Public Prosecutor in actions aimed at the defence of the public interest; in those cases, it is the General Public Prosecutor (*Fiscal General del Estado*) who, after hearing the Board of Senior Public Prosecutors (*Junta de Fiscales de Sala*), is competent to discretionary decide about the viability or legality of such actions.
9. The immediate precedents of the current rules on the public prosecution are to be found in the Law on the Judicial Power of 1870, and its functions were already regulated in both the Criminal Procedure Code of 1882 and in the Civil Procedure Code of 1881.
10. Article 1 of Law 50/1981, of December 30 (last amended on 11 March 2010) of the Public Prosecution Law (*Estatuto Orgánico del Ministerio Fiscal*, hereinafter PPL), reiterates the text of Article 124.1 of the Spanish Constitution, which also establishes that the Public Prosecutor exercises its functions in accordance with the principles of unity of action and hierarchical dependence, and subject also, in all cases, to the principles of legality and impartiality. The same definition is to be found in 541.1 of the Organic Law of the Judiciary (*Ley Orgánica del Poder Judicial*, LOPJ).

2. Principles and functions of the public prosecution within the criminal prosecution and outside the criminal justice system.

11. As established by Article 2 PPL, the Public Prosecutor is a body "of constitutional relevance". The Public Prosecutor's Office has its own legal personality and is governed by the following fundamental principles:

- a) the principle of legality, since the actions of the Public Prosecutor are always subject to the law and other norms in force;
- b) the impartiality, since the Public Prosecutor must act always with total objectivity and independence;
- c) the principle of hierarchy, since the Public Prosecutor's Office is organized according to a hierarchical structure, as will be explained below.

12. The functions of the Public Prosecutor's Office are very broad, and its activities are not limited to act in the criminal proceedings, although its role is mainly developed in this area. The public prosecutor in Spain will also participate in a number of civil proceedings, as well as in the area of administrative and labour jurisdiction. It also acts necessarily as a party in questions of constitutionality (*recursos de inconstitucionalidad*) and individual constitutional complaints (*recursos de amparo*) before the Constitutional Court.

13. Article 3 PPL defines which are the specific functions of the Public Prosecutor, as follows:

- a) to ensure that the jurisdictional function is performed effectively, in accordance with the laws and within the terms indicated therein, exercising actions and remedies;
- b) to exercise whatever functions the law attributes to it, in defence of the independence of judges and courts;
- c) to ensure respect for constitutional institutions and fundamental rights and public liberties;
- d) to exercise criminal and civil actions arising from crimes and offenses, or to oppose the same type of actions if exercised by others, when appropriate;
- e) to act in the criminal procedure requesting the judicial authority to adopt the appropriate precautionary measures and investigative measure during the pre-trial investigation; in the criminal proceedings against minors, it will be the public prosecutor who is directly in charge of the pre-trial investigative stage according to the provisions of the Organic Law that regulates the criminal responsibility of minors;
- f) to act in defence of legality and the public social interest in processes relating to civil status, and others established by law;
- g) to act in civil proceedings when there is a social interest present or when the interests of minors, persons with disabilities or vulnerable persons are affected;
- h) to maintain the integrity of the jurisdiction and competence of judges and courts by promoting, when appropriate, conflicts of jurisdiction and questions of competence;
- i) to ensure compliance with courts' decisions;
- j) to ensure the procedural protection of victims as well as the protection of witnesses and experts;

- k) to intervene in procedures of appeal for protection (*amparo*), as well as in questions of unconstitutionality (*questiones de inconstitucionalidad*);
- l) to file appeal for constitutional protection (*amparo*) and intervene in proceedings before the Constitutional Court, in defence of the legality;
- m) to exercise the functions entrusted to it by law in matters concerning the criminal responsibility of minors;
- n) to intervene in proceedings before the Court of Auditors (*Tribunal de Cuentas*) in the cases and in the manner established by law, as well as to defend the legality in the administrative and labour processes, when its intervention is foreseen by law;
- o) to provide international judicial assistance, in accordance with the provisions of international laws, treaties and conventions;
- p) to exercise any other functions assigned to it by State laws.

Action of the Public Prosecutor in the criminal justice and out of the criminal proceedings

14. It has to be underlined that in the Spanish criminal justice model, the pre-trial stage is directed by the Investigating Judge, in coordination and under the supervision of the PP. As of April 2020, a commission to reform the model of criminal procedure has been appointed by the Ministry of Justice. The reform intends to entrust the whole pre-trial stage to the PPO, currently under the direction of the Investigating Judge. To what extent this reform will finally be adopted is unclear, taking into account that this is a project that has been ongoing for at least the last 30 years.
15. In accordance with article 105 of the Criminal Procedure Code (*Ley de Enjuiciamiento Criminal*), the PP has the obligation to exercise, in accordance with the provisions of the CPC, all the criminal actions in investigating and prosecuting crimes, irrespective of whether there is or not a private accuser in the case, except in those cases that the Penal Code reserves exclusively to private accusation.
16. According to the statistics for 2018, there were 2.118.030 criminal cases registered; out of them, investigative acts of the ordinary criminal procedure (up to 5 years imprisonment) 1.570.255; 62% of them were closed during the pre-trial stage. This results in approx. 270.000 “real” cases handled by the prosecution during 2018, out of them 21.332 classified as complex cases. From the moment of registering a case until the formal indictment was filed, the average time was 218 days. 67% of the cases ended up with a plea agreement.²
17. In the civil procedure, the Public Prosecutor shall always be a party in proceedings on the legal capacity of persons, the international abduction of minors, and the determination and challenge of filiation. It must also intervene in matrimonial proceedings, proceedings on the protection of fundamental rights,

² See https://www.fiscal.es/memorias/memoria2019/FISCALIA_SITE/capitulo_I/cap_I_6_1.html

e.g. the right to honour and privacy. It has also standing to act in other proceedings, such as bankruptcy.

3. Organization of the public prosecution: hierarchical, territorial, specialisation

18. In 2015 the headcount of the Spanish PPO (as approved by Royal Decree 62/2015) was 2.473 Public Prosecutors. RD 255/2019 increased the headcount making at present 2.553 PPs. The number of first instance courts in Spain, 2.223, and total number of courts 3.763.³ The seat of the PPs is in the capital of the province, except when the number or geographical distance of the courts, justifies creating PPO for smaller areas.
19. The rate of PPs per 100,000 inhabitants in 2018 was 4.92 prosecutors per 100,000 inhabitants compared to 4.96% in 2017.
20. 34% of the PPs are between 41 -50 age, followed by 31% is the 51-60 age bracket (under the age of 30 only 1%). As for the distribution by gender, of the total of 2,468 PPs, 64% are women. The highest percentage is found in the prosecutors' offices of Madrid and Catalonia with rates higher than 70%. In the age bracket from 20 to 50, women are more than 70%. On the other hand, when it comes to leading positions, the number of men represents a significant majority of 63%; the highest ratio is found in the category of Prosecutors in the *Junta de Fiscales de Sala*, where women are only a 36%.
21. The PPO is organised on a hierarchical basis (as stated in the Constitution) distributed in territorial units, and within such territorial offices, it is also divided by specialisation criteria. The Chief Prosecutor in a province is subject to the superior, which is the Chief Prosecutor of the Autonomous Region (art. 22.7 PPL), who is integrated in the Board of Prosecutors of the Region. The GPP can give general and particular instructions (art. 25 PPL), but the lower PP can refuse to follow such orders if against the law or inappropriate (art. 27 PPL). In such case, he/she will inform his/her immediate superior.
22. As to the criminal policy, the PPO can set certain priorities, but in the Spanish system there is still a strict adherence to the principle of mandatory prosecution: indications, suspicions, report of a possible crime leads to the opening of a criminal investigation –unless manifestly ungrounded or minor offence against property with unknown perpetrator–. The public prosecution has no discretionary powers in deciding which cases shall be investigated/prosecuted or not. In that sense, there is no body within the PPO that defines the criminal policy.

a) Institutional structure

23. According to the provisions of articles 12 ff. PPL, these are the bodies that constitute the Public Prosecutor's Office:

³ Data of CEPEJ. The website and the annual reports for the judiciary do not reflect the total number of courts, but make a list by province and within the province by judicial district, being really difficult to have the broad picture.

24. The General Public Prosecutor's Office (GPPO, *Fiscalía General del Estado*). The head of the GPPO is the General Public Prosecutor (GPP), who, in accordance with article 124 of the Spanish Constitution, is appointed by the King at the proposal of the government. The removal of the GPP shall only occur upon the grounds specified in the law by decision of the Council of Ministers (art. 31 PPL). The time of his/her term is the same as the government.
25. Article 29 PPL provides that General Public Prosecutor must be appointed among Spanish jurists of recognized prestige, with more than fifteen years of experience in the legal profession. The GPP's is appointed for a term of four years, which is not renewable, except in case he/she has actually held the position for less than two years.
26. The GPPO is made by following bodies: Prosecution Inspection (*Inspección Fiscal*), with inspection and disciplinary functions with regard to prosecutors under its authority; a Technical Secretariat (*Secretaría Técnica*) to give support in the drafting of instructions, and in the elaboration of studies and reports; the Chamber of Senior Prosecutors (*Junta de Fiscales de Sala*).
27. Within the GPPO there is the Support Unit (*Unidad de Apoyo*), whose task is to assist the GPPO in matters of representation and relations with public authorities, communication and relations with the media, management of the office for the citizens, analysis and evaluation of legislative proposals, and others alike. It is also in charge of the analysis and reports regarding the organization and functioning of the PPO in statistics, IT support, **staff and human resources**, material resources, information and documentation matters (art. 13 PPL)
28. The Public Prosecutor's Council (PPC, *Consejo Fiscal*). The PPC is the self-governing body of the PPO. It is chaired by the GPP and composed of the Deputy Prosecutor of the Supreme Court, the Chief Prosecutor Inspector, and nine Prosecutors of any category elected for a term of four years by all the Prosecutors in active service. The PPC is competent to elaborate general criteria to ensure a homogeneous action of the Fiscal Ministry, to advise the GPP in all matters submitted to it, to inform proposals for the appointment of various positions, to prepare reports, to decide on disciplinary proceedings, prepare opinions on draft laws or regulations concerning the structure, organization and functions of the PPO.
29. Other bodies within the PPO are: the Board of Chamber Prosecutors (*Junta de Fiscales de Sala*); the Board of Superior Prosecutors of the Autonomous Communities (*Junta de Fiscales Superiores de las Comunidades Autónomas*); the Prosecutor's Office of the Supreme Court (*Fiscalía del Tribunal Supremo*); the Prosecutor's Office before the Constitutional Court (*Fiscalía ante el Tribunal Constitucional*); the Military Prosecutor's Office (*Fiscalía Jurídico Militar*); the Prosecutor's Office of the Court of Auditors (*Fiscalía del Tribunal de Cuentas*); the Prosecutor's Office of the National Court (*Fiscalía de la Audiencia Nacional*); and the Specialized Prosecutor's Offices (*Fiscalías especiales*).
30. There are specialized public prosecution offices in the following areas, which as a rule integrated within the provincial PPO: 1) International cooperation; 2) Environmental crime; 3) Road safety; 4) Cybercrime; 5) Minors; 6) Accidents at

work; 7) Hate offenses and discrimination; 8) Persons with disabilities; 9) Penitentiary; 10) Economic crime; 11) Protection of the rights of the elderly people; 12) Violence against women; 13) Foreigners and migrants; 14) Protection of victims.

