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**CONSULTATIVE COUNCIL OF EUROPEAN PROSECUTORS  
CONSEIL CONSULTATIF DES PROCUREURS EUROPEENS  
(CCPE)**

**Compilation of responses to the questionnaire  
for the preparation of the CCPE Opinion No. 18 (2023)  
on the Councils of Prosecutors  
as key bodies of prosecutorial self-governance**

***Compilation des réponses au questionnaire  
en vue de la préparation de l'Avis No. 18 (2023) du CCPE  
sur les Conseils de procureurs  
en tant qu'organes-clés de l'autonomie de gestion des procureurs***

Prepared by the CCPE Secretariat

*Préparée par le Secrétariat du CCPE*

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## Andorra / Andorre

### I. Questions générales

1. Existe-t-il un Conseil de procureurs et/ou d'autres organes traitant de l'autonomie de gestion des procureurs dans votre pays ? Si oui, quel est le titre exact/la dénomination de cet organe ou de ces organes, s'il y en a plusieurs ? (par exemple, Conseil des procureurs, Conférence/Congrès des procureurs, Commission de qualification et de discipline des procureurs, etc.) Existe-t-il une association professionnelle de procureurs qui s'occupe de l'autonomie des procureurs d'une manière ou d'une autre ?

Non, il n'existe pas de Conseil de procureurs en Andorre et non plus d'association professionnelle de procureurs, en raison de la dimension de notre parquet (aujourd'hui 1 Procureur Général, 4 procureurs adjoints, 3 procureurs en formation (2 depuis le mois de juin 2022 et 1 depuis janvier 2023), et un 4<sup>e</sup> qui va intégrer en formation le Ministère Public le mois prochain).

2. Si oui, quand un Conseil de procureurs et/ou tout autre organe traitant de l'autonomie de gestion des procureurs a-t-il été introduit dans le système des poursuites de votre pays ? Veuillez décrire brièvement, le cas échéant, les réformes importantes entreprises depuis la mise en place, visant à renforcer l'efficacité, l'indépendance et la responsabilité de ce(s) organe(s).
3. Si un tel Conseil de procureurs et/ou d'autres organes traitant de l'autonomie de gestion des procureurs existent dans votre pays, sont-ils uniquement destinés aux procureurs ou à d'autres professionnels de la justice ? Ces organes sont-ils séparés ou fonctionnent-ils au sein d'un organe commun aux juges et aux procureurs ?
4. A quel niveau législatif ou normatif le statut d'un Conseil de procureurs et/ou de tout autre organe traitant de l'autonomie de gestion des procureurs est-il établi et comment son/leur fonctionnement est-il réglementé ? (par exemple, par le biais de la Constitution, de lois, de règlements ou d'autres réglementations).
5. Ces Conseils de procureurs et/ou tout autre organe traitant de l'autonomie de gestion des procureurs disposent-ils des ressources nécessaires (humaines, financières et autres) pour fonctionner correctement ?
6. Si, dans votre pays, il n'existe pas de Conseil de procureurs et/ou d'autres organes traitant de l'autonomie de gestion des procureurs, y a-t-il des discussions pour introduire un ou plusieurs de ces organes ? Si oui, quels sont les arguments en faveur et contre son/leur introduction ?

Jusqu'à présent aucune discussion d'a été entamé à ce sujet.

## **II. Composition du Conseil de procureurs et/ou de tout autre organe traitant de l'autonomie de gestion des procureurs et statut de ses/leurs membres**

7. Veuillez décrire la composition du Conseil de procureurs et/ou de tout autre organe traitant de l'autonomie de gestion des procureurs dans votre pays. Veuillez indiquer :
  - Combien de membres sont des procureurs ?
  - Combien de membres, s'il y en a, ne sont pas des procureurs et qui sont-ils ? (par ex. universitaires, juges, avocats, société civile, autres)
8. Veuillez décrire la procédure d'élection ou de nomination des membres du Conseil de procureurs et/ou de tout autre organe traitant de l'autonomie de gestion des procureurs (y compris les membres procureurs et les membres non-procureurs), la durée de leur mandat et la procédure de révocation, y compris, le cas échéant, les motifs de résiliation anticipée du mandat ou de révocation des membres.
9. Y a-t-il des membres de droit dans la composition ? (c'est-à-dire ceux qui sont membres d'office en raison de la position qu'ils occupent, par exemple, le Procureur général, le ministre de la Justice ou autres)
10. Existe-t-il des règles ou des procédures pour prévenir d'éventuelles situations de conflit d'intérêts pendant le processus d'élection ou de nomination des membres du Conseil de procureurs et/ou de tout autre organe traitant de l'autonomie de gestion des procureurs? Existe-t-il une incompatibilité entre certaines fonctions au sein du ministère public et l'appartenance à un Conseil des procureurs ?
11. Existe-t-il des exigences spécifiques pour les membres qui sont des procureurs afin d'assurer une représentation proportionnelle et équitable de tous les niveaux du système de poursuites ?
12. Veuillez décrire brièvement le processus d'élection/de nomination du président et des vice-présidents, le cas échéant, du Conseil de procureurs et/ou de tout autre organe traitant de l'autonomie de gestion des procureurs, y compris les processus et les motifs de révocation.

## **III. Compétence et fonctionnement du Conseil de procureurs et/ou tout autre organe traitant de l'autonomie de gestion des procureurs**

13. Dans votre pays, le Conseil de procureurs et/ou tout autre organe traitant de l'autonomie de gestion des procureurs ont-ils le pouvoir exclusif d'exercer l'administration du ministère public ou ce pouvoir est-il partagé avec les organes exécutifs (ceux qui ne font pas partie du ministère public, par exemple le ministère de la Justice) ?

14. Veuillez décrire brièvement les fonctions et les pouvoirs du Conseil de procureurs et/ou de tout autre organe traitant de l'autonomie de gestion des procureurs, notamment en ce qui concerne le recrutement, la promotion, le transfert, l'évaluation, la discipline ou d'autres aspects concernant les procureurs, ainsi que les aspects budgétaires (y compris l'élaboration du budget du ministère public, la systématisation de la législation sur les activités du ministère public, l'approbation des plans de travail et des rapports annuels du ministère public, l'adoption du code d'éthique des procureurs, etc.).
15. Veuillez décrire brièvement la compétence, le cas échéant, ou le rôle joué par le Conseil de procureurs et/ou tout autre organe traitant de l'autonomie de gestion des procureurs dans :
  - l'évaluation des performances des procureurs, tant sur le fond que sur la procédure, et notamment les relations/interactions avec d'autres organismes si ceux-ci sont compétents en matière d'évaluation des performances ;
  - les mesures disciplinaires à l'encontre des procureurs, tant sur le fond que sur la procédure, y compris les relations/interactions avec d'autres organes si ceux-ci sont compétents en matière de mesures disciplinaires.
16. Le Conseil de procureurs et/ou tout autre organe traitant de l'autonomie de gestion des procureurs ont-ils le pouvoir d'examiner les situations de conflit au sein du ministère public, par exemple en cas d'instructions visant à inverser l'opinion d'un procureur ?
17. Les procureurs peuvent-ils s'adresser au Conseil de procureurs et/ou à tout autre organe traitant de l'autonomie de gestion des procureurs en cas d'allégation d'instructions illégales de la part de leurs supérieurs ou de tout autre acteur, tant à l'intérieur qu'à l'extérieur du ministère public ?
18. Veuillez décrire brièvement le processus de prise de décision du Conseil de procureurs et/ou de tout autre organe traitant de l'autonomie de gestion des procureurs, y compris tout aspect lié aux droits de vote des membres (par exemple, si tous les membres ont le même droit de vote), et les procédures et seuils applicables pour l'adoption d'une décision.
19. Quelle est la force juridique des décisions finales prises par le Conseil de procureurs et/ou tout autre organe traitant de l'autonomie de gestion des procureurs ? Ces décisions sont-elles seulement de nature consultative, n'étant pas légalement obligatoires, ou sont-elles de nature contraignante, étant légalement obligatoires, ou y a-t-il un mélange selon la nature de la décision ?

20. Les décisions finales prises par le Conseil de procureurs et/ou tout autre organe traitant de l'autonomie de gestion des procureurs sont-elles soumises à un contrôle judiciaire par un tribunal?
21. Quels mécanismes garantissent le fonctionnement indépendant du Conseil de procureurs et/ou de tout autre organe traitant de l'autonomie de gestion des procureurs?
22. Y a-t-il d'autres institutions en dehors du ministère public qui ont un rôle à jouer dans le fonctionnement et le processus de prise de décision du Conseil de procureurs et/ou de tout autre organe traitant de l'autonomie de gestion des procureurs ?
23. Comment est garantie la transparence des travaux du Conseil de procureurs et/ou de tout autre organe traitant de l'autonomie de gestion des procureurs :
  - rendent-ils compte au public par le biais de rapports et d'informations largement diffusés ?
  - disposent-ils de sites web accessibles au public fournissant des informations essentielles sur leur fonctionnement et leur prise de décision ?
  - d'autres mesures de transparence ? (par exemple, séances d'information publiques, communiqués de presse, etc.)

## Armenia / Arménie

### I. General questions

1. Is there a council of prosecutors and/or any other bodies dealing with prosecutorial self-governance in your country? If yes, what is the exact title/denomination of such body or bodies, if several? (i.e. Council of Prosecutors or Prosecutorial Council, Conference/Congress of Prosecutors, Qualification and Disciplinary Commission of Prosecutors etc.) Is there a professional association of prosecutors dealing with prosecutorial self-governance in any way?

Armenia does not have a Council of Prosecutors as a body of prosecutorial self-governance. Instead, there is the Prosecutors' Collegium. The law "On Prosecutor's Office" (Article 22) provides that with a view of discussing fundamental issues related to the organisation of activities of the Prosecutor's Office, determining the directions of exercising the constitutional powers of the Prosecutor's Office, a Collegium chaired by the Prosecutor General is operating within the Prosecutor's Office.

According to the law, the Collegium is composed of the Prosecutor General, Deputies of the Prosecutor General, heads of divisions within the prosecution service and the prosecutor of Yerevan.

They are not elected and become members of the Collegium by virtue of the relevant provisions of the Law.

Decisions of the Collegium of the Prosecutor's Office are of an advisory nature and are implemented upon the orders of the Prosecutor General.

Both Disciplinary and Qualification Commissions have been established within the Prosecutor General's Office.

2. If so, when was a council of prosecutors and/or any other bodies dealing with prosecutorial self-governance introduced in the prosecutorial system in your country? Please describe briefly, if applicable, any significant reforms undertaken since the establishment, aimed at strengthening effectiveness, independence and accountability of such body(ies).

The Collegium, Disciplinary and Qualification Commissions have been introduced in the prosecutorial system since Soviet period. The new law on Prosecutor's Office of 2017 increased the representation of prosecutors in Disciplinary and Qualification Commissions. It also changed the process of composition of those Commissions providing that the prosecutor members should be elected by majority of votes by the Prosecutor General, Deputy Prosecutors Generals, heads of structural subdivisions of the General Prosecutor's Office, Prosecutor of the city of Yerevan, prosecutors of regions, prosecutors of administrative districts of the city of Yerevan and military prosecutors of garrisons.

3. If such a council of prosecutors and/or any other bodies dealing with prosecutorial self-governance exist in your country, are they only for prosecutors or for other professionals of justice? Are such bodies separate or do they operate within a body common to judges and prosecutors?

Collegium, Disciplinary and Qualification commissions are dealing only with prosecutorial self-governance.

4. At what legislative or normative level is the status of a council of prosecutors and/or any other bodies dealing with prosecutorial self-governance established and how is its/their functioning regulated? (e.g. through Constitution, laws, by-laws or other regulations).

The composition and functions of the Collegium, Disciplinary and Qualification Commissions are regulated by the Law on Prosecutor's Office.

5. Are such council of prosecutors and/or any other bodies dealing with prosecutorial self-governance provided with the required resources (human, financial and other) to function properly?

The Collegium, Disciplinary and Qualification Commissions do not have their separate resources.

6. If in your country there is no council of prosecutors and/or any other bodies dealing with prosecutorial self-governance, is there any discussion to introduce such a body(ies)? If so, what are the arguments in favour and against its/their introduction?

N/A

## **II. Composition of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance and status of its/their members**

7. Please describe the composition of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance in your country. Please indicate:
  - How many of the members are prosecutors?
  - How many, if any, are non-prosecutor members and who are they? (e.g. scholars, judges, lawyers, civil society, others)

According to the law, the Collegium is composed of the Prosecutor General, Deputies of the Prosecutor General, heads of divisions within the prosecution service and the prosecutor of Yerevan.

The Ethics Commission consists of seven members. The Ethics Commission is composed of one Deputy Prosecutor General, three academic lawyers appointed by the Prosecutor General and three prosecutors elected by majority of votes by the Prosecutor General, Deputy



Prosecutors General that are not members of the Ethics Commission, heads of structural subdivisions of the General Prosecutor's Office, Prosecutor of the city of Yerevan, prosecutors of regions, prosecutors of administrative districts of the city of Yerevan and military prosecutors of garrisons. The Ethics Commission is headed by the Deputy Prosecutor General.

The Qualification Commission consists of nine members. The Qualification Commission is composed of the Rector of the Academy of Justice, one Deputy Prosecutor General, four prosecutors and three academic lawyers appointed by the Prosecutor General. The Qualification Commission is headed by the Deputy Prosecutor General.

8. Please describe the procedure for the election or appointment of the members of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance (including both prosecutor members and non-prosecutor members), the duration of their mandate and the dismissal procedure, including, if applicable, the grounds for early termination of mandate or dismissal of members.

The members of Collegium are not elected and become members of the Collegium by virtue of the relevant provisions of the Law. The prosecutor members of Disciplinary and Qualification Commissions are elected by majority of votes by the Prosecutor General, Deputy Prosecutors Generals, heads of structural subdivisions of the General Prosecutor's Office, Prosecutor of the city of Yerevan, prosecutors of regions, prosecutors of administrative districts of the city of Yerevan and military prosecutors of garrisons. Other members are appointed by the Prosecutor General.

9. Are there ex officio members in the composition? (i.e. those who are members automatically due to the position they occupy, for example, the Prosecutor General, the Minister of Justice or others)

Yes, see above paras. 1; 7 and 8.

10. Are there rules or procedures to prevent possible conflict of interest situations during the process of election or appointment of the members of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance? Is there an incompatibility between certain functions in the prosecution service and membership in a council of prosecutors?

No, there are not.

11. Are there any specific requirements for prosecutor members in order to ensure a proportional and fair representation of all levels of the prosecution system?

No, there are not.

12. Please describe briefly the election/appointment process of the president and vice-presidents, if applicable, of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance, including dismissal processes and grounds.

According to the law on Prosecutor's Office, the activities of the Collegium of the Prosecutor's Office shall be organised through sittings, which shall be held by the Prosecutor General or, upon the assignment thereof — one of the Deputy Prosecutors General. Disciplinary and Qualification Commissions are headed by the Deputy Prosecutors General.

### **III. Competence and functioning of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance**

13. In your country, do the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance have exclusive power to exercise the administration of the prosecution service or whether this power is divided with the executive bodies (those outside of the prosecution service, e.g. the ministry of justice)?

The Prosecutor's Office of the Republic of Armenia does not belong to the judiciary. Moreover, the Prosecutor's Office does not belong to any branch of power in the Republic of Armenia. The Prosecutor's Office is an independent autonomous body with its constitutional powers enshrined in Article 176 of the Constitution of the Republic of Armenia. According to Article 6, ¶ 1-3 of the "Law on the Prosecutor's Office" each prosecutor shall exercise his or her powers independently based on laws and moral certainty and shall be responsible for his or her decisions adopted in the course of exercising these powers. Intervention in the activities of the prosecutor, not provided for by law, shall be prohibited and shall entail liability prescribed by law. Also, it is stipulated that lawful requests of the prosecutor shall be binding for state and local self-government bodies, public servants, organisations and natural persons. Accordingly, it should be stated that both prosecutors and the Prosecutor's Office are independent from the executive and legislative branches of state power.

The Collegium deals with fundamental issues related to the organisation of activities of the Prosecutor's Office, determining the directions of exercising the constitutional powers of the Prosecutor's Office.

14. Please describe briefly the functions and powers of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance, in particular as regards the recruitment, promotion, transfer, evaluation, discipline or other aspects regarding prosecutors, and budgetary aspects (including the development of the prosecution service's budget, systematisation of the legislation on the activities of the prosecution service, approval of the prosecution service's task plans and annual reports, adoption of the code of ethics for prosecutors etc.).

The central body dealing with recruitment, promotion and dismissal of prosecutors other than the Prosecutor General is the Qualification Commission which operates within the Prosecutor's Office. The Qualification Commission is composed of the 9 following members:

- The Head of the Justice Academy;
- 1 Deputy Prosecutor General;
- 4 prosecutors;
- 3 academic lawyers.

In case of recruiting prosecutors dealing with the confiscation of illicit assets, 2 experts specialized in asset recovery are joining the Qualification Commission.

All the members of the Qualification Commission apart from the Head of the Justice Academy are designated by the Prosecutor General. The Deputy Prosecutor General serves as the head of the Commission.

The members of the Qualification Commission are independent. Any intervention in the activities thereof is prohibited. The members of the commission are appointed for a term of three years.

The law provides that the Deputy Prosecutor General shall be appointed by the Prosecutor General drawn from the candidates selected by the decision of at least 6 votes of the members of the Qualification Commission as a result of the competition. While this is an improvement, if the candidate of the Deputy Prosecutor General already occupies a position as a prosecutor, then he can be appointed as the Deputy Prosecutor General without competition by the General Prosecutor after consultation with the collegium of the Prosecutor's Office.

The law also provides for the establishment of the Ethics Commission in the Prosecutor General's Office to assist in enforcement of the ethics rules and disciplinary actions as provided by law. The Ethics Commission shall be comprised of 7 of the following members:

- 1 Deputy Prosecutor General;
- 3 prosecutors;
- 3 academic lawyers.

The academic lawyers and the Deputy Prosecutor General are designated by the Prosecutor General, and 3 prosecutors are elected by majority of votes by the most senior officials in the office, including the Prosecutor General, Deputy Prosecutors General who are not members of the Ethics Commission, heads of structural subdivisions of the General Prosecutor's Office, Prosecutor of the city of Yerevan, prosecutors of marzes, prosecutors of administrative districts of the city of Yerevan and military prosecutors of garrisons. The Ethics Commission shall be headed by the Deputy Prosecutor General.

In addition to its role in identifying and sanctioning violations, the Commission can provide advice to prosecutors faced with ethics issues.

15. Please describe briefly the competence, if any, or any role played by the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance in:

- performance assessment of prosecutors, both in terms of substance and procedure, and including relationship/ interactions with other bodies if those are competent on performance assessment;

- disciplinary measures against prosecutors, also both in terms of substance and procedure, and including relationship/ interactions with other bodies if those are competent on disciplinary measures.

Please, see above paras. 1 and 14.

16. Do the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance have the power to consider situations of conflict within the prosecution system, for example in case of instructions to reverse the view of a prosecutor?

The activities of the Prosecutor's Office are based on the principle of ensuring hierarchic subordination and uniformity. At the same time the Law on the Prosecutor's Office provides guarantees for the autonomy of the prosecutors and prescribes prohibitions to the interference with a prosecutor's activities.

The Law's provisions governing mutual relations between superior prosecutors and those subordinated to them, as well as grounds for transferring cases from one prosecutor to another are among positive developments in ensuring the independence of prosecutors. The Law also provides that an inferior prosecutor can object against assignments and instructions of a superior prosecutor when he or she finds them illegal or unjustified. The objection of the prosecutor can be solved only by the superior prosecutor. However, this rule, for some reason, is not applied to assignments or instructions that have been given by the Prosecutor General.

17. Can prosecutors apply to the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance with an allegation of illegal instructions from their superior prosecutors or any other actors, both from within and outside of the prosecution system?

The law does not contain any special provisions providing for the possibility for a prosecutor to apply to the Collegium of Prosecutor. On the other hand, it stems from the legal status of the Collegium that the issues related to the prosecutorial independence may also be discussed during its sessions. At the same time, the law does not restrict the prosecutor in addressing the Prosecutor General.

A special commission to provide ethical advice to prosecutors, upon the request of any prosecutor, was established in April 2019. It is now headed by the Deputy Prosecutor General who is not a member of the Ethics Commission under the Prosecutor General.

18. Please describe briefly the decision-making process of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance, including any aspects related to voting rights of members (for example, whether all members have the same right to vote), and applicable procedures and thresholds for a decision to be adopted.

The activities of the Collegium of the Prosecutor's Office are organised through sittings, which shall be held by the Prosecutor General or, upon the assignment thereof — one of the Deputy Prosecutors General. A sitting of the Collegium of the Prosecutor's Office has quorum where it

is attended by more than half of the members of the Collegium. Decisions of the Collegium of the Prosecutor's Office are adopted by simple majority of votes. In case of a tie vote, the decision is deemed as not adopted. Decisions of the Commissions are adopted by simple majority of votes.

19. What is the legal force of the final decisions taken by the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance? Are such decisions of only a consultative nature, not being legally obligatory, or are they of a binding nature, being legally obligatory/mandatory, or is there a mixture depending on the nature of a decision?

The decisions of the Collegium are advisory in nature and are implemented upon the orders of the Prosecutor General.

20. Are the final decisions taken by the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance subject to judicial review by a court?

The decisions of the Collegium and the Commissions are not subject to judicial review by a court.

21. Which mechanisms ensure the independent functioning of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance?

The mechanism of composition and functioning, see paras. above.

22. Are there any other institutions outside of the prosecution system which have a role with respect to the functioning and decision-making process of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance?

No

23. How is the transparency of the work of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance guaranteed:

- are they accountable to the public through widely disseminated reports and information?
- do they have publicly accessible websites providing essential information on their functioning and decision-making?
- any other measures for transparency? (i.e. public briefings, press releases etc.)

The decisions of the Collegium and the Commissions are published on the official web-site of the General Prosecutor's Office.

## Austria / Autriche

### I. General questions

1. Is there a council of prosecutors and/or any other bodies dealing with prosecutorial self-governance in your country? If yes, what is the exact title/denomination of such body or bodies, if several? (i.e. Council of Prosecutors or Prosecutorial Council, Conference/Congress of Prosecutors, Qualification and Disciplinary Commission of Prosecutors etc.) Is there a professional association of prosecutors dealing with prosecutorial self-governance in any way?

In Austria the governance of the prosecutorial basically lies in the competence of the Federal Ministry of Justice, which means that a “council of prosecutors” or any other body dealing with prosecutorial self-governance in the strict sense does not exist.

This means that (in the end) recruitment, transfer, promotion, transfer and budgetary affairs of the public prosecutorial system lie in the range of competences of the Austrian Federal Ministry of Justice. In the process of appointment of prosecutors the Federal Minister of Justice is empowered by the Federal President to appoint public prosecutors of a lower rank on his own decision, in the case of appointment of a prosecutor of a higher rank he has to submit a proposal for appointment to the Federal President.

Disciplinary aspects are covered by the competence of ordinary courts (disciplinary jurisdiction), specifically by the Courts of Appeal (Oberlandesgerichte of Vienna, Graz, Linz and Innsbruck) and the Supreme Court. In this field the Federal Ministry of Justice has only the right to suggest the initiation of proceedings before the disciplinary authorities.

Regardless of the decision-making power of the Ministry of Justice representatives of the public prosecution play an important role in the process of appointment of prosecutors: on the level of the Prosecution Offices at the Courts of Appeal (Oberstaatsanwaltschaften) and the Procurator General’s Office special commissions are established permanently (Personalkommissionen), which consist of four active prosecutors (one of them seconded by the Public Service Union, one of them seconded by a committee elected by prosecutors [Dienststellenausschuss] and two ex officio members), who are independent with regard of this function. These Commissions assess all applicants, rank them according to their qualification and submit a proposal for appointment to the Federal Ministry of Justice. If the Federal Minister of Justice intends not to follow this recommendation, he has to give a reasoned explanation and has to address the mentioned commission again to comment on this issue. Then – even in the case of the appointment of a lower ranked prosecutor – both the commissions’ and the Federal Minister’s proposal/statement will be submitted to the Federal President.

The above mentioned commissions (Personalkommissionen) are also competent for the evaluation of public prosecutors.

2. If so, when was a council of prosecutors and/or any other bodies dealing with prosecutorial self-governance introduced in the prosecutorial system in your country? Please describe briefly, if applicable, any significant reforms undertaken since the establishment, aimed at strengthening effectiveness, independence and accountability of such body(ies).

See 1.

3. If such a council of prosecutors and/or any other bodies dealing with prosecutorial self-governance exist in your country, are they only for prosecutors or for other professionals of justice? Are such bodies separate or do they operate within a body common to judges and prosecutors?

See 1.

4. At what legislative or normative level is the status of a council of prosecutors and/or any other bodies dealing with prosecutorial self-governance established and how is its/their functioning regulated? (e.g. through Constitution, laws, by-laws or other regulations).

See 1. The status of the above mentioned commissions (Personalkommissionen) is established by law (Richter- und Staatsanwaltschaftsdienstgesetz; RStDG).

5. Are such council of prosecutors and/or any other bodies dealing with prosecutorial self-governance provided with the required resources (human, financial and other) to function properly?

See 1.

6. If in your country there is no council of prosecutors and/or any other bodies dealing with prosecutorial self-governance, is there any discussion to introduce such a body(ies)? If so, what are the arguments in favour and against its/their introduction?

The issue to establish such a council of prosecutors is not subject to a current discussion as such at the moment. But currently there is an ongoing discussion and serious political attempt to reshape the Austrian system of the prosecutorial hierarchy in order to strengthen the independence of the prosecutorial system by removing the power to supervise prosecutors in operational terms from the Ministry of Justice (presumably towards the Procurator General's Office). This would also affect the competence to manage budgetary affairs of the prosecution offices but not the procedure of appointment of prosecutors.

There is also an ongoing discussion to redesign the above mentioned commissions (Personalkommissionen; see 1.) in order to create senates of three elected and two ex officio public prosecutors and strengthen the influence of public prosecutors in relation to the procedure of appointment of prosecutors.

## **II. Composition of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance and status of its/their members**

7. Please describe the composition of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance in your country. Please indicate:

- How many of the members are prosecutors?
- How many, if any, are non-prosecutor members and who are they? (e.g. scholars, judges, lawyers, civil society, others)

See 1.

8. Please describe the procedure for the election or appointment of the members of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance (including both prosecutor members and non-prosecutor members), the duration of their mandate and the dismissal procedure, including, if applicable, the grounds for early termination of mandate or dismissal of members.

See 1.

9. Are there ex officio members in the composition? (i.e. those who are members automatically due to the position they occupy, for example, the Prosecutor General, the Minister of Justice or others)

See 1.

10. Are there rules or procedures to prevent possible conflict of interest situations during the process of election or appointment of the members of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance? Is there an incompatibility between certain functions in the prosecution service and membership in a council of prosecutors?

See 1.

11. Are there any specific requirements for prosecutor members in order to ensure a proportional and fair representation of all levels of the prosecution system?

The composition of the above mentioned commissions (see 1.) ensure a representation of different levels of the prosecution system

12. Please describe briefly the election/appointment process of the president and vice-presidents, if applicable, of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance, including dismissal processes and grounds.

See 1.



### **III. Competence and functioning of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance**

13. In your country, do the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance have exclusive power to exercise the administration of the prosecution service or whether this power is divided with the executive bodies (those outside of the prosecution service, e.g. the ministry of justice)?
14. Please describe briefly the functions and powers of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance, in particular as regards the recruitment, promotion, transfer, evaluation, discipline or other aspects regarding prosecutors, and budgetary aspects (including the development of the prosecution service's budget, systematisation of the legislation on the activities of the prosecution service, approval of the prosecution service's task plans and annual reports, adoption of the code of ethics for prosecutors etc.).
15. Please describe briefly the competence, if any, or any role played by the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance in:
- performance assessment of prosecutors, both in terms of substance and procedure, and including relationship/ interactions with other bodies if those are competent on performance assessment;
  - disciplinary measures against prosecutors, also both in terms of substance and procedure, and including relationship/ interactions with other bodies if those are competent on disciplinary measures.

13. to 15: As described above (see 1.) these aspects (except disciplinary measures and evaluation) belong to the competences of the Federal Ministry of Justice, partly (according to the appointment of prosecutors) with the assistance of the above mentioned commissions. The power to set disciplinary measures falls into the competence of ordinary courts (disciplinary jurisdiction)

16. Do the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance have the power to consider situations of conflict within the prosecution system, for example in case of instructions to reverse the view of a prosecutor?

See 1.

17. Can prosecutors apply to the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance with an allegation of illegal instructions from their superior prosecutors or any other actors, both from within and outside of the prosecution system?

No (see 1.), but given Art 30 StAG (Public Prosecution Act) a public prosecutor cannot be forced (or is not even allowed) to follow illegal instructions from his superior. If a prosecutor considers an instruction from his superior to be illegal he has to inform him about his notion. If the public prosecutor does not receive the instruction in a written form then, it is considered

withdrawn.

If a public prosecutor is absolutely convinced that an instruction is illegal he must not follow it. In such a case he has to be released from handling this case.

18. Please describe briefly the decision-making process of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance, including any aspects related to voting rights of members (for example, whether all members have the same right to vote), and applicable procedures and thresholds for a decision to be adopted.

See 1.

19. What is the legal force of the final decisions taken by the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance? Are such decisions of only a consultative nature, not being legally obligatory, or are they of a binding nature, being legally obligatory/mandatory, or is there a mixture depending on the nature of a decision?

See 1.

20. Are the final decisions taken by the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance subject to judicial review by a court?

See 1.

21. Which mechanisms ensure the independent functioning of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance?

See 1.

22. Are there any other institutions outside of the prosecution system which have a role with respect to the functioning and decision-making process of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance?

See 1.

23. How is the transparency of the work of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance guaranteed:

- are they accountable to the public through widely disseminated reports and information?
- do they have publicly accessible websites providing essential information on their functioning and decision-making?
- any other measures for transparency? (i.e. public briefings, press releases etc.)

See 1.

Vienna, 15<sup>th</sup> February 2022

Franz Plöchl m.p.

Michael Leitner m.p.

## Azerbaijan / Azerbaïdjan

In response to the questionnaire, we would like to inform you that there is no council of prosecutors in our country. Nevertheless, a Collegium of the Prosecutor General's Office of the Republic of Azerbaijan functions in compliance with the law on Prosecutor's Office.

The Collegium of the Prosecutor General's Office of the Republic of Azerbaijan is an advisory body led by the Prosecutor General. The Collegium consists of the Prosecutor General, his deputies, and other senior staff members of the Prosecutor General's Office.

The composition of the Collegium of the Prosecutor General's Office is approved in accordance with the Constitution of the Republic of Azerbaijan.

The Collegium considers the key areas of the prosecutor's office's activities, anti-crime situation and executive discipline, personnel issues, draft orders and other acts, and reports from subordinate prosecutor's offices. Also, the issues of submitting requests to the Constitutional Court, as well as other issues related to the activities of the prosecutor's office, are considered. The Collegium regularly meets under the leadership of the Prosecutor General. Members of the Collegium have an equal voice in voting on matters that have been discussed. Decisions are made by majority vote.

In case of disagreement between the Prosecutor General and members of the Collegium, the Prosecutor General follows his well-thought-out judgment.

Furthermore, the Prosecutor General can make an order based on decisions reached on matters discussed in the Collegium, which are necessary for the prosecutor's office staff.