b) Territorial structure

31. From a territorial perspective, the PPO is organized in three levels: 1) Public Prosecutor's Offices of the Autonomous Regions (*Fiscalías de las Comunidades Autónomas*); there are as many territorial prosecutor's offices as there are Autonomous Communities (that is, 17; the two autonomous cities of Ceuta and Melilla are, to these effects, included in the Region of Andalusia). 2) Provincial Prosecutor's Offices (50); 3) Area Prosecutor's Offices (*Fiscalías de Área*), which exercise their functions in a territory inferior to the province. They will be established only if necessary taking into account the number of cases and the number of courts in the province (art. 18 PPL).

4. Status of the public prosecutors, selection, appointment, evaluation and promotion

32. Public Prosecutors are highly respected in Spain, because of their professionalism and the high requirements for entering into the profession. The entry into the Public Prosecution career is done through a very objective public competition, which can be taken by law graduates, provided that they meet the necessary capacity requirements (art. 42). The exam to enter the Judiciary and the Public Prosecution Office is the same and taken at the same time. Candidates that pass the exams must choose between one or the other career. Those who choose the PPO must go through a training course at the Centre for Legal Studies (*Centro de Estudios Jurídicos*). Once they pass it, they enter the PPO with an oath or promise and taking office in a specific destination. They enjoy tenure and, as judges, are civil servants, whose retirement age is fixed by the law at the age of 65 (ordinary retirement) although they can also opt to retire at 70.

33. Promotion takes place in an almost automatic way, based mainly upon seniority, very similar to the system applied for judges. The decision is taken by the Council of Prosecutors. There is no proper evaluation system and control on the performance is carried out by the immediate superior chief prosecutor, who can also trigger disciplinary proceedings. There is a system of incentives based on performance indicators that will be described below (art. 52 PPL).

34. There are three categories of the PPs, which correspond to those in the judiciary and are: PP of the Supreme Court (*Fiscales del Tribunal Supremo*) (in 2019 there were 26 PPs of the SC), who have the same category as Justices of the Supreme Court; the second level is of Prosecutors, equated with Senior Judges (*Magistrados*) (in 2019 there were 1.890 PPs); and First level Prosecutors (in 2019, 637 PPs), equated with Judges (*Jueces*) (art. 34 PPL).

II. WORKLOAD OF PUBLIC PROSECUTORS

5. Are there statistics on caseload of public prosecutors? If yes, comment on the findings/evolution and if possible analysis.

35. Yes, there are statistics on the total caseload of prosecutors, and these statistics specify in a very detailed what are the single actions that have been carried out by each of the territorial units (provincial and regional PPOs), but not by each individual PP.

36. The information that will be reflected here is mainly referred to the criminal justice system, as this is the main area of action of the public prosecution, and for comparative analysis will be more useful. Nevertheless, some data regarding the caseload of the public prosecution in other areas will be also indicated. For example, the PPO at the Constitutional Court has dealt with in 2018 with 5.973 cases (inadmissibility 5.921), which resulted in 178 judgments of the Court. This PPO is made of 9 PPs. The PPO at the Supreme Court, made of 49 PPs intervened in: civil cases 5.180, the vast majority cassation proceedings (3.155); in the administrative section, the public prosecutor intervened in 479 proceedings; and finally the labour section in 5.174 cases; while in the criminal section, the actions of the PPs resulted in 3.386 judgments and decisions (vast majority cassation proceedings).

37. Within the criminal justice, statistics show the total number of cases registered, but there is no analysis of the caseload per public prosecutor. Even having the total number of cases registered and cases finally ending up with an indictment in the criminal procedure, the ratio of criminal case/per prosecutor is not easy to calculate, as this would require counting how many PPs are actually working in the criminal justice. As the headcount is divided in central units, Autonomous Region's PPO and PPO at the provincial level, this is incredibly difficult to calculate. The Support Unit confirmed that they do not have those data and that there is not a caseload calculation per PP.

6. Are there statistics on workload of public prosecutors? If yes, comment on the findings/evolution and if possible analysis.

38. There are no statistics on workload of the public prosecutors. There is no general calculation of the workload, neither the rate of workload per public prosecutor. The absence of this calculation seemed surprising, taking into account the level of professionalism and performance within the PP's organization. However, it is justified for reasons of pragmatism.

39. It was explained to us that this calculation should be carried out –and it was planned to be done– to establish the adequate matrix. However, due to pragmatic/budgetary reasons, a detailed calculation of the workload per PP to define the general staff needs of the PPO had not been done until now. In other words, as the relevant unit explained to us, taking into account the budgetary limitations, it was not worth to establish the exact workload every public prosecutor should bear, if at the end the calculation of the needed workforce

would have no impact in the allocation of human resources. The system applied works the other way round: depending on the State's budgetary possibilities the MoJ would approve a number of new positions for PPs. Once they are appointed, the Support Unit of the GPPO applies a business management computerised tool, to decide how to distribute those new PPs among the existing units, upon the needs detected. Thus, the software calculates the total workload of a territorial unit, to compare which unit is under much pressure, and so decide where to allocate the new positions. This system will be explained below.

40. While it was argued that at least this workload/per PP would serve to justify the demand for more public prosecutors, the relevant unit replied, that indeed this would be theoretically adequate, but so far they concentrate on the criteria for the distribution of the new staff they are granted.
41. This approach is also backed by the PPL, whose art. 18 PPL expressly states that the staffing needs are in any event subject to the budgetary constraints and decisions. The PPL only sets out in a very general way the criteria that should be considered when deciding on the staff:
42. "The Prosecution Offices of the Autonomous Communities and the Provincial PPOs will be directed by their Chief Prosecutor and will be made by the number of PPs "necessary for its correct operation according to the size and volume of work of the Prosecutors" (art. 18.3 PPL).
43. This legal provision continues stating that the number of the Prosecutors' Offices and its staffing will be established, in accordance with the criteria of **number of cases** and **number of courts** the relevant province. The number of prosecutors and their destiny will be determined by Royal Decree, at the proposal of the Minister of Justice, following the report from the GPP after hearing the Prosecution Council. However, the establishment of the workforce and the destiny of the public prosecutors will be reviewed at least every five years to adapt it to new needs. But in any event, it will be subject to the limitations derived from the corresponding budget (art. 18.5 PPL).

General rules and principles on staffing

7. Is there an established ratio that determines the number of public prosecutors — upon inhabitants, upon number/type of courts; upon number of criminal cases? Who decides on the workload of each of the members of the PPO?

44. No, there is no established ratio that fixes the required or desired number of public prosecutors per cases/courts or inhabitants. As was explained above, the algorithm establishes a comparative analysis between regions, in order to decide to which PPO unit should the newly appointed public prosecutor be allocated. It is a comparative tool, comparing the workload between the different provincial PPOs, so that there is an appropriate balance in the staffing of each of them.

45. With regard to the workload of each of the PPs, there is no fixed time/workload calculus. As to the distribution of the work within the territorial offices, see below point 17.

8. Which body is responsible for analysing the needs on the number of prosecutors?

46. The preliminary analysis of the needs is done upon the reports sent by the Chief Prosecution Offices of the Autonomous Regions, based on the information provided by the Chief Prosecution Offices of each of the provinces. The analysis will be done taking into account the number of cases, increased caseload, number of courts and serving public prosecutors, considering also the incidence of legal reforms or other events (as it is the case with the Covid-19 crisis now), in the caseload of the courts/prosecution offices. For example, if three new first instance courts have been created in a province, theoretically there should be an equal increase of the prosecution staff, following the “prosecution model office”.

47. The “Support Unit” of the GPPO shall receive the reports of the territorial regional units and analyse the needs of the prosecution service, including the staffing needs. In accordance with art. 18.4 PPL it is competent for the “c) Analysis and evaluation of the proposals related to the organization and operation needs of the Public Prosecution in the field of statistics, informatics, **personnel**, material resources, information and documentation.” According to the Royal Decree 255/2019, of 12 April, there are at present 4 members of the PPO serving at this unit.

48. Upon the information received by the Chief Prosecution Offices of the Autonomous regions, the GPP through its Support Unit will take decisions on the staffing distribution. This decision will have to be informed by the competent authority in each Autonomous Region for Justice administration.

Estimating the workload

9. Are there separated criteria for estimating the workload of prosecutors, different from the ones applicable to the judges?

49. There are no workload calculations for each of the PPs. As it will be seen the caseload of the courts has an impact in assessing the staffing needs, but the caseload/workload calculation applicable for judges is not applicable to PPs.

10. If not, are the criteria applicable for measuring the workload of judges applicable mutatis mutandis to the public prosecutors?

50. As mentioned above, there are no fixed criteria to measure the workload of each individual PP the software will measure the total workload of each territorial unit for a comparative analysis between units. This calculation will serve to decide how to distribute the increased workforce agreed by the MoJ and approved in the

State's budget. Thus, it will not define how many PPs are needed to cover the total workload, nor to determine how much workload corresponds ideally to each of the members of the PPO, but to take the decision on how to distribute the new positions granted among the different territorial provincial PPOs. For example, last year 32 new positions of public prosecutors were approved. The relevant public competitions will be announced and once the examinations are finalised, decision is to be made how to distribute those 32 newly appointed public prosecutors, which province shall get reinforcement according to their workload (compared to the other territorial units).

51. The GPPO argues that the general rule for the MoJ to approve an increase of the number of the headcount of public prosecutors should follow the increase of the number of courts: if a new court is created in a province, there should be at least an additional PP allocated to it. However, this is not respected in practice, due to budgetary restrictions.
52. The business intelligence tool operates not to define the number of PPs needed, but to decide which territorial unit has more workload and thus should receive the newly appointed PPs. The tool does not determine how many PPs in each unit are required, or how many hours each PP employs in each case. The software works upon criteria that allow a comparative assessment. The first criterion that is applied for this "distributive" function of the PP staff is the existence of courts that have a PP working as additional support on secondment for more than 3 years.
53. The distribution of the new prosecutors is determined by the workload in each province calculated mainly upon the caseload of the courts located in that province.
54. The three criteria taken into account are:
 - a) Procedural activity (caseload), representing 60-70% of the calculation
 - b) Number of courts to cover, representing 10% of the calculation
 - c) Number of on-call duties performed/expected, representing 20% of the calculation

1) Caseload/workload calculation (procedural activity)

55. The calculation of the procedural activity distinguishes the actions in each of the jurisdictional orders, since the Spanish PP carries out actions in all four jurisdictions (criminal, civil, labour and administrative courts). The actions in the criminal order represent about 80% of the total. Each action receives a score based on the burden/time such activity represents. It is not strictly measured in "time spent", although in the end, the "burden" implies a higher score for those actions that involve more work and thus take more time to perform. But it is not strictly calculated in minutes, hours or days. A value of 1 to 10 is given to each act a PP performs, in a scale from 1 to 10.
56. For example, writing down the indictment has a score of 10 points; ordering preliminary investigative acts scores as 1, and so on up to 15 variables (which are

not public and were not provided). Adding those fifteen numeric variables, a total value is obtained that does not exactly determine the time spent, but a measurement of the workload for each task. Each PP fills in a form where all types of tasks are listed and introduces the number of such tasks carried out. The score for each task tries thus to reflect roughly the amount of effort/time that each task requires, but it is not based on the Delphi method nor on an exact time calculation. The system, while not reflecting exact time investment for each task, is quite sophisticated, thanks to the level of detail of the types of tasks and actions described in the form. Each PP fills in the list once per month. The on-line management allows to monitor the performance of the individual PP, while at the same time it allows to calculate the total workload of each prosecution unit.

57. That total sum in a prosecution unit is subsequently divided by the number of prosecutors who work in it. This index is the one that allows a comparative measurement between the different provincial prosecutors' offices: if one carries more workload per PP than the other according to this calculation formula, the new positions are allocated to those with the more work overload. While not reflecting accurate times, it is considered very useful in establishing comparative assessment on performance and average workload, which is necessary to determine where the newly appointed PPs will be allocated.
58. The 15 variables applied by the software are not public. It operates on the basis of "business intelligence" in a comparable way in business management.

2) Number of courts

59. The workload is also calculated based on the number and type of courts covered by each provincial prosecution office. Each type of court is given a value, depending on the workload it represents for the prosecution, the highest score corresponds to the investigating courts –*Juzgados de Instrucción*– (15 points); and the lowest to the commercial courts (1 point). These values are based on the work it represents for the public prosecution, but again, the value given does not correspond exactly to a time calculation, but it is an approximate value.

3) On-call services

60. The third criterion that the software is programmed to take into account is the total number of on-call duty services (nights, weekends, etc.) in each prosecutor's office / per prosecutor.
61. Weighting all these criteria a "ranking" listing all provinces is established, so that those that have higher workload will get staff reinforcement from the positions of newly appointed PPs as granted in the State budget.
62. The system applied in Spain is unique, because it is not based on a study to determine the needs of each prosecution unit or what would be the ideal workload, but it is only aimed at providing information for a comparative analysis of the workload in territorial PPOs. As explained above, this system responds to pragmatic reasons.

11. The estimate of time required to handle a case by a prosecutor is based upon which criteria? The time is estimated for each stage of the proceedings (pre-trial stage, filing the indictment, prosecution in court, appellate review)?

63. There is no time estimate as such. However, in the system of “scoring” the activities to calculate the total workload, each of the activities gets a score based on the complexity of the task/action for the public prosecutor. In such scoring the action in the different procedural stages are valued, but the total amount of time devoted in handling each of the procedural stages is not calculated.

12. What is the method applied to calculate the approximate time in handling a case? Weighted case method, which takes into account: 1) How much prosecutor time, on average, is required to handle each type of case to disposition; and 2) The amount of time available to a typical prosecutor to handle cases.

64. As already explained, the Spanish PPO does not have a method to calculate the workload based on the average time each activity involves.

13. Which criteria are taken into account to identify the complexity of a case?

65. Article 324 CPC sets out the criteria for considering a criminal investigation as “complex”. The classification of the case as complex, will authorise to extend the maximum time for the investigative pre-trial stage –which is as a rule a maximum of six months–, up to 18 months and, eventually for another additional 18 months. Until the reform of this rule by Law 41/2015, it was not clear which should be the criteria for considering a criminal case as complex, and it was not relevant either.

66. However, since no investigative act will be valid if carried out after the maximum time has expired, both PPs and Investigating Judges are very keen in establishing which cases will be considered as “complex cases”. Art. 324 CPC sets out the criteria to be assessed, which are: a) organised crime; b) numerous crimes; c) involves a large number of investigated or victims; d) requires the carrying out of expertise or collaborations that involves the examination of abundant documentation or complicated analysis; e) involves carrying out actions abroad; f) requires the review of the management of legal-private or public persons; or g) it is a crime of terrorism.

14. Is the weighted-case method complemented with the Delphi method?⁴

⁴ Following the Delphi method each public prosecutor would give an approximate calculation of the time it will take to process a case or certain types of cases. This system allows to provide cost-efficient approximate estimates on the staffing needs, and despite being inaccurate, it might be useful when setting up new courts or public prosecution offices.

67. There is no weighted-case method applied for estimating the workload, neither a time calculation for each of the actions/activities of the PP. Thus, this question, as explained above, does not apply to the Spanish system. The system of giving “points” to certain activities is based on general experience, but not on a strict calculation of time necessary to perform a certain activity.

Performance indicators

15. Are there pre-established performance indicators? If yes, please describe. Is there any “quantitative” rule that each of the individual PPs have to comply with (e.g. number of criminal cases handled)?

68. Yes, there is a basic system of performance indicators, linked to certain economic incentives. The system is mainly based upon quantitative criteria. Each of the PPs will fill every month a form, reflecting the number of cases/activities of each type they have accomplished/handled. The list of the activities is very detailed, as it includes more than 60 different tasks /actions of the PPs, differentiating also the same type of task according to the type of proceedings and court. Some of those tasks and the score (points) they are accorded will be mentioned next:

69. Investigative acts in criminal proceedings: - with filing of indictment (10); - without filing indictment (2); – indictment without previous investigative measures (1):

70. Decisions on pressing charges or dismissal of the case: in the ordinary proceedings (15); in the jury trials (25); in the abbreviated proceedings (15); in urgent or fast track proceedings (10); in complex cases (50); in penal order proceedings (5).

71. Trials, hearings and appearances: in jury trials (40); in ordinary proceedings (30); in abbreviated proceedings (20); and in misdemeanour proceedings (2); in hearing for adopting precautionary measures (5); in appeal proceedings; etc.

72. Opinions and reports: - in any judicial proceeding (except execution); - relating to the control of art. 324 CPC (complexity of proceedings); - with regard to enforcement of convictions (0,5); - on extraordinary review based on the reform of the penal code; - opinions on jurisdiction; - pardon proceedings; - cancellation of criminal record;

73. Each of the activities takes into account the type of proceedings, the type of court, and the type of activity carried out. Even the action of appearing in court when the hearing is suspended, is evaluated for the performance indicator.

74. The exact score or point that is allocated to each of the activities carried out by the individual PP is not publicly available as it is aimed for internal use. However, it was finally obtained. The exact economic incentive linked to the performance is not public either.

16. Who evaluates the compliance with the performance indicators? Do they result in economic incentives? Can the non-compliance with the performance indicators lead to disciplinary proceedings?

75. The evaluation and the possible disciplinary proceedings in case of negligence, is under the competence of the PP Inspection unit.

17. How is the allocation of cases done in practice in each PPO? Is this distribution of workload done objectively? Are there pre-established criteria? Are these criteria made public?

76. Regarding the distribution of work among prosecutors within each provincial unit, it is carried out by the provincial chief prosecutor on the basis of objective and fair criteria that are published. This is precisely regulated in art. 18.2.3) PPL. These criteria are submitted to the consideration of the provincial board of public prosecutors, who shall be heard, before its approval. The criteria are transparent and public. Three elements are taken into account in the distribution of the work among the serving PPS in the provincial units: 1) the existing courts in the province; 2) the on-call service needs; and 3) the specialisation.

77. Applying the first criteria, each public prosecutor will deal with the cases of precise courts located within the province and the distribution will be done in a random way, but also taking into account the number of cases pending before those courts. For example, if in a province there are 36 first instance courts (Girona), plus several labour courts, appellate courts, administrative courts and civil courts. There are 29 serving PPs, so each of them will be in charge of all the criminal cases of one first instance court within the territory, distributed randomly. The rest of the work will be distributed mainly according to the specialisation criteria.

78. The GPPO claims that ideally there should be a “prosecution model team” per first instance court. Such “prosecution model office or team” should be composed by one public prosecutor and three administrative staff (one of each of the three levels of judicial non-judge staff.⁵

79. In addition to the allocation of work by courts, there is the distribution of the on-call service (e.g. nights and weekends, urgent matters as well as detentions). These services are distributed following the pre-established order (equal number of on-call duties for each of the prosecutors in the province).