## Belgium / Belgique

### I. Questions générales

1. Existe-t-il un Conseil de procureurs et/ou d'autres organes traitant de l'autonomie de gestion des procureurs dans votre pays ? Si oui, quel est le titre exact/la dénomination de cet organe ou de ces organes, s'il y en a plusieurs ? (par exemple, Conseil des procureurs, Conférence/Congrès des procureurs, Commission de qualification et de discipline des procureurs, etc.) Existe-t-il une association professionnelle de procureurs qui s'occupe de l'autonomie des procureurs d'une manière ou d'une autre ?

Organes traitant de l'autonomie de gestion (pour le ministère public) – Avec pouvoir de décision :

- Collège du ministère public (avec le Service d'appui commun auprès du Collège des procureurs généraux et auprès du Collège du ministère public)
- Comités de direction des entités judiciaires

Organes traitant de l'autonomie de gestion (pour le ministère public) – Avec compétence d'avis :

- Conseil des procureurs du Roi
- Conseil des auditeurs du travail
- Conseil des secrétaires en chef

Associations professionnelles traitant de l'autonomie de gestion (pour le ministère public et le siège) :

- *Conseil consultatif de la magistrature*
- *Union Professionnelle de la Magistrature*
- *Association Syndicale des Magistrats*
- *Magistratuur en Maatschappij*
- *Nationaal verbond van magistraten van eerste aanleg*

2. Si oui, quand un Conseil de procureurs et/ou tout autre organe traitant de l'autonomie de gestion des procureurs a-t-il été introduit dans le système des poursuites de votre pays ? Veuillez décrire brièvement, le cas échéant, les réformes importantes entreprises depuis la mise en place, visant à renforcer l'efficacité, l'indépendance et la responsabilité de ce(s) organe(s).

#### 1) Le Collège du ministère public

Le Collège du ministère public a été mis en place par la loi du 18 février 2014 relative à l'introduction d'une gestion autonome pour l'organisation judiciaire.

La loi du 26 décembre 2022 portant des dispositions diverses en matière d'organisation judiciaire II a apporté quelques modifications :

- quant à la durée du mandat des représentants du Conseil des procureurs du Roi et du Conseil des auditeurs du travail au sein du Collège du ministère public : 3 ans (au lieu de 5 ans) et renouvelable à la demande de chacun des représentants concernés ;
- quant à la parité linguistique ;
- quant au remplacement des représentants des conseils en cas d'absence ou d'empêchement.

## 2) Le Conseil des procureurs du Roi

Le Conseil des procureurs du Roi a été mis en place par la loi du 22 décembre 1998 sur l'intégration verticale du ministère public, le parquet fédéral et le Conseil des procureurs du Roi. Cette loi est entrée en vigueur le 21 mai 2002.

La loi du 18 février 2014 relative à l'introduction d'une gestion autonome pour l'organisation judiciaire et la loi du 23 décembre 2021 introduisant le parquet de la sécurité routière et portant des dispositions diverses en matière d'organisation judiciaire et de justice ont apporté des modifications quant à la composition du Conseil des procureurs du Roi. Le procureur de la sécurité routière et le procureur du Roi adjoint de Bruxelles font depuis lors partie de ce conseil.

## 3) Le Conseil des auditeurs du travail

Le Conseil des auditeurs du travail a été mis en place par la loi du 12 avril 2004 portant intégration verticale du ministère public.

La loi du 18 février 2014 relative à l'introduction d'une gestion autonome pour l'organisation judiciaire et la loi du 23 décembre 2021 introduisant le parquet de la sécurité routière et portant des dispositions diverses en matière d'organisation judiciaire et de justice ont apporté des modifications quant à la composition du Conseil des auditeurs du travail. L'auditeur du travail adjoint de Bruxelles fait partie depuis lors de ce conseil et le procureur de la sécurité routière peut y assister.

## 4) Les comités de direction

Des comités de direction ont été mis en place par la loi du 18 février 2014 relative à l'introduction d'une gestion autonome pour l'organisation judiciaire.

3. Si un tel Conseil de procureurs et/ou d'autres organes traitant de l'autonomie de gestion des procureurs existent dans votre pays, sont-ils uniquement destinés aux procureurs ou

à d'autres professionnels de la justice ? Ces organes sont-ils séparés ou fonctionnent-ils au sein d'un organe commun aux juges et aux procureurs ?

Le Collège du ministère public, le Conseil des procureurs du Roi et le Conseil des auditeurs du travail sont uniquement destinés au ministère public. Les comités de direction des parquets généraux, du parquet fédéral, du parquet de la sécurité routière, des parquets des procureurs du Roi et des auditorats du travail fonctionnent également de façon autonome.

Le personnel judiciaire est représenté au sein du Collège du ministère public par deux secrétaires en chef élus par le Conseil des secrétaires en chef. Le personnel judiciaire est représenté au sein des comités de direction par les secrétaires en chef des parquets concernés.

Le Collège du ministère public se réunit régulièrement avec le Collège des cours et tribunaux afin de discuter de questions liées à l'autonomie de gestion qui concernent tant le ministère public que le siège et d'adopter, le cas échéant, une position commune.

Les matières de gestion communes<sup>1</sup> sont gérées conjointement soit par le Collège du ministère public et le Collège des cours et tribunaux, soit par ces deux collèges avec le Service public fédéral Justice (administration fédérale de la justice).

4. A quel niveau législatif ou normatif le statut d'un Conseil de procureurs et/ou de tout autre organe traitant de l'autonomie de gestion des procureurs est-il établi et comment son/leur fonctionnement est-il réglementé ? (par exemple, par le biais de la Constitution, de lois, de règlements ou d'autres réglementations).

La mise en place, la composition et le fonctionnement du Collège du ministère public, du Conseil des procureurs du Roi, du Conseil des auditeurs du travail et des comités de direction ont été réglés par des lois modifiant le Code judiciaire.

Des modalités de fonctionnement plus détaillées sont prévues par les règlements d'ordre intérieur du Collège du ministère public, du Conseil des procureurs du Roi et du Conseil des auditeurs du travail. Ces dispositions concernent la gestion quotidienne de ces organes (organisation pratique des réunions, établissement de l'ordre du jour des réunions, communication de la documentation, structure et contenu des procès-verbaux, exécution et suivi des décisions, traitement de la correspondance, ...).

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<sup>1</sup> Il s'agit des :

- matières pour lesquelles les moyens utilisés sont communs ;
- matières dans lesquelles le siège, le ministère public et, le cas échéant, le Service public fédéral Justice sont à ce point liés qu'elles ne peuvent pas être uniquement gérées par le siège, par le ministère public ou par le Service public fédéral Justice ;
- matières pour lesquelles le siège, le ministère public et, le cas échéant, le Service public fédéral Justice prônent une gestion commune compte tenu de leur ampleur ou des gains en efficacité.

5. Ces Conseils de procureurs et/ou tout autre organe traitant de l'autonomie de gestion des procureurs disposent-ils des ressources nécessaires (humaines, financières et autres) pour fonctionner correctement ?

Le Collège du ministère public est assisté par un Service d'appui placé sous l'autorité du président du Collège du ministère public. Ce service est chargé d'apporter un soutien :

- à la gestion en exécution de la politique criminelle déterminée par le Collège des procureurs généraux ;
- à la recherche de la qualité intégrale, notamment dans le domaine de la communication, de la gestion des connaissances, de la politique de qualité, des processus de travail, de la mise en œuvre de l'informatisation, de la gestion stratégique des ressources humaines, des statistiques, ainsi que de la mesure et de la répartition de la charge de travail afin de contribuer à une administration de la justice accessible, indépendante, diligente et de qualité;
- à la gestion au sein des entités judiciaires du ministère public.

Le Collège du ministère public et le Service d'appui disposent d'un plan de personnel et d'un budget de fonctionnement qui leur sont propres.

Le Service d'appui apporte également son soutien au Conseil des procureurs du Roi et au Conseil des auditeurs du travail.

6. Si, dans votre pays, il n'existe pas de Conseil de procureurs et/ou d'autres organes traitant de l'autonomie de gestion des procureurs, y a-t-il des discussions pour introduire un ou plusieurs de ces organes ? Si oui, quels sont les arguments en faveur et contre son/leur introduction ?

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## **II. Composition du Conseil de procureurs et/ou de tout autre organe traitant de l'autonomie de gestion des procureurs et statut de ses/leurs membres**

7. Veuillez décrire la composition du Conseil de procureurs et/ou de tout autre organe traitant de l'autonomie de gestion des procureurs dans votre pays. Veuillez indiquer :

- Combien de membres sont des procureurs ?
- Combien de membres, s'il y en a, ne sont pas des procureurs et qui sont-ils ? (par ex. universitaires, juges, avocats, société civile, autres)

### 1) Le Collège du ministère public

Le Collège du ministère public se compose des cinq procureurs généraux près les cours d'appel, de trois membres du Conseil des procureurs du Roi, d'un membre du Conseil des



auditeurs du travail, de deux membres du Conseil des secrétaires en chef et du procureur fédéral.

Sur les 12 membres du Collège, 10 sont procureurs (ou auditeur).

Le directeur du Service d'appui commun institué auprès du Collège des procureurs généraux et auprès du Collège du ministère public siège au Collège avec voix consultative. Il est premier substitut du procureur.

## 2) Le Conseil des procureurs du Roi

Le Conseil des procureurs du Roi est composé des 14 procureurs du Roi du pays, du procureur du Roi adjoint de Bruxelles et du procureur de la sécurité routière.

Sur les 16 membres du Conseil, 16 sont procureurs.

Le procureur fédéral peut assister aux réunions du Conseil. Il est également procureur.

## 3) Le Conseil des auditeurs du travail

Le Conseil des auditeurs du travail est composé des 9 auditeurs du travail du pays et de l'auditeur adjoint de Bruxelles.

Sur les 10 membres du Conseil, 10 sont « procureurs » (auditeurs)<sup>2</sup>.

Le procureur fédéral et le procureur de la sécurité routière peuvent assister aux réunions du Conseil. Ils sont également procureurs.

## 4) Les comités de direction

Le comité de direction d'un parquet général se compose du procureur général, du premier avocat général près la cour d'appel, du premier avocat général près la cour du travail et du secrétaire en chef. Sur les 4 membres, 3 sont procureurs.

Le comité de direction du parquet fédéral se compose du procureur fédéral, d'un magistrat fédéral de chaque rôle linguistique désigné par le procureur fédéral et du secrétaire en chef. Sur les 4 membres, 3 sont procureurs.

Le comité de direction du parquet de la sécurité routière se compose du procureur de la sécurité routière, des deux substituts du procureur de la sécurité routière et du secrétaire en chef. Sur les 4 membres, 3 sont procureurs.

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<sup>2</sup> En Belgique, l'auditeur du travail exerce la fonction du ministère public pour toutes les matières qui relèvent de la compétence des tribunaux du travail. Dans le cadre de la présente contribution, les auditeurs du travail sont donc à considérer comme des procureurs.

Le comité de direction d'un parquet du procureur du Roi se compose du procureur du Roi, des procureurs de division et du secrétaire en chef. Sur l'ensemble des membres, 1 n'est pas procureur.

Le comité de direction d'un auditarat du travail se compose de l'auditeur du travail, des auditeurs de division et du secrétaire en chef. Sur l'ensemble des membres, 1 n'est pas procureur.

Le chef de corps peut élargir son comité de direction de maximum deux personnes de son entité judiciaire qu'il juge compétentes en raison de leur aptitude à la gestion. Il peut s'agir de procureurs et/ou de membres du personnel judiciaire.

8. Veuillez décrire la procédure d'élection ou de nomination des membres du Conseil de procureurs et/ou de tout autre organe traitant de l'autonomie de gestion des procureurs (y compris les membres procureurs et les membres non-procureurs), la durée de leur mandat et la procédure de révocation, y compris, le cas échéant, les motifs de résiliation anticipée du mandat ou de révocation des membres.

1) Le Collège du ministère public

Les cinq procureurs généraux près les cours d'appel et le procureur fédéral siègent au Collège du ministère public pour toute la durée de leur mandat (cinq ans).

A leurs côté y siègent également trois membres du Conseil des procureurs du Roi, un membre du Conseil des auditeurs du travail et deux membres du Conseil des secrétaires en chef.

Le Conseil des procureurs du Roi, le Conseil des auditeurs du travail et le Conseil des secrétaires en chef élisent leurs représentants au sein du Collège pour un terme de trois ans, renouvelable à la demande de chacun des représentants concernés et, en ce qui concerne le Conseil des procureurs du Roi et le Conseil des auditeurs du travail, moyennant le respect de l'alternance en matière de rôle linguistique. Le procureur de la sécurité routière est réputé faire partie du Conseil des procureurs du Roi.

Les élections se déroulent de la manière suivante :

Au plus tard quatre mois avant la fin des mandats des représentants des conseils au sein du Collège, le Président du Collège établit :

- une liste provisoire des membres éligibles et des membres électeurs du Conseil des procureurs du Roi;

- une liste provisoire des membres éligibles et des membres électeurs du Conseil des auditeurs du travail.

Sont omis d'office des listes provisoires des magistrats éligibles les membres du Conseil des procureurs du Roi et les membres du Conseil des auditeurs du travail dont le mandat en cours, non renouvelable, expire avant la date d'expiration des mandats des représentants des conseils au sein du Collège ou dont le mandat en cours, non renouvelable, expire dans les trois mois qui suivent la date d'expiration de ces mandats.

Tout membre éligible du Conseil des procureurs du Roi et du Conseil des auditeurs du travail est candidat.

Le Président du Collège adresse par courrier ordinaire et par courriel avec demande de confirmation de lecture à chaque membre du Conseil des procureurs du Roi et du Conseil des auditeurs du travail en fonction, au plus tard trois mois avant la date d'expiration des mandats des représentants des conseils au sein du Collège, la liste provisoire des membres éligibles ainsi que celle des électeurs du Conseil dont il est membre.

Sous peine d'irrecevabilité, les réclamations doivent être adressées par courrier ordinaire ou par courriel au Président du Collège, dans les quatorze jours calendriers qui suivent la date d'envoi de la liste. Le magistrat précise si la réclamation porte sur la liste des votants, des magistrats éligibles ou sur les deux. Les réclamations sont examinées par le Président du Collège. Ceux qui ont introduit une réclamation sont informés par courrier ordinaire ou par retour de courriel de sa décision dans les quatorze jours calendriers qui suivent la date d'envoi de la réclamation.

Le Président du Collège établit les listes définitives au plus tard deux mois avant la date d'expiration des mandats des représentants des conseils au sein du Collège.

Sont omis d'office des listes définitives ceux qui sont décédés, ont démissionné, ceux qui ont été démis d'office ou révoqués entre la date d'établissement de la liste provisoire et la date d'établissement de la liste définitive. Les magistrats qui ont prêté serment entre la date d'établissement des listes provisoires et la date d'établissement des listes définitives sont ajoutés sur les listes définitives.

Un bulletin de vote bilingue distinct est établi pour chaque conseil sur la base des listes définitives. Le vote est obligatoire et secret. Le vote par procuration est exclu.

Le bureau de dépouillement est composé du Président du Collège, qui préside, d'un membre du personnel néerlandophone et d'un membre du personnel francophone du service d'appui auprès du Collège, désignés par lui.

Le dépouillement a lieu au plus tard dans les quatorze jours calendriers qui suivent la date d'expiration du délai imparti pour l'envoi du bulletin de vote conformément à l'article 14.

Sont élus en qualité de membre du Collège les magistrats ayant obtenu le plus grand nombre de suffrages et qui répondent également aux critères de composition auxquels le Collège doit satisfaire. En cas de parité des suffrages, la priorité est donnée au plus jeune des candidats. Le membre du Conseil des auditeurs du travail qui a obtenu le plus de suffrages est élu par priorité. Son appartenance linguistique détermine l'appartenance linguistique requise dans le chef des trois représentants du Conseil des procureurs du Roi. Un représentant de ce Conseil doit appartenir au même groupe linguistique que celui du représentant du Conseil des auditeurs du travail et les deux autres représentants doivent appartenir à l'autre groupe linguistique.

Une liste de membres successeurs du Collège est établie pour la durée du mandat. Elle est constituée des candidats non élus classés en fonction du nombre de suffrages obtenus.