80. The third criterion is based on the specialisation. Apart from the number of courts within the province each PP is in charge (and thus all criminal cases of those courts will be handled by the same PP), there are rules to distribute the cases by specialisation. For example, one PP will deal in addition to the criminal cases of the courts allocated to him/her, with all cases related to road traffic, another with the cases on environmental criminality, another with the cases of work accidents, labour law, etc. In those provinces where the number of first instance courts is

⁵ See Ministry of Justice Order JUS/3/2018, of 5 January, art.3.

lower than the number of PPs, there will be PPs who will handle only cases of non-criminal courts, or certain specific criminal law cases (e.g. environmental law).

81. The rules approved in each of the provincial PPOs are very similar, although not completely uniform. For example, in some provincial PPOs, the attendance to social jurisdiction hearings is not distributed on the basis of specialization, and thus every public prosecutor, following the pre-established order, will deal with such cases; while in other provinces it is always the same PP who will deal with the labour jurisdiction cases.
82. In any event, the rules for allocation/distribution of cases among the public prosecutors within the provincial PPO can be challenged before the inspection service. Thus, if they were not fair and objective, the inspection could intervene to correct them.
83. In practice, the public prosecutors interviewed agree that the distribution of work is done in a fair way, so that each of the members of the PPO deal with a similar number of cases/workload. If there is an increased caseload or workload due to specific circumstances (e.g. environmental disaster in an area, due to oil spill or arson), there is the possibility to request for the temporary transfer of additional public prosecutor to support in handling the additional workload.

Impact of workload on staffing decisions and budget

18. Who decides on the call for new positions, increase of number of prosecutors/leaving vacant positions when a workload increase is detected?

84. The responsible authority is the Ministry of Justice, after consultations with the GPPO.

19. Which body is responsible for cost-assessment and budgetary needs of the PPS?

85. The GGPO together with the Ministry of Justice.

Others

20. Other relevant information and any difficulties encountered in providing the requested information

86. This reporter has faced difficulties in accessing the information as it is not publicly available. However, the contacts with members of the public prosecution service have helped in overcoming such obstacles. It should be promoted that all this information is made publicly available for the aim of transparency and also for underpinning the legitimacy and the image of objectivity and professionalism of the Spanish PPO.

THE UNITED KINGDOM

I. GENERAL PART ¹

1. Introduction

1. The Consultative Council of European Prosecutors' Opinion No.9 of 2014 to the Committee of Ministers of the Council of Europe on European norms and principals concerning prosecutors, 'the Rome Charter', sets out the essential principles for the basis for the regulation of prosecutors and their workload to ensure the fair, impartial and efficient administration of justice and in accordance with democratic principles and values of the Council of Europe.
2. The Charter clearly states that prosecutors must have the necessary and appropriate means to carry out their duties, and, to this end, indicates that there should be "provision of adequate organizational, financial, material and human resources which contributes to ensuring independence. Particularly in times of economic difficulty, sufficient resources should be assigned to provide a quality service".
3. The United Kingdom has three criminal justice jurisdictions, which are served by different prosecutorial agencies:
 - a) the Crown Prosecution Service (CPS) and the Serious Fraud Office (SFO), in England & Wales;
 - b) the Crown Office and Procurator Fiscal Service of Scotland (COPFSS);
 - c) the Public Prosecution Service Northern Ireland (PPSNI).
4. The three legal systems they serve are based upon Common Law.
5. Under this system complaints of crime are made to the law enforcement authorities [the police], who investigate the crime and refer the evidence to the prosecutors to independently consider:
 - a) whether there is sufficient evidence to provide a realistic prospect of conviction for a criminal offence or offences;
 - b) whether it is in the public interest in pursuing a prosecution.
6. There are three types of criminal court in England and Wales. All cases begin in the magistrates' court, and most of the minor offences remain there to be dealt with. The magistrates court has limited sentencing powers. The youth court generally deals with

¹ This report has been written by Catherine Carrie, Senior Prosecutor with Crown Prosecution Service Homicide Unit London

offences involving youth offenders (10 – 17 years old), although in certain circumstances youths can be referred to the Crown Court to be dealt with.

7. Cases are referred to the Crown Court if they relate to a serious offence, or for sentencing if the magistrates' powers are insufficient or if a decision of the magistrates' court is appealed.

2. Structure and functions of the public prosecution within the criminal prosecution and outside the criminal justice system.

CPS and SFO

8. The Crown Prosecution Service was established in 1985 by the Prosecution of Offences Act. The CPS is a non-ministerial department headed by the Director of Public Prosecutions (DPP). It, and the Serious Fraud Office, are under the superintendence of the Law officers, the Attorney-General and Solicitor-General, who are appointed by the governing political party and accountable to Parliament. The Law Officers are responsible for safeguarding the independence of the prosecutors. The Attorney-General issues guidance on legal issues, practice and policy to ensure consistency of approach.
9. The DPP is responsible for ensuring that policies and guidance of the CPS are consistent with, and give effect to, government policies and issues guidance and principles regarding the conduct of casework. The CPS has an in-put into Government policy as regards to legislation and criminal justice reforms. The Serious Fraud Office was established in 1988. It is headed by a Director appointed by the Attorney-General. It is responsible for detecting, investigating and prosecuting the most serious and complex cases of fraud, bribery, corruption and corporate overseas' tax evasion.
10. The SFO covers cases from England, Wales and Northern Ireland, but not Scotland.
11. The COPFSS is Scotland's independent public prosecutions' service. It came into being in the 15th Century. Now the Service is a department of the Scottish Executive, and is led by the Scottish law officers, the Lord Advocate and the Solicitor-General. The Lord Advocate has Ministerial responsibility for the work of the Service. The Service advises and prosecutes criminal cases, investigates all sudden, accidental or suspicious deaths and investigates allegations of misconduct against the police.
12. The Public Prosecution Service for Northern Ireland is a department of the Northern Ireland Executive. It was established in 2002 and is headed by the Director of Public Prosecutions for Northern Ireland, who is appointed by the Attorney-General for Northern Ireland (the legal adviser to the Executive). Its function is to advise the investigating agency, authorize charging of defendants, review, prepare and prosecute cases.

3. Organizational principles of the public prosecution: hierarchical, territorial, specialisation

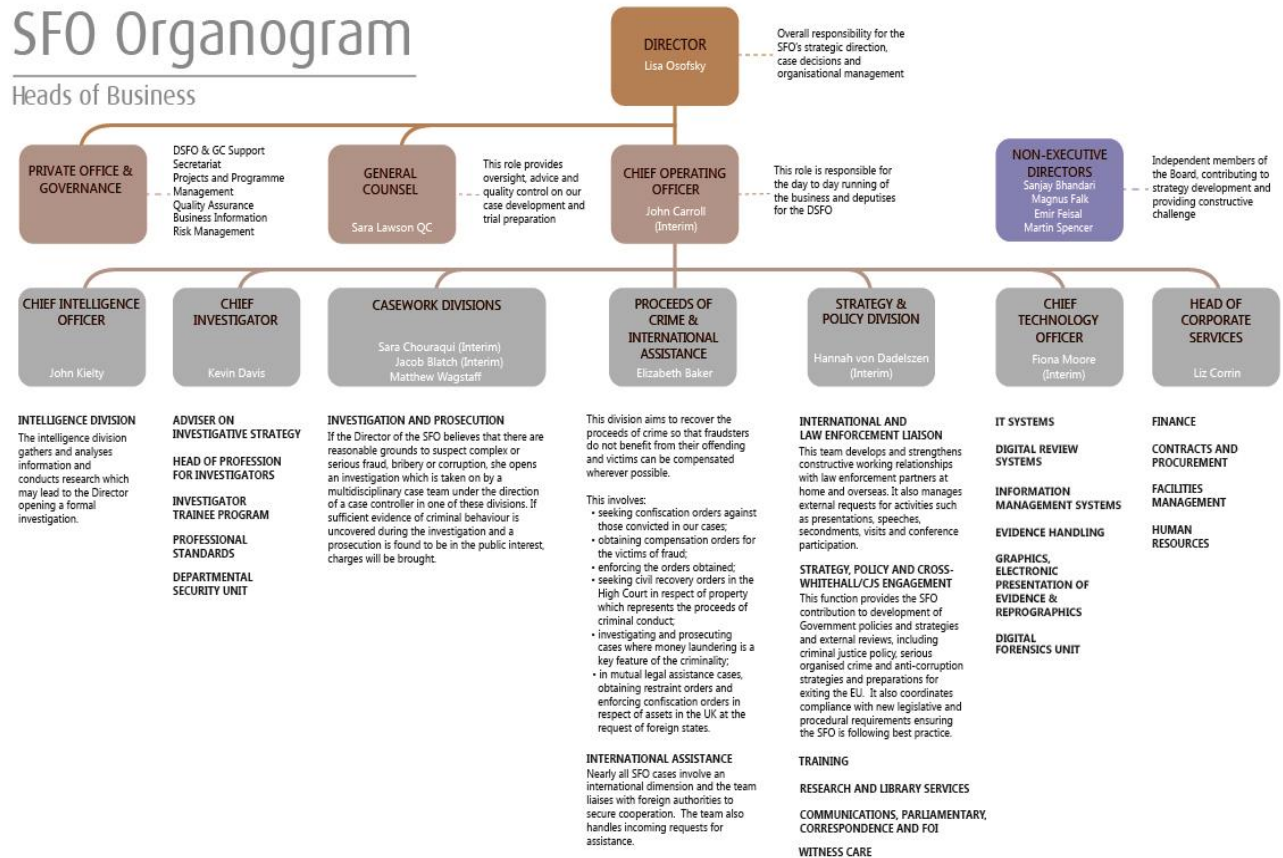
C.P.S.