La liste des représentants du Conseil des procureurs du Roi et du Conseil des auditeurs du travail au sein du Collège est publiée au Moniteur belge. Cette publication vaut installation.

Si un membre du Collège qui représente le Conseil des procureurs du Roi, le Conseil des auditeurs du travail ou le Conseil des secrétaires en chef est absent ou empêché, il est remplacé par un membre du Conseil qu'il représente et qui appartient au même rôle linguistique.

En cas d'absence ou d'empêchement d'un procureur général ou du procureur fédéral, il est remplacé par le magistrat qu'il désigne à cette fin. A défaut, il est remplacé par un titulaire d'un mandat adjoint dans l'ordre d'ancienneté de service ou à défaut par un autre magistrat dans l'ordre d'ancienneté de service. Ce remplaçant doit satisfaire aux mêmes conditions linguistiques que le chef de corps. Le remplacement prend fin de plein droit lorsque le magistrat est admis à la retraite.

Lorsqu'un représentant du Conseil des procureurs du Roi ou du Conseil des auditeurs du travail perd sa qualité de magistrat ou de chef de corps, ou un représentant du Conseil des secrétaires en chef sa qualité de secrétaire en chef au cours de son mandat, il est remplacé par un successeur issu d'une liste établie selon des modalités fixées par le Roi.

Au sein du Collège du ministère public, il n'y a pas de procédure de révocation des membres et de motifs de résiliation anticipée du mandat ou de révocation des membres.

## 2) Le Conseil des procureurs du Roi

Au sein du Conseil des procureurs du Roi, il n'y a pas de procédure d'élection, de nomination, de procédure de révocation des membres et de motifs de résiliation anticipée du mandat ou de révocation des membres.

Les membres du Conseil le sont pour toute la durée de leur mandat de chef de corps (cing ans).

3) Le Conseil des auditeurs du travail

Au sein du Conseil des auditeurs du travail, il n'y a pas de procédure d'élection, de nomination, de procédure de révocation des membres et de motifs de résiliation anticipée du mandat ou de révocation des membres.

Les membres du Conseil le sont pour toute la durée de leur mandat de chef de corps (cing ans).

4) Les comités de direction

Au sein des comités de direction, il n'y a pas de procédure d'élection, de nomination, de procédure de révocation des membres et de motifs de résiliation anticipée du mandat ou de révocation des membres.

Les membres du comité de direction le sont pour toute la durée de leur mandat (cing ans) ou de leur désignation pour les magistrats/membres non titulaires d'un mandat.

9. Y a-t-il des membres de droit dans la composition ? (c'est-à-dire ceux qui sont membres d'office en raison de la position qu'ils occupent, par exemple, le Procureur général, le ministre de la Justice ou autres)

1) Le Collège du ministère public

Les cinq procureurs généraux près les cours d'appel et le procureur fédéral sont membres de droit du Collège du ministère public.

2) Le Conseil des procureurs du Roi

Les 14 procureurs du Roi du pays, le procureur du Roi adjoint de Bruxelles et le procureur de la sécurité routière sont membres de droit du Conseil des procureurs du Roi.

3) Le Conseil des auditeurs du travail

Les 9 auditeurs du travail du pays et l'auditeur adjoint de Bruxelles sont membres de droit du Conseil des auditeurs du travail.

4) Les comités de direction

Sauf les personnes désignées par le chef de corps en raison de leur aptitude à la gestion, les membres des comités de direction en sont membres de droit.

10. Existe-t-il des règles ou des procédures pour prévenir d'éventuelles situations de conflit d'intérêts pendant le processus d'élection ou de nomination des membres du Conseil de procureurs et/ou de tout autre organe traitant de l'autonomie de gestion des procureurs? Existe-t-il une incompatibilité entre certaines fonctions au sein du ministère public et l'appartenance à un Conseil des procureurs ?

Il n'existe pas de règles ou de procédures pour prévenir d'éventuelles situations de conflit d'intérêts pendant le processus d'élection ou de nomination des membres des organes traitant de l'autonomie de gestion au sein du ministère public. Il n'existe pas non plus d'incompatibilité entre certaines fonctions au sein du ministère public et l'appartenance à un organe traitant de l'autonomie de gestion au sein du ministère public.

11. Existe-t-il des exigences spécifiques pour les membres qui sont des procureurs afin d'assurer une représentation proportionnelle et équitable de tous les niveaux du système de poursuites ?

Au sein du Collège du ministère public, tous les niveaux au sein du ministère public sont représentés : parquets généraux près les cours d'appel (niveau ressort), parquet fédéral (niveau fédéral), parquets de première instance (niveau arrondissement) et auditorats du travail (niveau arrondissement/ressort). Certaines exigences en matière linguistique sont également prévues (*voir réponse à la question 8 ci-dessus*).

12. Veuillez décrire brièvement le processus d'élection/de nomination du président et des vice-présidents, le cas échéant, du Conseil de procureurs et/ou de tout autre organe traitant de l'autonomie de gestion des procureurs, y compris les processus et les motifs de révocation.

1) Le Collège du ministère public

Le Collège du ministère public est présidé par le président du Collège des procureurs généraux. La présidence du Collège des procureurs généraux est assurée, à tour de rôle, pour chaque année judiciaire, successivement par les procureurs généraux près les cours d'appel d'Anvers, de Mons, de Bruxelles, de Gand et de Liège. Avec accord de tous les membres du Collège, il peut être dérogé à l'alternance entre procureurs généraux appartenant à un même régime linguistique. En cas d'absence ou d'empêchement du président, la présidence est assumée par le procureur général le plus ancien en rang du même régime linguistique.

Il n'existe pas de processus d'élection, de nomination ou de révocation du président et des vice-présidents.

2) Le Conseil des procureurs du Roi

Le Conseil des procureurs du Roi désigne en son sein, à chaque fois pour la durée d'une année judiciaire, un président, et un vice-président appartenant à un autre régime linguistique et qui remplace le président en cas d'absence ou d'empêchement.

Il n'existe pas de processus d'élection, de nomination ou de révocation du président et des vice-présidents.

3) Le Conseil des auditeurs du travail

Le Conseil des auditeurs du travail désigne en son sein, à chaque fois pour la durée d'une année judiciaire, un président, et un vice-président appartenant à un autre régime linguistique et qui remplace le président en cas d'absence ou d'empêchement.

Il n'existe pas de processus d'élection, de nomination ou de révocation du président et des vice-présidents.

4) Les comités de direction

Chaque comité de direction est présidé par le chef de corps.

Il n'existe pas de processus d'élection, de nomination ou de révocation du président et des vice-présidents.

**III. Compétence et fonctionnement du Conseil de procureurs et/ou tout autre organe traitant de l'autonomie de gestion des procureurs**

13. Dans votre pays, le Conseil de procureurs et/ou tout autre organe traitant de l'autonomie de gestion des procureurs ont-ils le pouvoir exclusif d'exercer l'administration du ministère public ou ce pouvoir est-il partagé avec les organes exécutifs (ceux qui ne font pas partie du ministère public, par exemple le ministère de la Justice) ?

Les matières de gestion communes sont gérées conjointement soit par le Collège du ministère public et le Collège des cours et tribunaux (collèges réunis), soit par ces deux collèges avec le Service public fédéral Justice (administration fédérale de la justice) (Comité de gestion commun) (voir question 3 ci-dessus).

Dans l'attente du transfert des compétences de gestion et de la répartition des moyens aux Collèges, un comité de gestion commun a été instauré auprès du Service public fédéral Justice. Celui-ci se compose des membres du comité de direction du Service public fédéral Justice et des présidents des Collèges.

Sans préjudice de la compétence du ministre de la Justice, ce comité de gestion commun prend les décisions qui concernent la mission du Service public fédéral Justice quant au soutien et à l'encadrement de l'organisation judiciaire et qui reviennent au comité de direction du Service public fédéral.

14. Veuillez décrire brièvement les fonctions et les pouvoirs du Conseil de procureurs et/ou de tout autre organe traitant de l'autonomie de gestion des procureurs, notamment en ce qui concerne le recrutement, la promotion, le transfert, l'évaluation, la discipline ou d'autres aspects concernant les procureurs, ainsi que les aspects budgétaires (y compris l'élaboration du budget du ministère public, la systématisation de la législation sur les activités du ministère public, l'approbation des plans de travail et des rapports annuels du ministère public, l'adoption du code d'éthique des procureurs, etc.).

#### 1) Le Collège du ministère public

Dans les limites de ses compétences, le Collège du ministère public prend toutes les mesures nécessaires à la bonne gestion du ministère public :

- le soutien à la gestion en exécution de la politique criminelle déterminée par le Collège des procureurs généraux;
- la recherche de la qualité intégrale, notamment dans le domaine de la communication, de la gestion des connaissances, de la politique de qualité, des processus de travail, de la mise en œuvre de l'informatisation, de la gestion stratégique des ressources humaines, des statistiques, ainsi que de la mesure et de la répartition de la charge de travail afin de contribuer à une administration de la justice accessible, indépendante, diligente et de qualité;
- le soutien à la gestion au sein des entités judiciaires du ministère public.

Pour exercer ses tâches et compétences, le Collège peut adresser des recommandations et des directives contraignantes aux comités de direction des entités judiciaires du ministère public.

Depuis plusieurs années, le système de publication des places vacantes des magistrats a été modifié par le SPF Justice. Le cadre légal du nombre de magistrats et de membres du personnel judiciaire n'est plus respecté.



Actuellement, une enveloppe budgétaire globale est mise à disposition du ministère public et du siège. Plusieurs fois par an, suite à un monitoring des dépenses, un montant spécifique est libéré pour la publication de plans de places vacantes. Il revient au Collège du ministère public de partager cette somme pour le recrutement des magistrats, du personnel des secrétariats de parquet, des collaborateurs de niveau A, et notamment des juristes et des criminologues, ainsi que des collaborateurs pour le Service d'appui.

Le Service d'appui prépare une proposition de répartition des effectifs entre les entités du ministère public, qui tient compte des demandes formulées par chaque entité et de la somme globale disponible. Il transmet cette proposition pour avis au Conseil des procureurs du Roi et au Conseil des auditeurs du travail, avant que celle-ci ne soit soumise à la délibération du Collège.

Pour chaque année judiciaire, le Collège du ministère public donne son avis sur le nombre de places vacantes de stagiaires judiciaires dans les rôles linguistiques français et néerlandais.

Le ministre de la Justice nomme les stagiaires judiciaires et désigne, sur proposition commune du Collège des cours et tribunaux et du Collège du ministère public, le ressort de la cour d'appel dans lequel le stage est accompli.

Le Collège du ministère public ne dispose pas de compétences spécifiques en matière de promotion et de discipline.

Le Collège du ministère public répartit des moyens humains (en ayant recours à un système de cadres flexibles) et les moyens de fonctionnement en fonction des places vacantes et des budgets accordés.

## 2) Le Conseil des procureurs du Roi

Le Conseil des procureurs du Roi est chargé de donner des avis, d'initiative ou à sa demande, au Collège des procureurs généraux sur l'harmonisation et l'application uniforme des dispositions et sur toute question en rapport avec les missions du ministère public.

Ses représentants au sein du Collège du ministère public participent au processus de décision concernant la répartition des moyens.

## 3) Le Conseil des auditeurs du travail

Le Conseil des auditeurs du travail est chargé de donner des avis, d'initiative ou à sa demande, au Collège des procureurs généraux sur l'harmonisation et l'application uniforme des dispositions et sur toute question en rapport avec les missions des auditorats du travail.

Son représentant au sein du Collège du ministère public participe au processus de décision concernant la répartition des moyens.

#### 4) Les comités de direction

Le comité de direction assiste le chef de corps dans la direction générale, l'organisation et la gestion de l'entité judiciaire. Les comités de direction ont comme mission légale la rédaction d'un plan de gestion.

Au niveau local, les comités de direction des entités judiciaires concernées se concertent sur les matières de gestion communes.

15. Veuillez décrire brièvement la compétence, le cas échéant, ou le rôle joué par le Conseil de procureurs et/ou tout autre organe traitant de l'autonomie de gestion des procureurs dans :

- l'évaluation des performances des procureurs, tant sur le fond que sur la procédure, et notamment les relations/interactions avec d'autres organismes si ceux-ci sont compétents en matière d'évaluation des performances ;

1. L'évaluation des performances des chefs de corps pris individuellement ne relève pas directement de la compétence des organes traitant de l'autonomie de gestion au sein du ministère public mais, pour l'évaluation intermédiaire, de la commission d'évaluation composée de chefs de corps élus par leurs pairs, d'un représentant de la Cour des comptes, du Service public fédéral BOSA et du Conseil supérieur de la Justice ainsi que, pour l'évaluation finale, du Conseil supérieur de la Justice

2. Le Collège du ministère public, le Conseil des procureurs et le Conseil des auditeurs du travail ne sont pas compétents pour l'évaluation des magistrats. Cette compétence revient au chef de corps assisté de deux magistrats-évaluateurs élus par la réunion de corps.

Les magistrats peuvent introduire un recours devant une commission de recours contre la mention définitive "insuffisant" obtenue dans le cadre de leur évaluation dans les trente jours qui suivent la notification de cette mention.

Le Collège du ministère public désigne par rôle linguistique et pour trois ans six membres issus des parquets du procureur du Roi et des auditorats du travail et six membres issus des parquets généraux et des auditorats généraux.

Si le requérant appartient au ministère public, le recours est adressé au président du Collège du ministère public qui compose la commission de recours dans les cinq jours.

3. Le stage judiciaire, et en particulier l'évaluation des stagiaires judiciaires, relève de la compétence de la commission d'évaluation présidée par le directeur de l'Institut de formation

judiciaire et est composée, entre autres, de membres du ministère public désignés par le ministre de la Justice sur proposition du Collège du ministère public. Cet organe agit comme commission de recours pour les recours concernant l'évaluation du stage judiciaire.

4. Chaque entité judiciaire rédige un compte rendu dans son rapport de fonctionnement afin de permettre aux Collèges d'évaluer les moyens, les activités et la réalisation du plan de gestion. Le rapport de fonctionnement est également communiqué au Collège des cours et tribunaux ou au Collège du ministère public.

Chaque Collège rédige annuellement un rapport de fonctionnement. Chaque Collège mentionne dans le rapport de fonctionnement ses activités, ses directives et recommandations, les décisions des comités de direction qu'il a annulées, la manière dont sont utilisés les moyens alloués par le biais du contrat de gestion, les résultats obtenus par chaque organisation sur la base de ces moyens ainsi que les indicateurs permettant de constater si les objectifs de l'organisation ont été réalisés. Ce rapport de fonctionnement est communiqué au ministre de la Justice et aux Chambres législatives fédérales<sup>3</sup>.

5. Le Collège rend un avis sur la manière dont est enregistrée la charge de travail du ministère public ainsi que la manière dont ces données enregistrées sont évaluées.

6. Le Service d'appui commun auprès du Collège des procureurs généraux et auprès du Collège du ministère public est chargé de l'organisation d'un audit interne du Collège du ministère public et des entités judiciaires<sup>4</sup>.

- les mesures disciplinaires à l'encontre des procureurs, tant sur le fond que sur la procédure, y compris les relations/interactions avec d'autres organes si ceux-ci sont compétents en matière de mesures disciplinaires.

Les mesures disciplinaires à prendre à l'encontre des chefs de corps pris individuellement ne relève pas directement de la compétence des organes traitant de l'autonomie de gestion au sein du ministère public.

16. Le Conseil de procureurs et/ou tout autre organe traitant de l'autonomie de gestion des procureurs ont-ils le pouvoir d'examiner les situations de conflit au sein du ministère public, par exemple en cas d'instructions visant à inverser l'opinion d'un procureur ?

Les organes traitant de l'autonomie de gestion au sein du ministère public ne disposent pas de compétences spécifiques à cet égard.