13. The DPP is assisted by two Directors of Legal Services, who are in overall charge of the Areas and Specialist units, and a Chief Executive, who is responsible for the running of the support services of the organization (finance, communication, policy etc).
14. England and Wales are divided into 14 Areas that deal with crimes on a geographical basis. Within those Areas there are Units solely dealing with Magistrates Court work and Units solely dealing with Crown Court work.
15. There are also Specialist units that deal with rape and serious sexual offences and Special Casework Units that cover the more serious and complex cases in the Area which require greater expertise and time.
16. Each Area is led by a Chief Crown Prosecutor is assisted by a business manager, who are responsible for the day to day delivery of the service and maintaining budgetary control.
17. The C.P.S. employs some 2,700 lawyers and prosecutes approximately 500,000 cases each year.
18. The majority of the cases in the lower courts are prosecuted by staff employed by the C.P.S., but agents from private practice are also used. Private barristers are employed to prosecute most of the cases dealt with by the higher courts, the remainder being dealt with by Higher Courts' Advocates employed by the C.P.S.
19. There are also Headquarters' Divisions: Special Crime and Counter- Terrorism, International Justice & Organized Crime, Specialist Fraud and the Proceeds of Crime Division.
20. The Counter-terrorism Division prosecutes acts of terrorism or terrorist related offences as well as certain other offences such as crimes against humanity.
21. The Organised Crime Division deals with complex cases from the National Crime Agency and from the Immigration Enforcement Directorate.
22. Special Crime Division deals with a number of specialized cases including serious cases investigated by the Independent Office of Police Complaints (IOPC); corporate and medical manslaughter and allegations of political or constitutional significance against public figures with a nationally high profile.
23. The Special Fraud Division provides a specialist prosecution and advisory service for the most serious and/or complex fraud or economic crime cases in England and Wales.

SFO

24. The SFO employs between 350 and 500 people. It is headed by the Director.

25. The organization and structure of the SFO is as follows:



COPFSS

26. There are approximately 520 Procurator Fiscals employed in 11 areas consisting of Procurator Fiscal Deputes, Senior Procurator Fiscal Depute, Principal Procurator Fiscal Depute and Senior Civil Service grades.

27. The prosecutors deal with some 80,000 cases a year.

28. The Crown Office & Procurator Fiscal Service of Scotland is sent reports of an initial crime investigation by law enforcement agencies. The Service has an investigative role and can direct and instruct the police in an investigation, but the modern practical reality is that the majority of criminal offences are detected and investigated by the Police without any involvement by the Service and are then reported to the relevant Procurator Fiscal.

29. An Initial Case Processing Team assesses the case, which is then allocated to a Procurator Fiscal, who decides whether or not proceedings should be taken against an accused and if so what the charge should be and in which court the case should proceed.

30. The preparation for a Solemn Trial before a jury involves the preparation of a full written report (a precognition) that contains full details of the case together with detailed statements taken by Procurator Fiscal staff from the witnesses. This report is sent to the Crown Office for consideration by Crown Counsel (the collective name for Advocate Deputes), who decide whether the case should proceed in the High Court, in the Sheriff Court before a Jury or be downgraded to a summary hearing in the Sheriff Court. Where the case is to be heard in the Sheriff Court before a Sheriff and Jury the case is prepared and presented by the Procurator Fiscal, but where the case is to be heard in the High Court, while further preparation is carried out by the lawyer or para-legal officer, the presentation of the case is handled by an Advocate Depute.

PPSNI

31. The prosecutors are divided between two regions located in four offices that deal with all types of offence within their geographical area, except for those cases that are referred and allocated to the Serious Crime Unit, the Fraud and Departmental, Central Casework or High Court & International sections.
32. The two regions and four specialist sections are each headed by an Assistant Director who has overall responsibility for decision-making on investigation files and for the conduct of prosecutions in their section. The two geographical regions are staffed by 94 prosecutors, who deal with approximately 40,000 cases a year and deal with local offences investigated by the PSNI and other enforcement agencies.
33. The Serious Crime Unit consists of 9 Senior Public Prosecutors, 4 Public Prosecutors and 3 Higher Court Advocates. This unit deals with the most serious and complex offences including murder, rape and other serious sexual offences, human trafficking, prostitution and related offences. A dedicated Gateway Team within this section assesses the quality of the files received from law enforcement and provides guidance and support to investigating officers. This assists in the sharing of best practice and consistency of approach across the team and a better service for victims of serious crimes.
34. The Central Casework unit employs 8 Senior Public Prosecutors and deals with high profile and complex cases including terrorist cases, gross negligence manslaughter, corruption, and serious organised crime cases.
35. The High Court & International Section, with 8 Public Prosecutors, has the responsibility for High Court bail applications, restraint and confiscation orders, extradition, international Letters of Request, judicial reviews, civil cases, unduly lenient sentences, appeals to the Court of Appeal and the Supreme Court, and cases referred to it by the Criminal Cases Review Commission.
36. With 7 Public Prosecutors, the Fraud and Departmental section deals with serious and complex fraud files submitted by the police and the National Crime Agency, files from Northern Ireland's government departments and their agencies, and from Her Majesty's Revenue and Customs. This section also deals with cases involving pollution, benefit fraud, agriculture-related offences and health and safety offences.

4. Status of the public prosecutors, selection, appointment, evaluation and promotion

37. Prosecutors are civil servants appointed by open selection and interview. Promotion is by application to advertised posts, where the applicant must satisfy the criteria and competencies that the post requires.
38. The selection process used by the CPS in the England and Wales involves candidates being required to submit a written application. A short list of candidates is then prepared. The shortlisted candidates are subject to an assessment and interview. Each year a prosecutor's line manager carries out an appraisal report based upon agreed objectives that examines the prosecutor's performance over the preceding year.
39. The objectives set for the reporting period are directly connected to the key organisational priorities and values of the CPS. The objectives specify not only what is required of the individual prosecutor but how it is expected that the work is to be delivered by reference to the organisational priorities and values of the organisation. Prosecutors are expected to deliver their work in such a manner as to support the overall aims and values of the organisation. The objectives are set at the start of the year and performance is reviewed regularly during the year, including a more formal written mid-year review. This report is counter-signed by the manager of the line manager. Pay is based upon a grade system with differing bands of pay for each post.

II. WORKLOAD OF PUBLIC PROSECUTORS

40. For the purposes of this Section the analysis provided will focus on the system in England and Wales.

5. Are there statistics on caseload of public prosecutors? If yes, comment on the findings/evolution and if possible analysis & 6 Are there statistics on workload of public prosecutors? If yes, comment on the findings/evolution and if possible analysis.

41. The CPS does not publish official statistics on the caseload and workload of prosecutors. The official statistics relating to crime and policing in England & Wales are maintained by the Government Departments in question and the Office for National Statistics, but these statistics do not include the caseload and workload of individual prosecutors.
42. The SFO currently has under investigation about 25 cases with a further 5 being prosecuted before a court.

7. Is there an established ratio that determines the number of public prosecutors (upon inhabitants, upon number/type of courts; upon number of criminal cases? Who decides on the workload of each of the members of the PPO?

43. The national number of prosecutors depends primarily on budgetary issues and the volume and complexity of cases referred to the Crown Prosecution Service by the police. These factors can vary from year to year.

44. Supervising managers/Unit Heads decide upon the workload of each of their prosecutors within their Units.

8. Which body is responsible for analysing the needs on the number of prosecutors?

45. The CPS estimates the number of prosecutors required each year (and estimates for future years) and costs this number into its application to the relevant treasury for its funding.

9. Are there separated criteria for estimating the workload of prosecutors, different from the ones applicable to the judges?

46. There are no published criteria for estimating the workload of prosecutors. The CPS publishes in its Annual Reports the total numbers of cases referred to them nationally by the police, and the numbers of cases dealt with in the magistrates Court and Crown Court with statistics regarding the outcome of the cases dealt with. This data assist in identifying trends which may increase or decrease the future workload of prosecutors.

47. Similarly, there are no published criteria for estimating the workload of judges. The workload of the criminal courts in England and Wales depends on the number and complexity of cases received from the CPS and other prosecuting agencies.

48. When extra resources are given to the police and CPS, and other prosecuting agencies, the workload of the courts is likely to increase; conversely in periods when the resources of the police, CPS and other prosecuting agencies' resources are cut there is likely to be a corresponding reduction in the workload of the criminal courts.

49. The Ministry of Justice publish quarterly and annual statistical reports regarding cases in the Lower [Magistrates] courts and the Upper [Crown Courts]. These reports analyse the volume of cases received by the courts and track increases and decreases in cases received and cases disposed and the timeliness of cases dealt with so that trends can be identified for the purposes of projecting future workloads of the courts. The published reports do not provide statistics relating to individual courts or individual judges.

50. The Criminal Practice Directions 2015 as amended contain detailed guidance regarding the workings of The Magistrates and Crown Court including guidance regarding judicial workloads and Listing practice. Judges, working with Her Majesty's Court Service, are responsible for deciding on the assignment of cases to particular courts, and the listing of those cases before particular judges.

51. Subject to the supervision of the Presiding Judges, the Resident Judge at each Crown Court has the general responsibility within his or her court centre for the allocation of criminal judicial work, to ensure the just and efficient dispatch of the business of the court or group of courts. This includes overseeing the deployment of allocated judges at the court or group, including the distribution of work between all the judges allocated to that court. The listing officer in the Crown Court is responsible for carrying

out the day-to-day operation of listing practice under the direction of the Resident Judge.

52. In the magistrates' courts, the Judicial Business Group, subject to the supervision of the Presiding Judges of the circuit, is responsible for determining the listing practice in that area. The day-to-day operation of that listing practice is the responsibility of the justices' clerk with the assistance of the listing officer.
53. Custody time limits (CTLs) must be observed in both the magistrates court and the Crown Court. These provide for a set period within which a defendant in custody must be tried. The time limit can only be extended if there is good reason to do so.
54. The Resident Judge of each court has additional administrative duties in addition to trying cases. These may be time consuming.
55. Administrative duties include:
 - a) ensuring that good practice is implemented throughout the court, such that all hearings commence on time;
 - b) ensuring that the causes of trials that do not proceed on the date originally fixed are examined to see if there is any systemic issue;
 - c) monitoring the general performance of the court and the listing practices and implementing good practice.

10. If not, are the criteria applicable for measuring the workload of judges applicable mutatis mutandis to the public prosecutors?

56. The workload of Judges in England and Wales differs from the workload of Prosecutors in several key respects. Much of the work of Prosecutors in England and Wales involves advising the police in investigations, considering charges, case review and case progression. Only a limited proportion of prosecutors conduct hearings in the magistrates and Crown Courts. The workload of judges involves the need for preparation and reading of cases as well as the time needed for other administrative duties.

11. The estimate of time required to handle a case by a prosecutor is based upon which criteria? The time is estimated for each stage of the proceedings (pre-trial stage, filing the indictment, prosecution in court, appellate review? and 12. What is the method applied to calculate the approximate time in handling a case? Weighted case method, which takes into account: 1) How much prosecutor time, on average, is required to handle each type of case to disposition; and 2) The amount of time available to a typical prosecutor to handle cases.

57. No set criteria have been established by the prosecuting authorities to estimate the time required to be spent on each case by a prosecutor. There are too many variable factors. For straightforward minor cases dealt with in the magistrates (lower) court and more serious but straightforward cases in the Crown (higher) Court there is generally no need for a time assessment to be made for each case and new cases are simply divided equally between the available prosecutors.

58. In the most complex cases, which are largely dealt with by the Specialist Units within the Prosecution Service, the method of identifying the complexity of cases involves the Supervising Manager /Unit Head making an initial assessment of the complexity of the case at the point which the case is first referred to the Unit or shortly afterwards. A Complexity Rating Checklist Form is completed by the Prosecutor allocated to the case once they have initially assessed the case, in consultation with their Supervising Manager/Unit Head.

13. Which criteria are taken into account to identify the complexity of a case?

59. Studies on methods to assess Prosecutor workloads indicate that there are two principal methods of assessing prosecutor workload:

- a) a basic calculation using the number of cases processed divided by the quantity of available prosecutors or available prosecutor hours. (“basic calculation” method);
- b) a system based on case weighting (“case weighting method”).

60. The weight of a case can be assessed in several ways:

- a) the level of effort required by case type (for example -murder, theft);
- b) the identification of one or more factors increasing complexity (for example - complex scientific evidence or extensive digital evidence);
- c) the case processing time;
- d) a combination of the above.

61. The basic calculation method assumes that all cases are equal and does not take into account the individual complexity of cases or other factors capable affecting the time needed to prepare the case, such as whether the case will go to trial.

62. For this reason, it is not an accurate tool for assessing prosecutor workload in complex cases but may be an adequate method to assess workloads in prosecutor Units where the caseload is made up of only minor non-complex offences.

63. A case weighting system has the advantage of enabling an assessment to be made of the complexity of the case. As a consequence such a system is capable of producing a more accurate measurement of workloads as it takes into account the varying complexities of each case as well as time spent by the prosecutor on administrative tasks connected to a case.

Case weighting System in England and Wales.

64. Specialist Prosecutor Units in England and Wales use case weighting measures in order to assess workloads. The method used is the completion of a case Weighting Form which specifies a number of set complexity features which are aggregated to give a total score for the case. An example of a Case Rating Checklist Form is attached at Annex A to this Report.

65. The Complexity Weighting Form sets out a number of complexity weighting measures including the following:
- a) whether the number of defendants exceeds 4 or more;
 - b) whether there are numerous victims or there are vulnerable victims;
 - c) whether there is more than one prosecutor needed to manage the case;
 - d) whether two or more counsel are allocated;
 - e) whether the trial is anticipated to last 6 weeks or more;
 - f) whether this is a multi- agency prosecution.
66. Other complexity factors include:
- a) complex evidential issues, including a significant amount of digital data;
 - b) international issues;
 - c) sensitive disclosure issues;
 - d) miscellaneous complicating factors such as media interest and risk of reputational damage;
 - e) additional factors relating to SFO cases.
67. The more weighting measures that are identified as present within the case, the greater the complexity rating overall. The form is used for all types of offences and the type of offence itself does not attract a specific complexity rating. Once the form is completed a total complexity rating for the case is arrived at, with a score of 1 being the least complex and 10 being the most complex.
68. In this context, reference to a “case” is reference to all the defendants charged as a result of the particular offence or offences investigated by the police. The form is not completed separately for every defendant charged with the particular offence or offences in question. The Supervising Manager /Unit Head then signs the form to agree the rating.
69. The form can be updated during the life of the case as many additional factors can develop during the case which were not present initially and which may affect the complexity rating – for example an increase in the anticipated length of trial. The purpose of the form is twofold:
- a) to assist Supervising managers /Head of Unit in assessing the workload of individual prosecutors;
 - b) to assist Supervising managers /Head of Unit in assessing the overall workload of the Unit in managing resources (for example if there are a large number of cases being dealt with by the Unit that have a maximum complexity score this may inform whether additional resources needed).
70. There are several potential limitations of the case weighting method used:
- a) it can only provide an indication of complexity to assist Supervising Managers /Unit heads to assess likely workload but does not result in a time calculation of the Prosecutor hours that may be necessary to complete the case;

- b) the system, whilst seeking to identify as many complex factors as possible that may affect the time needed to deal with a case does not and cannot result in scientific precision, due to the endless variations in size and complexity of large cases and the difficulty in predicting accurately at the start of a case all the eventualities which are likely to affect the time needed (such as how many defendants may plead guilty and at what stage in the case and how many will go to trial);
 - c) even within cases with the maximum complexity score of 10 there are likely to be huge variations in the actual complexity and time needed by a prosecutor to deal with the cases in this category;
 - d) as far as multi-handed defendant cases are concerned, the complexity criteria distinguish between cases of less than 4 defendants and those with 4 or more defendants but do not distinguish the largest multi-defendant cases from the smaller. There is no sliding scale relating to defendant numbers within the case weighting system, meaning that a case with only 4 defendants is not distinguished from a case with 30 or more defendants. Similarly, the form only requires the prosecutor to identify whether or not there are numerous victims or vulnerable victims but does not require an indication of the number of victims;
 - e) the form does not include reference to whether the defendants are in custody.
71. A prosecutor's workload is likely to be affected if he or she has a high number of cases involving defendants in custody awaiting trial. Cases involving defendants who are remanded into custody for trial place additional time pressure on prosecutors. These cases attract custody time limits and the court is required to list the trial within the custody time limits unless there are good reasons to extend these. Consequently, prosecutors may be required to prepare for trial even highly complex cases within a limited period of time.
72. Case procedure rules also tightly regulate the date by which service of the case and other case tasks must be effected and even in complex cases these can only be extended if there is good reason to do so. The custody time limit in the Crown Court is 182 days from first appearance to the commencement of the trial.

Time Sheets

73. In addition to the use of case weighting forms in the Specialist Units the assessment of prosecutor workload is supplemented by completion by prosecutors in all prosecutorial Units (Specialist and non-specialist) of Resource and Efficiency Time sheets. These forms are completed by prosecutors (and also paralegal and support staff), ideally on a daily basis, to record the time taken to complete key tasks completed on particular cases. The forms are then submitted electronically.
74. The key tasks measured comprise a list of prescribed activities needed at different stages in the life of the case, such as tasks in preparation for a plea Hearing. The data is used by managers to assess the average time to process each task and to then calculate the staffing levels required for the Area. The forms are not used to assess the individual performance of Prosecutors. A potential disadvantage of this system is that in order to provide reliable data, time sheets must be prepared accurately and submitted consistently and in a timely manner by all staff members. When workloads are heavy the compliance rate may be affected. This may lead to gaps and inaccuracy in the data.

14. Is the weighted method complemented with the Delphi method?

75. The Delphi method is not used in the England and Wales to assess workload. Whilst Prosecutors do not calculate the likely process time at the start of a case, they do provide ongoing time recording information during the life of the case as to the time taken on particular tasks within a case, and this information is provided on a standard Resource time sheet form, which is submitted electronically as each task on a case is completed .

15. Are there pre-established performance indicators? If yes, please describe. Is there any “quantitative” rule that each of the individual PPs have to comply with (e.g. number of criminal cases handled)?

76. There are numerous pre-established performance indicators which focus primarily on the quality and timeliness of casework. There is no “quantitative“ rule requiring prosecutors to handle a certain number of cases but prosecutors are expected to manage their allocated caseload in a diligent and competent manner and to complete the required tasks on a case to the necessary standard.

16. Who evaluates the compliance with the performance indicators? Do they result in economic incentives? Can the non-compliance with the performance indicators lead to disciplinary proceedings?

77. Compliance by Prosecutors with performance indicators is directly monitored by the Supervising Manager /Unit Head of the Prosecutor Unit .This is checked by routine day to day supervision of Prosecutors supplemented by a Quality Assurance Monitoring system which involves selecting and reviewing one case file for each Prosecutor per month, and then measuring the Prosecutor’s work on the case as against a number of pre-set criteria designed to assess the quality and timeliness of casework decisions, case progression, case presentation and disclosure. In respect of each of the criteria the Supervising Manager provides a rating ranging from ‘Fully Met’ to ‘Not Met’.

78. Any issues identified are notified to the Prosecutor and are monitored subsequently. This system provides regular information for the Supervisor/Manager /Unit Head regarding quality and timeliness of casework and assists in identifying issues which may be indicative not only of poor performance but may identify other issues such as heavy caseload, training needs or other factors which need to be addressed. The records of the monitoring results are held centrally.

79. There are no economic incentives for the Prosecutor for fully meeting the criteria set. The information obtained as part of these assessments is one method of assessing the overall performance of the Prosecutor to enable Supervising Manager/Unit Head to complete the Prosecutor’s Annual Performance Development Report. Persistent non-

compliance with the required standards may be indicative of poor performance. which may ultimately lead to disciplinary proceedings.

17. How is the distribution of cases done in practice in each PPO? Is this distribution of workload done objectively? Are there pre-established criteria? Are these criteria made public?