17. Les procureurs peuvent-ils s'adresser au Conseil de procureurs et/ou à tout autre organe traitant de l'autonomie de gestion des procureurs en cas d'allégation d'instructions

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<sup>3</sup> Le système des plans de gestion et des contrats de gestion n'est pas encore en vigueur. Des travaux sont encore en cours à ce sujet. Le Collège du ministère public n'établit pas encore de rapport de fonctionnement mais bien un rapport annuel avec le Collège des procureurs généraux portant tant sur la politique criminelle que sur la gestion. Ce rapport annuel est communiqué au ministre de la Justice et est rendu public.

<sup>4</sup> Cette mission n'a malheureusement pas encore pu être mise en place faute de moyens.

illégalles de la part de leurs supérieurs ou de tout autre acteur, tant à l'intérieur qu'à l'extérieur du ministère public ?

Les organes traitant de l'autonomie de gestion au sein du ministère public ne disposent pas de compétences spécifiques à cet égard, mais ces difficultés peuvent toujours être portées à la connaissance du Collège du ministère public dans la pratique.

18. Veuillez décrire brièvement le processus de prise de décision du Conseil de procureurs et/ou de tout autre organe traitant de l'autonomie de gestion des procureurs, y compris tout aspect lié aux droits de vote des membres (par exemple, si tous les membres ont le même droit de vote), et les procédures et seuils applicables pour l'adoption d'une décision.

1) Le Collège du ministère public

Le Collège décide à la majorité des voix, dont au moins une voix dans chaque groupe linguistique<sup>5</sup>.

En cas de parité des voix, la voix du président est prépondérante.

Si aucune décision n'est prise, le ministre de la Justice prend les mesures nécessaires en matière de gestion.

2) Le Conseil des procureurs du Roi

Il n'existe pas de dispositions légales concernant le processus de prise de décision au sein du Conseil des procureurs du Roi.

Toutefois, son règlement d'intérieur prévoit les modalités suivantes.

Le Conseil délibère valablement si au moins la moitié de ses membres est présente. Les décisions sont prises par consensus.

En cas d'absence de consensus, les décisions sont prises à la majorité absolue des membres présents.

Si la majorité prévue n'est pas atteinte, la question discutée est soumise à un nouvel examen et à une délibération au cours d'une séance ultérieure.

3) Le Conseil des auditeurs du travail

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<sup>5</sup> Le Collège est composé paritairement sur le plan linguistique.

Il n'existe pas de dispositions légales concernant le processus de prise de décision au sein du Conseil des auditeurs du travail.

Le Conseil délibère valablement dès que la moitié plus une personne sont présentes.

Une décision est prise avec au moins la moitié plus un des votes émis valablement par les personnes présentes.

Dès qu'une majorité absolue n'a pas été atteinte, une nouvelle délibération aura lieu à ce sujet lors de la prochaine réunion. A ce moment, il sera décidé valablement à la majorité simple (plus de voix pour que de voix contre) nonobstant le quorum ou la majorité des membres présents. En cas de parité des suffrages, le vote du président est décisif.

Le procureur fédéral, les auditeurs de division ou les experts, n'ont qu'une voix consultative.

#### 4) Les comités de direction

Le comité de direction décide par consensus. A défaut d'accord, le chef de corps décide.

19. Quelle est la force juridique des décisions finales prises par le Conseil de procureurs et/ou tout autre organe traitant de l'autonomie de gestion des procureurs ? Ces décisions sont-elles seulement de nature consultative, n'étant pas légalement obligatoires, ou sont-elles de nature contraignante, étant légalement obligatoires, ou y a-t-il un mélange selon la nature de la décision ?

#### 1) Le Collège du ministère public

Pour exercer ses tâches et ses compétences prévues, le Collège peut adresser des recommandations et des directives contraignantes aux comités de direction des entités judiciaires du ministère public.

#### 2) Le Conseil des procureurs du Roi

Les décisions et accords adoptés ne sont pas contraignants.

#### 3) Le Conseil des auditeurs du travail

Les décisions ne sont pas contraignantes.

#### 4) Les comités de direction

Les décisions prises par les comités de direction sont contraignantes pour les membres de l'entité judiciaire concernée.

20. Les décisions finales prises par le Conseil de procureurs et/ou tout autre organe traitant de l'autonomie de gestion des procureurs sont-elles soumises à un contrôle judiciaire par un tribunal?

1) Le Collège du ministère public

Un recours en annulation peut être introduit contre la décision du Collège devant le Conseil d'Etat. Un recours intenté devant le tribunal disciplinaire n'est pas admis.

2) Le Conseil des procureurs du Roi

Les décisions finales ne sont pas soumises à un contrôle judiciaire par un tribunal.

3) Le Conseil des auditeurs du travail

Les décisions finales ne sont pas soumises à un contrôle judiciaire par un tribunal.

4) Les comités de direction

Les décisions finales ne sont pas soumises à un contrôle judiciaire par un tribunal.

Le Collège du ministère public peut annuler une décision d'un comité de direction, s'il estime, après avoir entendu le comité de direction, que cette décision est contraire à une directive contraignante ou au plan de gestion.

Lorsqu'un magistrat est chargé d'exercer ses fonctions dans une autre division ou une autre entité judiciaire, sans que son consentement soit requis, il peut introduire un recours administratif auprès du Collège du ministère public.

Le recours n'est pas suspensif. Le Collège décide dans le mois à la majorité, après que le requérant ait été entendu. Il peut confirmer ou annuler la décision. En cas de parité des voix, la voix du président du Collège est prépondérante.

21. Quels mécanismes garantissent le fonctionnement indépendant du Conseil de procureurs et/ou de tout autre organe traitant de l'autonomie de gestion des procureurs?

La Constitution belge dispose que le ministère public est indépendant dans l'exercice des recherches et poursuites individuelles, sans préjudice du droit du Ministre compétent d'ordonner

des poursuites et d'arrêter des directives contraignantes de politique criminelle, y compris en matière de politique de recherche et de poursuite.

En ce qui concerne la gestion, ce sont les mécanismes habituels de l'organisation de l'Etat qui s'appliquent.

Les organes traitant de l'autonomie de gestion au sein du ministère public sont dépendants de l'Etat en ce qui concerne le budget globale nécessaire pour le fonctionnement du ministère public (ressources humaines, frais de fonctionnement, frais d'investissement, informatique, bâtiments,...).

Ce budget est insuffisant.

22. Y a-t-il d'autres institutions en dehors du ministère public qui ont un rôle à jouer dans le fonctionnement et le processus de prise de décision du Conseil de procureurs et/ou de tout autre organe traitant de l'autonomie de gestion des procureurs ?

1) Le Collège du ministère public

Le Collège du ministère public peut également être invité à se réunir par une demande motivée du ministre de la Justice ou du président du Collège des cours et tribunaux.

Ils peuvent demander au Collège d'édicter une recommandation ou une directive.

Le Collège statuera sur ces demandes.

Les deux Collèges se réunissent conjointement de leur propre initiative ou à la demande du ministre de la Justice.

2) Le Conseil des procureurs du Roi

Il n'y a pas d'autres institutions en dehors du ministère public qui ont un rôle à jouer dans le fonctionnement et le processus de prise de décision.

3) Le Conseil des auditeurs du travail

Il n'y a pas d'autres institutions en dehors du ministère public qui ont un rôle à jouer dans le fonctionnement et le processus de prise de décision.

4) Les comités de direction

Il n'y a pas d'autres institutions en dehors du ministère public qui ont un rôle à jouer dans le fonctionnement et le processus de prise de décision.

23. Comment est garantie la transparence des travaux du Conseil de procureurs et/ou de tout autre organe traitant de l'autonomie de gestion des procureurs :

- rendent-ils compte au public par le biais de rapports et d'informations largement diffusés ?
- disposent-ils de sites web accessibles au public fournissant des informations essentielles sur leur fonctionnement et leur prise de décision ?
- d'autres mesures de transparence ? (par exemple, séances d'information publiques, communiqués de presse, etc.)

#### 1) Le Collège du ministère public

Le Collège rédige annuellement un rapport de fonctionnement. Il y mentionne ses activités, ses directives et recommandations, les décisions des comités de direction qu'il a annulées, la manière dont sont utilisés les moyens alloués par le biais du contrat de gestion, les résultats obtenus par chaque organisation sur la base de ces moyens ainsi que les indicateurs permettant de constater si les objectifs de l'organisation ont été réalisés.

Ce rapport est communiqué au ministre de la Justice et aux Chambres législatives fédérales avant le 1er juillet<sup>6</sup>.

Le ministère public dispose d'un site Internet ([www.omp-mp.be](http://www.omp-mp.be)) accessible au public. Y sont notamment publiées toutes les circulaires non confidentielles adoptées par le Collège des procureurs généraux et le Collège du ministère public. Une refonte de ce site Internet est actuellement en cours.

Dans le respect du secret de l'information et de l'instruction, du secret professionnel, de la présomption d'innocence et du droit à l'information du public, la communication par le ministère public doit permettre de donner de la transparence à ses actions, d'expliquer le fonctionnement de la Justice et de prévenir la délinquance.

Dans sa circulaire COL OMP 01/2019 organisant la communication du ministère public vers les médias, le Collège rappelle les notions retenues et le cadre légal. La fonction du magistrat presse, qui peut être assisté d'une cellule communication au sein de son corps, est précisée. Ses attributions, compétences et missions sont explicitées. Le choix des interlocuteurs et le contenu de la communication font l'objet de mises en garde pratiques : objectivité, discrétion, réserve, absence d'identification des personnes concernées. Dans les formes et techniques de communication, une nouvelle place est confiée aux médias

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<sup>6</sup> Le Collège du ministère public n'établit pas encore de rapport de fonctionnement mais bien un rapport annuel avec le Collège des procureurs généraux portant tant sur la politique criminelle que sur la gestion. Ce rapport annuel est communiqué au ministre de la Justice et est rendu public.



sociaux, dont l'exploitation permet une diffusion large et instantanée de communiqués de presse. Les émissions de télévision y sont également largement abordées.

Le Collège a aussi adopté une note-cadre portant sur la stratégie de communication du ministère public.

Le ministère public représente la société au sein de la Justice et s'inscrit dans la défense de l'intérêt général. En tant qu'élément essentiel de l'État de droit démocratique, le ministère public entend faire preuve de transparence et rendre compte de la politique criminelle qu'il mène.

À l'heure où la confiance envers les institutions (et spécifiquement envers la Justice) reste fragile, la communication à l'égard des citoyens sur les actions du ministère public est essentielle à trois niveaux :

- faire connaître le ministère public ;
- susciter de l'intérêt pour le ministère public ;
- associer les actions du ministère public à une perception positive.

L'activité judiciaire est ponctuée de rendez-vous récurrents et/ou prévisibles qui peuvent justifier une communication.

Les rentrées judiciaires et les mercuriales des procureurs généraux en sont quelques exemples. La vie judiciaire a évolué au fil du temps, passant d'un exposé d'un problème juridique à un discours souvent plus « politique ». De manière générale, le procureur général souhaite faire passer un message à propos de son action ou de la politique criminelle qu'il veut appliquer dans le cadre de ses compétences. Ce message sera d'autant plus écouté qu'il pourra être diffusé au-delà de l'enceinte de la cour d'appel.

On peut évoquer aussi la diffusion des statistiques annuelles. Le Collège s'est déjà exprimé à cette occasion et a suscité l'intérêt des médias soucieux de connaître l'évolution de la criminalité et de l'activité des parquets. C'est aussi l'occasion d'exposer, de justifier et d'expliquer la politique criminelle du Collège avec une vision d'ensemble.

L'adoption d'une circulaire de politique criminelle est aussi une opportunité de communication. Chacune d'elles devrait faire l'objet d'une appréciation par la cellule « Communication » du service d'appui pour proposer, le cas échéant, le mode de communication le plus adéquat.

La publication du rapport annuel ou des notes de vision peut également devenir un vecteur de communication positif pour la stratégie et l'image de l'organisation, particulièrement auprès des partenaires de la Justice, du monde politique ou encore de la presse spécialisée.

Un évènement particulier dans le cadre de la sphère pénale pourrait aussi donner lieu à une communication du ministère public qui pourrait ainsi donner sa vision et, le cas échéant, rectifier des interprétations hasardeuses des médias.

De nombreuses organisations ou groupes de pression diffusent régulièrement des communiqués de presse, des études ou des statistiques plus ou moins pertinentes pour diffuser leurs préoccupations dans l'actualité et justifier leur action. La presse peut y trouver l'opportunité d'évoquer un sujet qui intéresse son public. C'est aussi parfois l'occasion pour elles de critiquer l'action du ministère public. À cet égard, il peut s'avérer nécessaire de restituer la réalité et de donner l'éclairage du ministère public sur le problème évoqué.

2) Le Conseil des procureurs du Roi

La garantie de la transparence des travaux s'inscrit dans le cadre exposé ci-dessus.

3) Le Conseil des auditeurs du travail

La garantie de la transparence des travaux s'inscrit dans le cadre exposé ci-dessus.

4) Les comités de direction

Chaque entité judiciaire rédige un compte rendu dans son rapport de fonctionnement afin de permettre aux Collèges d'évaluer les moyens, les activités et la réalisation du plan de gestion.

Le rapport de fonctionnement est également communiqué au Collège du ministère public.

La garantie de la transparence des travaux s'inscrit dans le cadre exposé ci-dessus.

## **Bosnia and Herzegovina / Bosnie et Herzégovine**

### **Answers to the general questions**

The High Judicial and Prosecutorial Council of Bosnia and Herzegovina (HJPC), was founded in 2004 as a state's body. Under the law it is responsible for the appointment of judges, prosecutors and legal associates, disciplinary affairs, judicial administration and statistics, judicial institutions budgets, supervision over professional development, introduction of ICT systems, as well as taking a leading role in the implementation and coordination of reform activities in the BiH justice sector. The HJPC consists of 15 members who reflect the composition of the people of Bosnia and Herzegovina and so it is put together from 6 Bosnians, 5 Serbs, 1 Croat and 1 of „other nations“. Its members are elected for 4 years and could be reelected one time only. The gender issue has to be balanced.

### **Composition of the HJPC**

The composition of the HJPC includes 6 judges, 6 prosecutors, 1 member of the bar association, 1 member of the House of Representatives of BiH and in the end 1 member, who is not member of a governmental or judicial body.

The first 14 members are elected in separate formally elections by their colleagues prosecutors, judges, attorneys in their respective institutions, but the last one is proposed by the Ministry of justice of Bosnia and Herzegovina and shall be elected by the Council of Ministers of Bosnia and Herzegovina.

All members of the HJPC could be dismissed in case of not acting under the law and its function upon a proposal from a Disciplinary Panel or from one third of the members of the HJPC and by a final decision of a three third majority of the HJPC. Members of the Council shall be entitled to a leave of absence from their official positions in order to perform their duties in the Council.

To the HJPC is attached a Secretariat which has 30 positions, is led by a director and in general responsible for all financial affairs, the budget, documentary and statistics of the HJPC as well as all kind of assistance to the members of HJPC and their activities. The Director has to care for the overall performance of the professional, financial and administrative tasks of the Secretariat and especially for execution of the budget adopted by the Council. The Deputy Director has to oversee the preparation of Council sessions and the execution of Council decisions. The Director and the Deputy Director have the right to attend all meetings of the Council as non-voting participants and to express his or her opinion on all issues on the agenda.

### **Competence and functioning of the HJPC**

H The HJPC is an independent states' body and has exclusive power regarding all aspects of self-governance concerning prosecutors and judges. Its function and power includes the exclusive responsibility for the recruitment of prosecutors and judges, their promotion, transfer, evaluation, discipline and a code of ethics for both of them.

The annual budget of the HJPC is decided by the parliament of Bosnia and Herzegovina, but is self-administrated by the HJPC with the assistance of its secretariat. The budget is complemented by some international donations.

Concerning the assessment of prosecutors and judges the HJPC sets criteria for the performance evaluations of judges and prosecutors. In disciplinary proceedings the HJPC decides upon appeals as well as upon suspensions of prosecutors and judges.

The law on HJPC does not provide any instruction power to reverse the view of a prosecutor.

On the other hand the HJPC has to provide opinions on complaints lodged by a prosecutor or a judge who considers that his rights provided for by law has been violated or his independence has been threatened.

To constitute a quorum a minimum of eleven members of the HJPC is required. A decision requires a majority of affirmative votes of the total votes cast by the members present and voting. If the voting is equal, a roll call vote shall then be taken and the President, or the Vice-President have the casting vote.

In general the decisions of the HJPC do have the character to be legally obligatory because the Ministry of Justice in case that it has to confirm the nominations of the HJPC according to the procedures, has to follow the vote of the HJPC.

In the field of disciplinary do exist an appeal to the decisions of the first and second instance disciplinary panel.

A prosecutor or a judge who has been removed by decision of the HJPC may appeal to the Court of Bosnia and Herzegovina. This legal institution only could be used in case of materially violated procedures by the panel.

Final decisions of the HJPC could be subject to judicial review by the Constitutional court of Bosnia and Herzegovina, in case of violated human rights by the European Court of Human Rights.

To achieve transparency the HJPC established for example a web side to publish concours, applications and nominations as well as actual information concerning its decisions. In addition it is custom to publish nominations in the local newspaper

## Bulgaria / Bulgarie

### I. General questions

1. Is there a council of prosecutors and/or any other bodies dealing with prosecutorial self-governance in your country? If yes, what is the exact title/denomination of such body or bodies, if several? (i.e. Council of Prosecutors or Prosecutorial Council, Conference/Congress of Prosecutors, Qualification and Disciplinary Commission of Prosecutors etc.) Is there a professional association of prosecutors dealing with prosecutorial self-governance in any way?

Yes. The respective state body is the **the Supreme Judicial Council (SJC)**. The SJC implements its powers through a Plenum, a Judges Chamber and a **Prosecutors Chamber**. There is an active Association of Prosecutors in Bulgaria (APB) as a voluntary professional organization of the prosecutors which declares the purpose to defend and promote the professional rights of the prosecutors incl. their independence.

2. If so, when was a council of prosecutors and/or any other bodies dealing with prosecutorial self-governance introduced in the prosecutorial system in your country? Please describe briefly, if applicable, any significant reforms undertaken since the establishment, aimed at strengthening effectiveness, independence and accountability of such body(ies).

The Supreme Judicial Council (SJC) was established with the Constitution of 1991. It use to act only as a Plenum. The division of the Judges Chamber and a Prosecutors Chamber was introduced in 2015. Earlier than that the SJC has been transformed to a standing (permanent) body – i.e. its members do not exercise other competences during their term;

3. If such a council of prosecutors and/or any other bodies dealing with prosecutorial self-governance exist in your country, are they only for prosecutors or for other professionals of justice? Are such bodies separate or do they operate within a body common to judges and prosecutors?

The Plenum of the Supreme Judicial Councils (SJC) shall consist of all members thereof and is vested with the general managerial and budgetary powers concerning both judges and prosecutors (courts and POs).

The Judges Chamber and the Prosecutors Chamber implement the powers, separately and in line with the professional specialisation thereof, with regard to judges, prosecutors and investigating magistrates in terms of appointment, promotion, transfer, release, evaluation, imposing disciplinary sanctions and measures, appointment of Heads of Judicial authorities, organization etc.

The Prosecutors Chamber elects and releases the Director of the National Investigation Service

4. At what legislative or normative level is the status of a council of prosecutors and/or any other bodies dealing with prosecutorial self-governance established and how is its/their functioning regulated? (e.g. through Constitution, laws, by-laws or other regulations).

The primary regulation at the highest possible normative level - in the Constitution from 1991 (Chapter VI). The detailed regulation is in the law adopted by the Parliament - Judiciary System Act. (Promulgated, SG No. 64/7.08.2007)

5. Are such council of prosecutors and/or any other bodies dealing with prosecutorial self-governance provided with the required resources (human, financial and other) to function properly?

Yes.

6. If in your country there is no council of prosecutors and/or any other bodies dealing with prosecutorial self-governance, is there any discussion to introduce such a body(ies)? If so, what are the arguments in favour and against its/their introduction?

N/A

## II. **Composition of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance and status of its/their members**

7. Please describe the composition of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance in your country. Please indicate:

- How many of the members are prosecutors?

Prosecutors elect from among their number four members of the Supreme Judicial Council **for the Prosecutors Chamber**. Investigating magistrates elect from among their number one member of the Supreme Judicial Council **for the Prosecutors Chamber**. This is the minimum representation of the prosecutors plus the Prosecutor General.

The National Assembly also elects eleven members of the Supreme Judicial Council, of whom six for the Judges Chamber and **five for the Prosecutors Chamber**. The National Assembly is free to decide whom to elect – there is no obligation to elect magistrates (judges, prosecutors or investigating magistrates). This is only an option

**Currently (Feb.2023)** the SJC is working beyond its term due to the political crises and negligence of the National Assembly to elect its representatives. At the moment 9 out of 10 of the elective members of the Prosecutors Chamber have been elected as prosecutors. One has been elected as an investigating magistrate. During their activity as members of the SJC they are not prosecutors/ magistrates. The only exception is the Prosecutor General who is member of the SJC ex officio and conducts his/her duties as a head of the prosecutorial system.

- How many, if any, are non-prosecutor members and who are they? (e.g. scholars, judges, lawyers, civil society, others)

As already explained, with during their mandate all the members of the Prosecutors Chamber (excluding the Prosecutor General) are non-prosecutors. 9 of 10 of the elective members of the Prosecutors Chamber have been elected as prosecutors. One has been elected as an investigating magistrate.

In general - the National Assembly shall elect eleven members of the SJC, of whom six for the Judges Chamber and five for the Prosecutors Chamber. The election by chamber shall be held from among judges, prosecutors, investigating magistrates, academic-degree-holding scholars in legal sciences, lawyers and other jurists of high professional standing and moral integrity, taking into account their professional qualification and specialisation. Jurists of high professional standing and moral integrity who have practised law for at least 15 years shall be elected members of the Supreme Judicial Council.

8. Please describe the procedure for the election or appointment of the members of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance (including both prosecutor members and non-prosecutor members), the duration of their mandate and the dismissal procedure, including, if applicable, the grounds for early termination of mandate or dismissal of members.
1. The members of Supreme Judicial Council of the Judiciary quota are elected directly by secret ballot by the judges, by the prosecutors and by the investigating magistrates, respectively, according to the procedure in the law.

This means that the election of the 5 members of the Supreme Judicial Council for the Prosecutors Chamber **from the prosecutors and from the investigating** magistrates is direct one – by the general assembly of each profession.

The general assemblies shall be convened by the Prosecutor General not earlier than eight months and not later than six months before the expiry of the term of office of the Supreme Judicial Council.

Each general assembly shall meet on two consecutive Saturdays. On the first Saturday, the general assembly shall elect an election commission and voting sections and shall hear the candidates.

The general assembly shall meet if more than half of the prosecutors or investigating magistrates are present. In the absence of a quorum, the assembly shall be adjourned to a time within one hour thereafter and shall be held regardless of the number of those present. The assemblies shall be public and shall be streamed live on the website of the Supreme Judicial Council.

The election shall be considered valid if more than one-half of the prosecutors or investigating magistrates have voted. If not a new election shall be conducted on the following day. The election shall be considered valid if not less than 33 per cent of those entitled to vote have voted. The candidates who have gained more than one-half of the valid votes shall be considered elected. If the candidates satisfying this condition outnumber the

candidates die to be elected at the respective general assembly, those from among them who have gained the most votes shall be considered elected.

2. Eleven of the members of the Supreme Judicial Council shall be elected **by the National Assembly by a majority of two-thirds** of the National Representatives.

All the 22 elective members of the Supreme Judicial Council shall **serve terms of five years**. They may not be re-elected immediately upon the expiry of the said term.

3. The term of office of an elective member of the Supreme Judicial Council **shall terminate upon:**
  1. tendering resignation;
  2. an enforceable judicial instrument on a criminal offence committed by the said member;
  3. sustained actual inability to discharge the duties thereof for a period exceeding one year;
  4. release from office by reason of breach of discipline or disqualification from practicing a legal profession or activity.

Upon termination of the term of office of an elective member of the Supreme Judicial Council, a replacement shall be elected from the relevant quota to serve for the remainder of the term of office [of the member whose term of office is terminated

9. Are there ex officio members in the composition? (i.e. those who are members automatically due to the position they occupy, for example, the Prosecutor General, the Minister of Justice or others)

Yes. The Prosecutor General is a member of the Supreme Judicial Council for the Prosecutors Chamber ex officio.

The President of the Supreme Court of Cassation, the President of the Supreme Administrative Court, shall be ex officio members of the SJC, as well (Constitution).

10. Are there rules or procedures to prevent possible conflict of interest situations during the process of election or appointment of the members of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance? Is there an incompatibility between certain functions in the prosecution service and membership in a council of prosecutors?

**1. An elective member of the Supreme Judicial Council may not:**

1. be a National Representative, a mayor or municipal councillor;
2. hold a position at other State or municipal authorities;
3. carry on business or be a partner, manager or member of supervisory, management boards or boards of directors or on control bodies of commercial corporations, cooperatives or non-profit legal entities that carry on business, with the exception of those of professional associations of judges, prosecutors and investigating magistrates;
4. be remunerated for business performed under a contract or while in a civil service relationship with a state or public organisation, a commercial company, cooperative, non-profit legal entity, a natural person or sole trader, with the exception of research and



teaching or the exercise of copyright, as well as for participation in international projects, including ones funded by the European Union;

5. practise a liberal profession or another remunerative professional activity;

6. be a member of political parties or coalitions, of organisations pursuing political purposes, carry out political activity, as well as be a member of any organisations or carry out any activities interfering with his or her independence;

7. be a member of trade union organisations outside the Judiciary system;

8. has been convicted for a serious criminal offence, notwithstanding any subsequent rehabilitation, or has been released from criminal responsibility for an intentional offence;

9. be a spouse, a lineal relative, a collateral relative up to the fourth degree of consanguinity, or an affine up to the third degree of affinity inclusive, or a de facto cohabitant with another member of the Supreme Judicial Council, with an administrative head of a judicial authority, appointed by the respective college he/she is a member of or with the Minister of Justice;

10. be an elective member of the Supreme Judicial Council who has been released from office on disciplinary grounds;

11. be a person in respect of whom a conflict of interest has been ascertained by an enforceable decision less than one year prior to the election.

An elective member shall be released by the Supreme Judicial Council where the said member fails to vacate office or to discontinue the activity mentioned above within one month from the election=

2. During their term of office the elective members of the Supreme Judicial Council for the Prosecutors Chamber **are not exercising functions as prosecutors or investigative magistrates.**

11. Are there any specific requirements for prosecutor members in order to ensure a proportional and fair representation of all levels of the prosecution system?

No.

12. Please describe briefly the election/appointment process of the president and vice-presidents, if applicable, of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance, including dismissal processes and grounds.

Ex lege the Prosecutors Chamber of the Supreme Judicial Council is presided over by the Prosecutor General or – in his absence – by most senior member present. The Minister of Justice may attend the sessions in a non-voting capacity.

### **III. Competence and functioning of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance**

13. In your country, do the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance have exclusive power to exercise the administration of the prosecution service or whether this power is divided with the executive bodies (those outside of the prosecution service, e.g. the ministry of justice)?

The administration of the prosecution service is an exclusive power of the SJC (Plenum and Prosecutors Chamber), Prosecutor General and Heads of POs. There is no involvement by the Executive power incl. Ministry of Justice.

14. Please describe briefly the functions and powers of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance, in particular as regards the recruitment, promotion, transfer, evaluation, discipline or other aspects regarding prosecutors, and budgetary aspects (including the development of the prosecution service's budget, systematisation of the legislation on the activities of the prosecution service, approval of the prosecution service's task plans and annual reports, adoption of the code of ethics for prosecutors etc.).

The powers of the Prosecutors Chamber are to

1. appoint, promote, transfer and release from office the prosecutors and investigating magistrates;
2. carry out periodic and other appraisals and adopt the aggregate score from the appraisal of prosecutors, investigating magistrates, administrative heads and deputy administrative heads in the judicial authorities and address matters concerning the acquisition and restoration of tenure;
3. impose the disciplinary sanctions of demotion and release from office on prosecutors, investigating magistrates, administrative heads and deputy administrative heads in the judicial authorities;
4. determine the number, appoint and release the administrative heads and the deputy administrative heads in the judicial authorities with the exception of the Prosecutor General;
5. address matters concerning the organisation of the operation of the respective system of judicial authorities;
6. submit proposals to the Plenum of the Supreme Judicial Council for determining the number of judicial districts and the seats of the district, regional and appellate prosecution offices;
7. submit proposals to the Plenum of the Supreme Judicial Council for determining the number of prosecutors and investigating magistrates at all courts, prosecution offices and investigation departments;
8. determine the number of judicial officers depending on the caseload level on a proposal by, or after consulting, the administrative heads of the judicial authorities, and for the authorities included in the structure of the prosecuting magistracy of the Republic of Bulgaria, also after consulting the Prosecutor General, having the option to open new positions and to eliminate positions;
9. organise and carry out competitions for the positions of prosecutors and investigating magistrates;

10. assign to the Inspectorate with the Supreme Judicial Council to carry out inspections not included in the annual action programme thereof;
11. propose to the Plenum of the Supreme Judicial Council opinions on bills within the scope of their competence;
12. analyse and report annually the caseload level of the judicial authorities;
13. once every six months, require and summarise information from the prosecuting magistracy and the National Investigation Service on the operation thereof;
14. establish standing and ad hoc commissions to assist the activity thereof;
15. organise and coordinate the participation of prosecutors and investigating magistrates in international legal cooperation;
16. adopt rules of procedure thereof, which shall be published on the website of the Supreme Judicial Council;

The Prosecutors Chamber also elects and releases the Director of the National Investigation Service

15. Please describe briefly the competence, if any, or any role played by the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance in:
  - performance assessment of prosecutors, both in terms of substance and procedure, and including relationship/ interactions with other bodies if those are competent on performance assessment;

See p. 2 above

- disciplinary measures against prosecutors, also both in terms of substance and procedure, and including relationship/ interactions with other bodies if those are competent on disciplinary measures.

See p. 1 above

16. Do the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance have the power to consider situations of conflict within the prosecution system, for example in case of instructions to reverse the view of a prosecutor?

Yes – as long this intervention could be considered as misconduct of power or disciplinary violation.

17. Can prosecutors apply to the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance with an allegation of illegal instructions from their superior prosecutors or any other actors, both from within and outside of the prosecution system?

Yes.

18. Please describe briefly the decision-making process of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance, including any aspects related to voting rights of members (for example, whether all members have the same right to vote), and applicable procedures and thresholds for a decision to be adopted.

The members have equal rights when voting.  
Some decisions require **special (qualified) majority**.

For instance the decisions of the **Plenum of the Supreme Judicial Council** to terminate the mandate of an elective member of the Council or to propose to the President for appointment or relief the Chairperson of the Supreme Court of Cassation, the Chairperson of the Supreme Administrative Court and the Prosecutor General shall be adopted by a majority of not less than seventeen votes. The rest of the decisions shall be adopted by a majority of more than one-half of the members present. Voting shall always be by open ballot.

The decisions of the **Prosecutors Chamber** to appoint, promote, transfer and release from office the prosecutors and investigating magistrates or to impose the disciplinary sanctions shall be adopted by a majority of not less than six votes. The rest of the decisions shall be adopted by a majority of more than one-half of the members present, Where the required has not voted in favour of a decision, a decision on rejection shall be presumed, and the said decision shall be appealable according. Voting shall always be by open ballot.

19. What is the legal force of the final decisions taken by the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance? Are such decisions of only a consultative nature, not being legally obligatory, or are they of a binding nature, being legally obligatory/mandatory, or is there a mixture depending on the nature of a decision? The decision of the SJC and the Prosecutors Chamber are legally binding. The interested parties may challenge the decisions of the Supreme Judicial Council within 14 days of their communication. An appeal will not stop the enforcement of the decision, unless the court decrees otherwise

20. Are the final decisions taken by the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance subject to judicial review by a court?