80. The distribution of cases in practice in each Prosecutor Unit is dependent upon the number of Prosecutors and the amount of cases referred by the investigating authorities for advice/prosecution. For Units dealing with the more straightforward minor offences in the Magistrates Court, routine cases are generally allocated by Administrative staff who divide the cases as equally as possible between Prosecutors. Any particularly complex or unusual file would normally be referred to the Supervisor /Unit Head who then decides which Prosecutor is best placed to deal with the case.
81. Within the Magistrates Units there are divisions of tasks and there are Prosecutors who deal with case preparation and other Prosecutors [many of whom are paralegal Associate Prosecutors], who attend Court and the division of cases reflects this.
82. For more serious but straightforward cases in the Crown Court, allocation is also generally dealt with by Administrative Support staff who divide cases as equally as possible between Prosecutors. The Crown Court Units also receive a significant number of more complex cases and these are normally referred to the Supervising Manager /Unit Head to allocate a suitable Prosecutor taking into account the type of case and individual Prosecutors' workload and experience.
83. In Specialised Units where the most complex cases are dealt with cases are allocated by the relevant Supervising Manager/Unit Head taking in to account the prosecutor's experience, workload and ability to deal with the case. Cases are allocated to try and ensure an even division of work, but due to the variations in types of cases even within the Specialised Units, the number of cases each Prosecutor has may not be equal. The Case Weighting forms should assist the Unit Head in ensuring that the most complex cases are as far as possible divided equally between Prosecutors, taking into account other variables such as experience.
84. In the most complex cases the same Prosecutor should ideally deal with the case throughout the life of the case and may often be involved in advising the investigating team before the case is charged.

18. Who decides on the call for new positions, increase of number of prosecutors/leaving vacant positions when a workload increase is detected?

85. To obtain the funding for further prosecution posts an Area/Specialist section of a prosecuting authority has to make out the case for such additional posts to its Senior Management Team who will include such a request in their annual funding bid. Where there is a need to reduce funding/expenditure this is achieved by leaving vacant posts unfilled and/or retiring staff early.

19. Which body is responsible for cost-assessment and budgetary needs of the PPS?

86. CPS: The Treasury with heads being responsible for value for money etc. The Director of Public Prosecutions has personal responsibility for the proper presentation of the CPS's accounts and has overall responsibility for the use of public money and stewardship of assets. The funding for the financial year 2019 – 2020 is £540 million.
87. SFO: receives a core budget from The Treasury, which is supplemented as necessary by additional funding from the Treasury Reserve, whereby reserve funding is available for the costs of any case once they exceed 5% of the vote funding for the year. For the financial year 2019 – 2020 the funding is £52 million.
88. COPFSS: receives its budget from the Scottish Government, that is voted upon each year. In 2019 – 2020 budget is £120 million.
89. PPSNI: draws up its estimated expenditure, which is laid before the Northern Ireland Assembly. Its budget for the financial year 2019 – 2020 is £39 million.

20. Other relevant information and any difficulties encountered in providing the requested information

90. In relation to the workload of a prosecutor, health and safety legislation together with the European Union's Working Time Directive and the Working Time Regulations apply to all three jurisdictions within the United Kingdom.
91. In addition, the prosecuting organisations provide support to staff such as Workplace Wellbeing initiatives including stress management workshops.
92. All grades of staff in England and Wales are encouraged to contribute to the Annual Staff Survey which involves completing a confidential and anonymised form responding to a number of set questions including questions regarding stress and workload. The results are analysed and then disseminated to Areas to identify aspects of working practices and conditions where change may be needed.
93. Apart from the specific criteria applied by specialist prosecution units, the prosecutor has little or no control over the amount of cases that s/he is tasked to deal with. Regular measurement by line managers using a case weighting system allows a realistic control to be exercised over the measurement of the workload of an individual prosecutor or unit.
94. The prosecuting authorities in England and Wales have not devised set criteria to determine the ideal caseload that a prosecutor can be expected to undertake. Inevitably the nature of police activity involves periods of increased referrals of cases to the prosecuting authorities due to a variety of factors such as local policing initiatives and major incidents and prosecutor units need to have sufficient flexibility to be able to absorb this additional work.

95. The increasing number of complex cases dealt with by Prosecutors in recent years and the development of Specialist Units to deal with certain types of cases means that it is not possible to compare the workload of Specialist units with the workload of non-specialist units. Caseloads in the Specialist Units tend to be much smaller than caseloads in non-Specialist Units reflecting the comparative complexity of these cases and the additional time required for legal tasks and administration work that prosecutors in the Specialist Units are required to undertake to manage a case successfully to conclusion.
96. Direct comparison of workload between Specialists Units in different regions of the country may be affected by regional differences between units. Such differences may be caused by variations in patterns of offending in rural and urban areas, police resources and different numbers of support staff in the respective Units. Similar issues may apply to direct comparison of workloads in non-Specialist Units in different regions of the country.
97. The difficulty in identifying an ideal caseload for a prosecutor, particularly in respect of the more complex cases, is that there are wide differences between cases of the amount of time needed to ensure that the case is prosecuted in a timely and efficient manner to conclusion. There can even be wide variations in the hours needed by Prosecutors doing the same type of case – for example a homicide case being dealt with by one Prosecutor may involve a large number of defendants, extensive phone data and complex scientific evidence and where the case will go to trial whereas another homicide case may involve just one defendant who admits the killing and who will plead guilty at an early stage. The two cases are clearly not equal in complexity nor the time needed by the Prosecutor to deal with them.
98. The 2002 National Workload Assessment Project carried out by the American Prosecutors Research Institute proposed a “disposition” method of determining caseload by measuring the time taken on average to bring cases to disposition for different types of offences. The system involves the calculation of the average for a case to go through each stage of the criminal proceedings from pre-charge; alternatively, the study propounded a system whereby the average amount of time it takes to complete all stages of the proceedings is calculated. The initial part of the calculation involves an assessment of the amount of time all staff spend on different types of cases, whether or not a disposition is achieved. This data is recorded by staff over a set period of 6 to 12 weeks by a time recording system and this is then used to calculate the average time needed to process each type of case. This is then used to calculate a Prosecutorial Workload Measurement to determine the optimal number of cases a prosecutor can deal with over a year. Such a workload measure would be based on the average case processing time and the number of hours annually available to process cases. The number of annual caseload hours should be determined by computing the total hours in a workday, subtracting from that number the hours spent in training, on holiday or sick. This gives the annual year value (in hours) and can be used to determine the workload measure. A potential disadvantage of this method is that the initial calculation is reliant on accurate time recording by staff.
99. In conclusion, whilst case weighting methods assist in enabling the workload of prosecutors to be assessed, whatever system may be adopted, the role of the

Supervising manager /Unit head remains key in monitoring the work of the prosecutors within the Unit and managing periodic spikes in cases received.

100. There are also other measures which may assist prosecutors in managing their case load such as:

- a) delegation of non-prosecutor tasks to administrative staff;
- b) regular training programmes to increase expertise amongst prosecutors ;
- c) listing practices at court designed to ensure that cases proceed expeditiously ;
- d) ensuring that court prosecutors' cases are listed together where possible to save on travelling and waiting time;
- e) streamlining case processes;
- f) increased use of IT to assist case processes.

Case Complexity Rating Checklist used in the United Kingdom



Name of Case / Operation:	
Lead defendant:	
Number of defendants in case:	
Case Number:	
Allocated Lawyer/s:	
Allocated Caseworker/s:	
Unit	
Case Type	
1. Nature and Scale of Case	Features <i>Click box if applicable</i>
(a) Number of defendants [4 or more]	<input type="checkbox"/>
(b) Does the case require the management of numerous victims, or vulnerable victims	<input type="checkbox"/>
(c) Will more than one prosecutor be required to manage the case?	<input type="checkbox"/>
(d) Two or more counsel allocated	<input type="checkbox"/>
(e) Trial anticipated to last 6 weeks or more	<input type="checkbox"/>
(f) Is this a multi-agency prosecution?	<input type="checkbox"/>
2. Evidential and witness issues	
(a) Does the case involve any unusual/complex medical/ forensic or other expert evidence?	<input type="checkbox"/>
(b) Does the case involve the use of protected witnesses, drafting of anonymity applications or evidence adduced from members of the intelligence service in camera or in secret?	<input type="checkbox"/>
(c) Does the case involve the consideration of a significant amount of digital material?	<input type="checkbox"/>
(d) Is there likely to be a legal argument over the admissibility of key evidence?	<input type="checkbox"/>
(e) Does the case involve an undercover operation using foundation or advanced operatives?	<input type="checkbox"/>
(f) Does the case involve complex restraint and / or confiscation issues?	<input type="checkbox"/>
3. International Issues	

(a) Does the case involve a significant amount of work involving MLA?	<input type="checkbox"/>
(b) Does the case involve overseas defendants?	<input type="checkbox"/>
(c) Is a JIT required or liaison with overseas prosecuting / law enforcement agencies / Eurojust?	<input type="checkbox"/>
(d) Does this case require consideration of the impact of overseas investigative techniques on UK proceedings or use of foreign intercept material?	<input type="checkbox"/>
(e) Is advice required in relation to UK cross border and/or international, jurisdiction and primacy issues?	<input type="checkbox"/>
(f) Does this case involve consideration of International Law?	<input type="checkbox"/>
4. Disclosure and PII	
(a) Highly sensitive / CHIS material involved	<input type="checkbox"/>
(b) S73 / s74 SOCPA or potential for a deferred prosecution agreement	<input type="checkbox"/>
(c) Are you advising on an investigation that will require significant disclosure management in relation to sensitive material?	<input type="checkbox"/>
(d) Is there significant amount of 3 rd party material to consider or third party material which is held abroad?	<input type="checkbox"/>
(e) Does this case require the review of material held by the intelligence services?	<input type="checkbox"/>
(f) Are you being asked to advise on the management and review of a large amount of linked cases / prosecutions?	<input type="checkbox"/>
5. Miscellaneous	
(a) Media: Is there significant local or national media interest?	<input type="checkbox"/>
(b) Does the case require referral / approval of the Director of Legal Services?	<input type="checkbox"/>
(c) Does the case involve new legislation or a novel point of law?	<input type="checkbox"/>
(d) Is there significant interest from the AGO or other government departments?	<input type="checkbox"/>
(e) Are there any significant issues of fact, sensitivity or reputational risk to CPS or to the investigator?	<input type="checkbox"/>
(f) Other feature not listed above [Provide details in comment section below. There may be CONFIDENTIAL aspects to the case that cannot be specified on this form]	<input type="checkbox"/>
6. Serious Fraud Division – for completion by SFD only	
(a) Is the value of the Fraud/ loss to the Revenue significant?	<input type="checkbox"/>

(b) Has there been a significant delay in the investigation or prosecution?	<input type="checkbox"/>
(c) Does the case require specialist knowledge?	<input type="checkbox"/>
(d) Does the investigation include individuals or corporates overseas?	<input type="checkbox"/>
(e) Are you advising on an investigation that will require significant disclosure management of digital material?	<input type="checkbox"/>
(f) Does the case require extensive pre-charge advice?	<input type="checkbox"/>

Complexity Case Rating

Number of features identified:

Count

Case Complexity Rating: Choose from dropdown

There may be confidential aspects to the case that cannot be specified on this form .