Yes – by all means – especially if the decision concerns matters described in p.1-4 in the answer of Question N14. The competent court is the Supreme Administrative Court.

21. Which mechanisms ensure the independent functioning of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance?

- the regulation at the highest possible normative level - in the Constitution from 1991 (Chapter VI). The detailed regulation is in the law adopted by the Parliament - Judiciary System Act. (Promulgated, SG No. 64/7.08.2007)
- the judiciary budget - autonomous budget
- the procedure for the election of the members
- the judicial review of the decisions of the PC by a competent court - the Supreme Administrative Court.

22. Are there any other institutions outside of the prosecution system which have a role with respect to the functioning and decision-making process of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance?

No – the short answer.

But the process cannot be considered on its own, with a view to the existence of a quota from the National Assembly.

23. How is the transparency of the work of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance guaranteed:

- are they accountable to the public through widely disseminated reports and information?

**The Plenum of the Supreme Judicial Council is bound by law to:**

✓ prepare and lay before the National Assembly an annual report on the activity thereof together with the annual report on the activity of the Inspectorate with the Supreme Judicial Council and with the annual reports of the Supreme Court of Cassation, the Supreme Administrative Court and of the Prosecutor General]

✓ prepare and make public an annual report on the independence and transparency of the operation of the judicial authorities and of its own activity, which shall be submitted to public consultation;

- do they have publicly accessible websites providing essential information on their functioning and decision-making?

Yes

- any other measures for transparency? (i.e. public briefings, press releases etc.)

Yes

## Czech Republic / République tchèque

### I. General questions

1. Is there a council of prosecutors and/or any other bodies dealing with prosecutorial self-governance in your country? If yes, what is the exact title/denomination of such body or bodies, if several? (i.e. Council of Prosecutors or Prosecutorial Council, Conference/Congress of Prosecutors, Qualification and Disciplinary Commission of Prosecutors etc.) Is there a professional association of prosecutors dealing with prosecutorial self-governance in any way?

NO. The Czech Republic does not have any Council of prosecutors and/or any other bodies dealing with prosecutorial self-governance.

There is no self-governing body in the Czech Republic common to the courts and the prosecutors. Neither does the Constitution provide for such a body. The Ministry of Justice is the main authority for the administration of justice, despite proposals to establish a Supreme Council of the Judiciary for the purpose of greater independence from other state powers. The establishment of this self-governance council has been called for by the Judicial Union of the Czech Republic and the Czech branch of Transparency International.

In the Czech Republic, a self-governance in the judiciary is exercised by judicial Councils at courts. Such councils do not have any real powers and are primarily an advisory body. The president of a court is not bound by the opinion of the judicial council. Judicial Councils also express their opinion on the staffing of courts and on fundamental issues of judicial administration. An important issue is the participation of the councils in drawing up the work schedule, which is drawn up for each year.

There is a Union of Public Prosecutors. The Union of Public Prosecutors of the Czech Republic is a voluntary, professional, and non-political association of public prosecutors and prosecutor trainees. The Union of Public Prosecutors is not responsible for the administration of the public prosecution service.

The aim of the Union of Public Prosecutors is to assist in completing tasks of the public prosecution service. The Union promotes the independent and impartial position of a public prosecutor. The Union also contributes to the professional education and development of prosecutors, prosecutor trainees and legal assistants, and seeks for gradual introduction and strengthening of the self-governing elements in the administration of the public prosecution.

The Public Prosecutor's Office Act imposes the cooperation of the prosecutor's office administration bodies with voluntary organisations of prosecutors. The Union of Public Prosecutors comments on some issues, such as draft laws concerning the competence of the procuracy, organisational issues or the status of prosecutors.

Although the nature of the Judicial Councils and the Union of Prosecutors differs considerably, a common thread of self-government can be seen in them.

Generally speaking, the Union of Public Prosecutors shows signs of self-government.

2. If so, when was a council of prosecutors and/or any other bodies dealing with prosecutorial self-governance introduced in the prosecutorial system in your country? Please describe briefly, if applicable, any significant reforms undertaken since the establishment, aimed at strengthening effectiveness, independence and accountability of such body(ies).
3. If such a council of prosecutors and/or any other bodies dealing with prosecutorial self-governance exist in your country, are they only for prosecutors or for other professionals of justice? Are such bodies separate or do they operate within a body common to judges and prosecutors?
4. At what legislative or normative level is the status of a council of prosecutors and/or any other bodies dealing with prosecutorial self-governance established and how is its/their functioning regulated? (e.g. through Constitution, laws, by-laws or other regulations).
5. Are such council of prosecutors and/or any other bodies dealing with prosecutorial self-governance provided with the required resources (human, financial and other) to function properly?
6. If in your country there is no council of prosecutors and/or any other bodies dealing with prosecutorial self-governance, is there any discussion to introduce such a body(ies)? If so, what are the arguments in favour and against its/their introduction?

Discussions on the reform of the administration of justice are ongoing in the Czech Republic. Proposals concerns establishment of a Supreme Council of the Judiciary for the purpose of greater independence from other state powers. The establishment of this self-governing council is called for by the Czech Judicial Union and the Czech branch of Transparency International. There is also an effort to strengthen the judicial councils at each court. However, it is probably not possible to consider the establishment of councils of prosecutors without a reform of the judiciary, which should consist in the introduction of the so-called judicial self-government, i.e., the establishment of a Supreme Council of the Judiciary at the national level.

Thus, the creation of prosecutorial councils should go hand in hand with the establishment of judicial councils.

I believe this should be emphasised because without harmonising of the influence of both councils, their common purpose and importance would be diminished.

The function of the Prosecutorial Council would be to ensure the independence of public prosecution and public prosecutors. It should also oversee that prosecutor's work is performed in accordance with the principle of legality.

## **II. Composition of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance and status of its/their members**

7. Please describe the composition of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance in your country. Please indicate:
    - How many of the members are prosecutors?
    - How many, if any, are non-prosecutor members and who are they? (e.g. scholars, judges, lawyers, civil society, others)
  8. Please describe the procedure for the election or appointment of the members of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance (including both prosecutor members and non-prosecutor members), the duration of their mandate and the dismissal procedure, including, if applicable, the grounds for early termination of mandate or dismissal of members.
  9. Are there ex officio members in the composition? (i.e. those who are members automatically due to the position they occupy, for example, the Prosecutor General, the Minister of Justice or others)
  10. Are there rules or procedures to prevent possible conflict of interest situations during the process of election or appointment of the members of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance? Is there an incompatibility between certain functions in the prosecution service and membership in a council of prosecutors?
  11. Are there any specific requirements for prosecutor members in order to ensure a proportional and fair representation of all levels of the prosecution system?
  12. Please describe briefly the election/appointment process of the president and vice-presidents, if applicable, of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance, including dismissal processes and grounds.
- III. Competence and functioning of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance**
13. In your country, do the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance have exclusive power to exercise the administration of the prosecution service or whether this power is divided with the executive bodies (those outside of the prosecution service, e.g. the ministry of justice)?
  14. Please describe briefly the functions and powers of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance, in particular as regards the recruitment, promotion, transfer, evaluation, discipline or other aspects regarding prosecutors, and budgetary aspects (including the development of the prosecution service's budget, systematisation of the legislation on the activities of the prosecution



service, approval of the prosecution service's task plans and annual reports, adoption of the code of ethics for prosecutors etc.).

15. Please describe briefly the competence, if any, or any role played by the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance in:
  - performance assessment of prosecutors, both in terms of substance and procedure, and including relationship/ interactions with other bodies if those are competent on performance assessment;
  - disciplinary measures against prosecutors, also both in terms of substance and procedure, and including relationship/ interactions with other bodies if those are competent on disciplinary measures.
16. Do the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance have the power to consider situations of conflict within the prosecution system, for example in case of instructions to reverse the view of a prosecutor?
17. Can prosecutors apply to the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance with an allegation of illegal instructions from their superior prosecutors or any other actors, both from within and outside of the prosecution system?
18. Please describe briefly the decision-making process of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance, including any aspects related to voting rights of members (for example, whether all members have the same right to vote), and applicable procedures and thresholds for a decision to be adopted.
19. What is the legal force of the final decisions taken by the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance? Are such decisions of only a consultative nature, not being legally obligatory, or are they of a binding nature, being legally obligatory/mandatory, or is there a mixture depending on the nature of a decision?
20. Are the final decisions taken by the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance subject to judicial review by a court?
21. Which mechanisms ensure the independent functioning of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance?
22. Are there any other institutions outside of the prosecution system which have a role with respect to the functioning and decision-making process of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance?
23. How is the transparency of the work of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance guaranteed:

- are they accountable to the public through widely disseminated reports and information?
- do they have publicly accessible websites providing essential information on their functioning and decision-making?

any other measures for transparency? (i.e. public briefings, press releases etc.)

## Denmark / Danmark

### I. General questions

1. Is there a council of prosecutors and/or any other bodies dealing with prosecutorial self-governance in your country? If yes, what is the exact title/denomination of such body or bodies, if several? (i.e. Council of Prosecutors or Prosecutorial Council, Conference/Congress of Prosecutors, Qualification and Disciplinary Commission of Prosecutors etc.) Is there a professional association of prosecutors dealing with prosecutorial self-governance in any way?

No. In Denmark, the Prosecution Service is formally subordinated to the Ministry of Justice.

The daily functioning of the Prosecution Service as such, however, is under the responsibility of the Office of the Director of Public Prosecutions.

2. If so, when was a council of prosecutors and/or any other bodies dealing with prosecutorial self-governance introduced in the prosecutorial system in your country? Please describe briefly, if applicable, any significant reforms undertaken since the establishment, aimed at strengthening effectiveness, independence and accountability of such body(ies).
3. If such a council of prosecutors and/or any other bodies dealing with prosecutorial self-governance exist in your country, are they only for prosecutors or for other professionals of justice? Are such bodies separate or do they operate within a body common to judges and prosecutors?
4. At what legislative or normative level is the status of a council of prosecutors and/or any other bodies dealing with prosecutorial self-governance established and how is its/their functioning regulated? (e.g. through Constitution, laws, by-laws or other regulations).
5. Are such council of prosecutors and/or any other bodies dealing with prosecutorial self-governance provided with the required resources (human, financial and other) to function properly?
6. If in your country there is no council of prosecutors and/or any other bodies dealing with prosecutorial self-governance, is there any discussion to introduce such a body(ies)? If so, what are the arguments in favour and against its/their introduction?

The status of the Danish Prosecution Service builds on a long, legal tradition. It has not been discussed to introduce such a council or a self-governing body.

## **II. Composition of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance and status of its/their members**

7. Please describe the composition of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance in your country. Please indicate:
  - How many of the members are prosecutors?
  - How many, if any, are non-prosecutor members and who are they? (e.g. scholars, judges, lawyers, civil society, others)
8. Please describe the procedure for the election or appointment of the members of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance (including both prosecutor members and non-prosecutor members), the duration of their mandate and the dismissal procedure, including, if applicable, the grounds for early termination of mandate or dismissal of members.
9. Are there *ex officio* members in the composition? (i.e. those who are members automatically due to the position they occupy, for example, the Prosecutor General, the Minister of Justice or others)
10. Are there rules or procedures to prevent possible conflict of interest situations during the process of election or appointment of the members of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance? Is there an incompatibility between certain functions in the prosecution service and membership in a council of prosecutors?
11. Are there any specific requirements for prosecutor members in order to ensure a proportional and fair representation of all levels of the prosecution system?
12. Please describe briefly the election/appointment process of the president and vice-presidents, if applicable, of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance, including dismissal processes and grounds.

## **III. Competence and functioning of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance**

13. In your country, do the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance have exclusive power to exercise the administration of the prosecution service or whether this power is divided with the executive bodies (those outside of the prosecution service, e.g. the ministry of justice)?
14. Please describe briefly the functions and powers of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance, in particular as regards the recruitment, promotion, transfer, evaluation, discipline or other aspects regarding

prosecutors, and budgetary aspects (including the development of the prosecution service's budget, systematisation of the legislation on the activities of the prosecution service, approval of the prosecution service's task plans and annual reports, adoption of the code of ethics for prosecutors etc.).

15. Please describe briefly the competence, if any, or any role played by the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance in:
  - performance assessment of prosecutors, both in terms of substance and procedure, and including relationship/ interactions with other bodies if those are competent on performance assessment;
  - disciplinary measures against prosecutors, also both in terms of substance and procedure, and including relationship/ interactions with other bodies if those are competent on disciplinary measures.
16. Do the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance have the power to consider situations of conflict within the prosecution system, for example in case of instructions to reverse the view of a prosecutor?
17. Can prosecutors apply to the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance with an allegation of illegal instructions from their superior prosecutors or any other actors, both from within and outside of the prosecution system?
18. Please describe briefly the decision-making process of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance, including any aspects related to voting rights of members (for example, whether all members have the same right to vote), and applicable procedures and thresholds for a decision to be adopted.
19. What is the legal force of the final decisions taken by the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance? Are such decisions of only a consultative nature, not being legally obligatory, or are they of a binding nature, being legally obligatory/mandatory, or is there a mixture depending on the nature of a decision?
20. Are the final decisions taken by the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance subject to judicial review by a court?
21. Which mechanisms ensure the independent functioning of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance?
22. Are there any other institutions outside of the prosecution system which have a role with respect to the functioning and decision-making process of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance?

23. How is the transparency of the work of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance guaranteed:
- are they accountable to the public through widely disseminated reports and information?
  - do they have publicly accessible websites providing essential information on their functioning and decision-making?
  - any other measures for transparency? (i.e. public briefings, press releases etc.)

## Finland / Finlande

### I. General questions

1. Is there a council of prosecutors and/or any other bodies dealing with prosecutorial self-governance in your country? If yes, what is the exact title/denomination of such body or bodies, if several? (i.e. Council of Prosecutors or Prosecutorial Council, Conference/Congress of Prosecutors, Qualification and Disciplinary Commission of Prosecutors etc.) Is there a professional association of prosecutors dealing with prosecutorial self-governance in any way?
  - no council of prosecutors
  - association of prosecutors deals mostly with trade union related issues
2. If so, when was a council of prosecutors and/or any other bodies dealing with prosecutorial self-governance introduced in the prosecutorial system in your country? Please describe briefly, if applicable, any significant reforms undertaken since the establishment, aimed at strengthening effectiveness, independence and accountability of such body(ies).
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3. If such a council of prosecutors and/or any other bodies dealing with prosecutorial self-governance exist in your country, are they only for prosecutors or for other professionals of justice? Are such bodies separate or do they operate within a body common to judges and prosecutors?
4. At what legislative or normative level is the status of a council of prosecutors and/or any other bodies dealing with prosecutorial self-governance established and how is its/their functioning regulated? (e.g. through Constitution, laws, by-laws or other regulations).
5. Are such council of prosecutors and/or any other bodies dealing with prosecutorial self-governance provided with the required resources (human, financial and other) to function properly?
6. If in your country there is no council of prosecutors and/or any other bodies dealing with prosecutorial self-governance, is there any discussion to introduce such a body(ies)? If so, what are the arguments in favour and against its/their introduction?

no discussion so far. The independence of prosecutors is guaranteed in law. There is at the moment however discussion whether it should be in the constitution, as we have seen "reforms"

in some countries reducing or annulling the independence and impartiality of the prosecutors. This discussion is only starting now.