Comments:

Unit Head:

Date:

Rating re-assessed [Date]

Case Complexity Rating: Choose from dropdown

There may be confidential aspects to the case that cannot be specified on this form .

Reasons:

Rating re-assessed [Date]

Case Complexity Rating: Choose from dropdown

There may be confidential aspects to the case that cannot be specified on this form .

Reasons:

Rating re-assessed [Date]

Case Complexity Rating: Choose from dropdown

There may be confidential aspects to the case that cannot be specified on this form .

Reasons:

Spell Checker

Note:

Exceptional Rating: Minimum of 9 and expectation that there will be features from several categories.

High Rating: Minimum of 7 and expectation that there will be features from several categories.

Medium Rating: At least 4 features present.

Low rating: Less than 4 features present.

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CONCLUSIONS

1. Public prosecutions, albeit not being a company where managerial criteria should be applied, are more and more aware, that in order to provide the quality and timely service for society, they need to use business-management intelligence tools to calculate their workload and their workforce. The comparative analysis of the six countries studies show that estimates on workload of public prosecutors are not in place in every country, although they are being increasingly valued and several countries have already implemented quite sophisticated systems.
2. The six countries studied present different solutions as to the workload estimates and workforce needs identification methods. Despite such differences, none of the countries studied also show some analogies. For example, none of them has a fixed ratio of cases each PP has to deal with every year. It is true that some countries show at the end the average number of cases per PP (Poland and Slovenia report this is approximately 200 cases per PP), it is not a goal that every PP has to achieve or that is used to calculate the staffing needs.
3. Another similarity in the six countries studied can be seen in the elements used to identify a complex criminal case. Almost all of the six countries use the same criteria to classify a case as “complex” and thus, needing more time and effort to be investigated/tried/solved. Evidentiary difficulties and number of defendants and crimes are factors named in all studies. However, the categorisation of a case as “complex” does not have the same impact in all the countries: in Spain it will be scored higher, but at the end it will only impact in the maximum time for the pre-trial investigation; in Germany it is not relevant, because the workload estimates already takes into account the real time employed in each type of case, so the classification is not necessary. In the UK where the weighted-case method is applied, the criteria for identifying the “complexity” of a case a very detailed, and are reflected also in the timesheets.
4. Only **Germany** has an estimating workload and time-calculation system. The PEBB\$Y system developed in **Germany** seems to be the most sophisticated in this regard, because it is not only based on an abstract time calculation of types of cases, but on an empirical observation of the tasks performed by public prosecutors in their daily work. Having detailed information on the time employed in every case and type of case, the time estimate is calculated. On this basis the needed workforce can be derived on an objective basis. Despite being very detailed, the system is still criticised – for it is based on the empirical data collected by “perfectly” working units, not taking into account possible incidents or illness of some members or other dysfunctions that may appear (as for example the present Covid-19 crisis). Despite these criticisms, it can be concluded that it provides a solid basis to take decisions on the workload and thus the staffing needs of the public prosecution.
5. This system, being very developed is only valid, as long as the basis time estimates are correct. The German system departs from the assumption that the public prosecutors involved in the time calculation are already working efficiently and professionally. If this workload calculation should be replicated in another context/country, it should be

ensured that the basic units used for time estimates are representative and already adjusted to efficient working models.

6. The pragmatic approach of the **Spanish system**, not based on timesheets, but on tasks performed, allocating also a “weight” or score to each of the tasks, has proved to be useful, if not for calculating the estimate workload for each PP in terms of time, but for a comparative assessment of the workload. The advantage of this system is that the complexity assessment is already calculated by the software, and it does not need the calculation of time spent in every case/task by each PP, but only the ticking the tasks carried out. The system then calculates the total “score” for the PP and the PP unit, and the support office makes a decision on the needs on a comparative assessment with other PPs or units.
7. Slovenia and Poland do not have workload estimates and thus the workforce of the public prosecution system is not determined upon a time calculation for different types of cases. Ireland represents the outlier, for the time-calculation method is not applicable to any other systems due to the unique distribution of tasks of different prosecutors, barristers and solicitors in each of the stages of a criminal procedure.
8. Finally, the timesheet system coupled with the complexity criteria used in the **UK**, provides also a good overview of the average time employed by each PP in each task/case, but it requires the continuous update of the timesheets and the reliable assessment of the complexity criteria done by each PP when handling a case. This weighted-case system is useful, if the timesheets are correctly filled.
9. To conclude, it can be affirmed that out of the countries studied, the most accurate system is the German PEBB\$Y programme, as it gives clear information on the workload each PP can assume and thus allows to make a planning on the public prosecution staffing based on objective quantitative and qualitative criteria. However, when it comes to recommend the adopting of a certain workload calculation system, it is difficult to conclude which system should be transplanted to other countries or to recommend the use of one of these systems. As stated above, the PEBB\$Y system will give a clear picture of the time-calculation of an already efficiently working PP unit, but the system may give distorted figures if applied in an inefficient structure. On the other side, it cannot be overlooked that it may be useless to establish a very detailed workload calculation in a context where the budget will not allow covering all the positions that according to the time estimates would be necessary. It might be convenient to start introducing a timesheet system where the weighted-case method, as in the UK is slowly introduced, and each of the PPs can also identify criteria for complex cases. Nevertheless, this cannot be seen as a definitive recommendation, but rather a conclusion to be drawn out of the comparative study of six selected countries.

ANNEX 1 COMPARATIVE TABLE

COUNTRY	GERMANY	IRELAND	POLAND	SLOVENIA	SPAIN	UNITED KINGDOM
Inhabitants in millions (approx.)	83 mill	5 mill	38 mill	2 mill	48 mill	67 mill
Total number PPs	7.905 (2018)	147	6.974	208 (2019)	2553 (2019)	2717 (as of January 20, 2020)
Number of PPs per 100.000 inhabitants	9.5	2.9	17.8	10	4.92	3.7 prosecutors per 100,000 inhabitants in England and Wales
Functions outside criminal justice system?	NO	NO	YES	NO	YES	NO
Caseload 1) incoming cases 2) indicted/tried cases	1) 372.526 2) 738.909 (tried)	2) 11.964 (total files disposed)	1) 1.122.0761 2) 250.453 indicted	1) 28495	1) 2.118.030 67% of those led to indictment	not provided
Is there an established ratio for number of PPs (per cases, per inhabitants, per courts??)	YES	NO	NO	NO	NO	NO
Which body analyses the staffing needs?	Ministry of Justice (Land), upon PEBB\$Y	Director Public Prosecution	GPPO Human Resources Dpt and Heads of units	GPPO and PPOs	Support Unit of the GPPO	Crown Prosecution Service
Is there an estimating workload system per PP?	YES. PEBB\$Y	NO	NO, but rough calculations in practice: 200 cases /PP/year	NO statistics. Calculations in practice: 200 cases /PP/year	NO	NO
Is there an estimate of time calculation per case?	Yes, average time per case upon empirical study	No, in each case intervene many different PPs	NO.	NO.	NO, but rough estimate by a system of scoring cases	Yes, upon the daily timesheets, average calculation of time for each task
What are the criteria for identifying complex cases?	NO	Mainly complex evidential issues	Not fixed. IN practice, extensive evidence, diverse lines of inquiry, number of defendants	Number of suspects/defendants, number of crimes, evidence complexity, legal complexity	Number of crimes, defendants and victims; organised crime, terrorism, economic crime, complex evidence abroad	Number of defendants and victims; several units involved; complex evidential issues
	NO, PEBB\$Y time calculation	N/A	NO	NO	NO	Case weighting method only

Weighted case method complemented with DELPHI system?	per case, more precise					upon complexity rating. No system of likely time per case calculation, but possible calculation upon timesheets
Are there pre-established quantitative performance indicators for each PP?	NO	No, but electronic case management system reflects performance	No, only time within cases shall be disposed/cleared.	No, but monitoring by case management system, comparative evaluation	No, but performance assessment by comparison: based on the case management system establishes a score for each task	NO, but each PP is expected to deal with the cases allocated within a timeline.
Who evaluates performance or compliance with indicators?	Head of unit.	Head of unit	Superior PP	Head of unit	PPO Inspection unit	Head of unit supervising manager, quality assurance monitoring system
Can it lead to disciplinary action?	Yes, if neglect.	Yes, if unjustified underperformance	YES	YES	YES, if unjustified underperformance by comparison	YES, in case of persistent non compliance
How is the allocation of cases within each unit done?	General internal organizational rules, with flexible elements to adapt to needs	N/A	BY decision of the managing PP or direct superior	Pre-established rules for distribution of cases among individual PPs	Pre-established and public internal rules for distribution of tasks	Incoming cases are equally distributed by administrative support staff; or by specialisation by Head of unit
Who decides on staffing?	Ministry of Justice upon PEBBSSY data, subject to budgetary constraints	Director of PP (Office of Administration Division) and Department of Public Expenditure	Ministry of Finance upon proposal of the Office of the Slovenian Prosecutor General	Ministry of Justice after consultation with GPP, subject to budgetary decisions	Director of Public Prosecution makes a funding bid and the Treasury makes the decision	Decisions on staffing within CPS are based on projected caseloads by Area and type of work and are agreed at a senior management level within the Prosecution Service