## **II. Composition of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance and status of its/their members**

7. Please describe the composition of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance in your country. Please indicate:
  - How many of the members are prosecutors?
  - How many, if any, are non-prosecutor members and who are they? (e.g. scholars, judges, lawyers, civil society, others)
8. Please describe the procedure for the election or appointment of the members of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance (including both prosecutor members and non-prosecutor members), the duration of their mandate and the dismissal procedure, including, if applicable, the grounds for early termination of mandate or dismissal of members.
9. Are there ex officio members in the composition? (i.e. those who are members automatically due to the position they occupy, for example, the Prosecutor General, the Minister of Justice or others)
10. Are there rules or procedures to prevent possible conflict of interest situations during the process of election or appointment of the members of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance? Is there an incompatibility between certain functions in the prosecution service and membership in a council of prosecutors?
11. Are there any specific requirements for prosecutor members in order to ensure a proportional and fair representation of all levels of the prosecution system?
12. Please describe briefly the election/appointment process of the president and vice-presidents, if applicable, of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance, including dismissal processes and grounds.



### **III. Competence and functioning of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance**

13. In your country, do the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance have exclusive power to exercise the administration of the prosecution service or whether this power is divided with the executive bodies (those outside of the prosecution service, e.g. the ministry of justice)?

as said before there are no such councils etc, the administration of prosecution is in the hands of prosecutor general. Prosecutor generals so far have had no e.g. political background or interests. The role of Ministry of Justice is budgetary. Prosecutor General is nominated by President of the Republic and state prosecutors by the government. Government's decisions have only once deviated from the suggestion of Prosecution Authority.

14. Please describe briefly the functions and powers of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance, in particular as regards the recruitment, promotion, transfer, evaluation, discipline or other aspects regarding prosecutors, and budgetary aspects (including the development of the prosecution service's budget, systematisation of the legislation on the activities of the prosecution service, approval of the prosecution service's task plans and annual reports, adoption of the code of ethics for prosecutors etc.).

- recruitment, promotion, evaluation of prosecutors and transfers are in the hands of PG and PGO with the exception of recruitment of by Chief prosecutors of prosecution districts. Decision is made in the Prosecution Authority. Disciplinary power are in the hands of the PG, the Chancellor of Justice or the Parliamentary Ombudsman.
- PG has issued code of ethics for prosecutors
- Role of MoJ: The Prosecution Service concludes an annual performance agreement with the Ministry of Justice. The agreement sets out the basic tasks and objectives for the next four-year planning period, the effectiveness and efficiency of the activities, as well as human and financial resources. The Prosecution Service will submit its proposal for the budget for the following year to the Ministry of Justice in the spring. The State budget will be adopted by Parliament.

15. Please describe briefly the competence, if any, or any role played by the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance in:

- performance assessment of prosecutors, both in terms of substance and procedure, and including relationship/ interactions with other bodies if those are competent on performance assessment;
- disciplinary measures against prosecutors, also both in terms of substance and procedure, and including relationship/ interactions with other bodies if those are competent on disciplinary measures.

16. Do the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance have the power to consider situations of conflict within the prosecution system, for example in case of instructions to reverse the view of a prosecutor?

PG has the possibility to take over an entire case of a subordinate prosecutor and either do the prosecution himself or hand it over to another prosecutor. Nobody has the power to tell/order the prosecutor how to prosecute or which measures take etc. Some cases need the approval of PG, e.g. cases concerning freedom of speech in mass or social media and prosecuting a crime that has been committed outside of Finland

17. Can prosecutors apply to the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance with an allegation of illegal instructions from their superior prosecutors or any other actors, both from within and outside of the prosecution system?

they could turn to PG, Chancellor of Justice or Parliamentary Ombudsman. There is also the possibility to take the case to court.

18. Please describe briefly the decision-making process of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance, including any aspects related to voting rights of members (for example, whether all members have the same right to vote), and applicable procedures and thresholds for a decision to be adopted.

19. What is the legal force of the final decisions taken by the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance? Are such decisions of only a consultative nature, not being legally obligatory, or are they of a binding nature, being legally obligatory/mandatory, or is there a mixture depending on the nature of a decision?

20. Are the final decisions taken by the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance subject to judicial review by a court?

21. Which mechanisms ensure the independent functioning of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance?

22. Are there any other institutions outside of the prosecution system which have a role with respect to the functioning and decision-making process of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance?

23. How is the transparency of the work of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance guaranteed:

- are they accountable to the public through widely disseminated reports and information?

- do they have publicly accessible websites providing essential information on their functioning and decision-making?
- any other measures for transparency? (i.e. public briefings, press releases etc.)

## Georgia / Géorgie

### I. General questions

1. Is there a council of prosecutors and/or any other bodies dealing with prosecutorial self-governance in your country? If yes, what is the exact title/denomination of such body or bodies, if several? (i.e. Council of Prosecutors or Prosecutorial Council, Conference/Congress of Prosecutors, Qualification and Disciplinary Commission of Prosecutors etc.) Is there a professional association of prosecutors dealing with prosecutorial self-governance in any way?

Reply of the Prosecution Service of Georgia (PSG): Georgia has in place the following prosecutorial governance bodies:

- Conference of prosecutors
- Prosecutorial Council
- Career Management, Ethics and Incentives Council
- Strategic Development and Criminal Justice Policy Council
- Grading Council
- Internship commission

There is no other professional association of prosecutors dealing with prosecutorial self-governance.

2. If so, when was a council of prosecutors and/or any other bodies dealing with prosecutorial self-governance introduced in the prosecutorial system in your country? Please describe briefly, if applicable, any significant reforms undertaken since the establishment, aimed at strengthening effectiveness, independence and accountability of such body(ies).

PSG reply:

Georgia established the **Conference of Prosecutors** and the **Prosecutorial Council** in September 2015, through 2015 Prosecution Service reform.<sup>7</sup> There has been no analogue of such bodies before. The reform aimed at strengthening the independence and effectiveness of the Prosecution Service.

The 2018 Prosecution Service reform upgraded the status of the Prosecutorial Council and provided additional guarantees to its independence by enshrining it in the Constitution of Georgia. According to the Constitution<sup>8</sup>, the Prosecutorial Council ensures the independence, transparency and efficiency of the Prosecution Service. Notably, this reform separated the

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<sup>7</sup> On 18 September 2015, the Parliament of Georgia adopted the amendments to the Law of Georgia on Prosecution Service, which entered into force on 28 September 2015.

<sup>8</sup> Article 65 §3.

Prosecution Service from the Ministry of Justice and established it as a distinct branch of power outside of any institution.

In addition, the 2018 Prosecution Service reform abolished the *ex officio* membership and presidency of the Minister of Justice in the Prosecutorial Council. It aimed at reducing the influence of the government/parliamentary majority on the Council.

The **Career Management, Ethics and Incentives Council** is operational since April 2019, the **Strategic Development and Criminal Justice Policy Council** - since March 2020, the **Grading Council** – since December 2020 and the **Internship Commission** – since January 2022.

The 2018 Organic Law of Georgia on Prosecution Service provides for the legislative bases for these bodies.

3. If such a council of prosecutors and/or any other bodies dealing with prosecutorial self-governance exist in your country, are they only for prosecutors or for other professionals of justice? Are such bodies separate or do they operate within a body common to judges and prosecutors?

**PSG reply:** The Prosecutorial Council and other collegial bodies of the PSG are dealing with prosecutors and PSG investigators. There are separate governance bodies for judges.

4. At what legislative or normative level is the status of a council of prosecutors and/or any other bodies dealing with prosecutorial self-governance established and how is its/their functioning regulated? (e.g. through Constitution, laws, by-laws or other regulations).

PSG reply:

The Constitution of Georgia defines the status and mandate of the Prosecutorial Council. The Organic Law of Georgia on Prosecution Service and the Charter of the Prosecutorial Council provide for the rules and procedures of its operation.

The Organic Law of Georgia on Prosecution Service defines the status and mandate of the Conference of Prosecutors, the Career Management, Ethics and Incentives Council and the Strategic Development and Criminal Justice Policy Council. The charter of the Conference of Prosecutors provides for the rules and procedures of its operation. The by-laws issued by the Prosecutor General of Georgia define the rules and procedures regarding the operation of the Career Management, Ethics and Incentives Council, the Strategic Development and Criminal Justice Policy Council, the Grading Council and the Internship Commission.

5. Are such council of prosecutors and/or any other bodies dealing with prosecutorial self-governance provided with the required resources (human, financial and other) to function properly?

PSG reply: The PSG provides the funding and premises to all prosecutorial collegial bodies. They are sufficient for their proper functioning.

6. If in your country there is no council of prosecutors and/or any other bodies dealing with prosecutorial self-governance, is there any discussion to introduce such a body(ies)? If so, what are the arguments in favour and against its/their introduction?

PSG reply: This question is not applicable to Georgia

## **II. Composition of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance and status of its/their members**

7. Please describe the composition of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance in your country. Please indicate:
- How many of the members are prosecutors?
  - How many, if any, are non-prosecutor members and who are they? (e.g. scholars, judges, lawyers, civil society, others)

PSG reply:

The Prosecutorial Council is composed of 15 members, which includes 8 prosecutors and PSG investigators elected by the Conference of Prosecutors and 7 non-prosecutor members, elected by the Parliament (5 persons) and the High Council of Judges (2 persons). The non-prosecutor members are 2 judges, 2 Members of Parliament, 2 persons from the academia, bar association or/and non-commercial legal entities of Georgia and one person nominated by the Minister of Justice.

The Internship Commission is in charge of selection and recruitment of new prosecutors through internship. It has 20 prosecutor members, out of which 8 persons are elected by the Conference of Prosecutors.

The Career Management, Ethics and Incentives Council, the Strategic Development and Criminal Justice Policy Council and the Grading Council are composed of 15 prosecutor members with voting rights. Out of them, slight majority, 8 members, are the persons elected by the Conference of Prosecutors. The guarantee for the membership of 8 elected persons to the Career Management, Ethics and Incentives Council and the Strategic Development and Criminal Justice Policy Council is provided for by the Organic Law of Georgia on Prosecution Service.

8. Please describe the procedure for the election or appointment of the members of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance (including both prosecutor members and non-prosecutor members), the duration of their mandate and the dismissal procedure, including, if applicable, the grounds for early termination of mandate or dismissal of members.

## **PSG reply:**

### *Conference of Prosecutors*

All prosecutors and the PSG investigators are the members of the Conference of Prosecutors.

### *Prosecutorial Council*

Eight members of the Prosecutorial Council, who are elected by the Conference of Prosecutors, may be prosecutors/investigators of the PSG, who have at least five years' experience of working as a lawyer, including at least three years' experience of working as a prosecutor or as an investigator of the PSG.

Two members of the Prosecutorial Council, who are elected by the High Council of Justice of Georgia, should be the judges of the common courts of Georgia having at least five years' experience of working as a judge.

One member of the Prosecutorial Council, who is selected by the Parliament on the basis of a recommendation from the Minister of Justice of Georgia, should have a higher education in law with a master's or equal academic degree with at least five years' experience of working as a lawyer;

Two members of the Prosecutorial Council, who are selected by the Parliament of Georgia, should be selected from among the professors and scholars working in higher education institutions of Georgia, members of the Bar Association of Georgia and/or the persons nominated by non-entrepreneurial (non-commercial) legal entities of Georgia, upon recommendation of a collegial management body of the organisation concerned.

There are no specific qualification requirements for 2 MPs, who are elected by the Parliament.

The term of office of the members of the Prosecutorial Council is four years. The same person cannot be elected for two consecutive terms. The grounds for the early termination of the powers of a member of the Prosecutorial Council are as follows:

- personal statement;
- recognition by a court as a beneficiary of support, unless otherwise determined by a court decision, recognition as a person with limited legal capacity, or as missing, or as dead;
- criminal conviction;
- occupation of a position of a public servant;
- the loss of the citizenship of Georgia;
- death.

### *Other PSG collegial bodies*

Eight elected members of the Prosecutorial Council by the Conference of Prosecutors are also the members of other PSG collegial bodies.

9. Are there ex officio members in the composition? (i.e. those who are members automatically due to the position they occupy, for example, the Prosecutor General, the Minister of Justice or others)

PSG reply: All prosecutors and the PSG investigators are the members of the Conference of Prosecutors. The Prosecutorial Council does not have ex officio members. All other PSG collegial bodies are composed of prosecutor and investigator members only. These bodies include 8 elected prosecutor/investigator members of the Prosecutorial Council and officials of the Prosecution Service, such as the First Deputy and the Deputies of the Prosecutor General, the Head of the General Inspectorate, the Head of the Human Resources Management and Development Department, and the Head of the Department for Supervision over Prosecutorial Activities and Strategic Development.

10. Are there rules or procedures to prevent possible conflict of interest situations during the process of election or appointment of the members of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance? Is there an incompatibility between certain functions in the prosecution service and membership in a council of prosecutors?

PSG reply: The Law of Georgia on Conflict of Interests and Corruption in Public Service and the Organic Law of Georgia on Prosecution Service provide the applicable conflicts of interest and accountability rules with respect to the prosecutor members and other public official members of the Prosecutorial Council, the other PSG councils and the Internship Commission.

The rules stipulate that a public servant, whose duty within a collegial body is to make decisions with respect to which he/she has interests, shall inform the other members of the body of this fact and shall refuse to participate in the decision-making. The members of the Prosecutorial Council shall not be the Prosecutor General, the First Deputy Prosecutor General, the Deputy Prosecutor General, the Head of the department of the Office of the Prosecutor General, the Prosecutor of the Autonomous Republic of Abkhazia, the Prosecutor of the Autonomous Republic of Adjara, the Prosecutor of Tbilisi, or a Regional Prosecutor.

The Prosecutorial Council shall not interfere with the exercise of investigative and prosecutorial powers by the Prosecution Service.

The position of prosecutor and PSG investigator is incompatible with other positions within state institutions or local self-government bodies, as well as with any entrepreneurial or other paid positions other than scientific, creative and pedagogical activities. They shall not be the members of a political association or be engaged in political activities.



11. Are there any specific requirements for prosecutor members in order to ensure a proportional and fair representation of all levels of the prosecution system?

PSG reply: All prosecutors and the PSG investigators are the members of the Conference of Prosecutors. This body elects prosecutor members in the Prosecutorial Council. The Organic Law of Georgia on Prosecution Service ensures proportional and fair representation of all levels of prosecution system in the Prosecutorial Council. In particular, the Conference of Prosecutors elects its investigator and prosecutor members according to the following quotas:

- 3 members from the Office of the Prosecutor General of Georgia;
- 1 member from the Prosecutor's Offices of the Autonomous Republics of Abkhazia and Adjara;
- 3 members from the District Prosecutor's Offices of east Georgia;
- 1 member from the District's Prosecutor's Offices of west Georgia.

The elected investigator and prosecutor members of the Prosecutorial Council are also the members of other PSG collegial bodies.

12. Please describe briefly the election/appointment process of the president and vice-presidents, if applicable, of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance, including dismissal processes and grounds.

PSG reply:

The Prosecutorial Council elects its chairperson from its members by a secret ballot, by a majority of votes of the members who are present at the session. The term of office of the Chairperson is two years. In case of splitting the votes, the voting continues until a candidate with more votes is elected.

The Prosecutor General is the chair of the Conference of Prosecutors, the Career Management, Ethics and Incentives Council, the Strategic Development and Criminal Justice Policy Council and the Grading Council. The Prosecutor General appoints the chair of the Internship Commission.

### **III. Competence and functioning of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance**

13. In your country, do the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance have exclusive power to exercise the administration of the prosecution service or whether this power is divided with the executive bodies (those outside of the prosecution service, e.g. the ministry of justice)?

PSG reply: The management and the collegial bodies of the PSG are exclusively in charge of managing the Prosecution Service. No outside power is involved in this process.

14. Please describe briefly the functions and powers of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance, in particular as regards the recruitment, promotion, transfer, evaluation, discipline or other aspects regarding prosecutors, and budgetary aspects (including the development of the prosecution service's budget, systematisation of the legislation on the activities of the prosecution service, approval of the prosecution service's task plans and annual reports, adoption of the code of ethics for prosecutors etc.).

PSG reply:

The **Conference of Prosecutors** is a general meeting of all prosecutors and investigators of the PSG. The main function of the Conference is to elect 8 prosecutor and investigator members of the Prosecutorial Council.

**The Prosecutorial Council** is competent to select a candidate for the Prosecutor General. It has an authority to conduct disciplinary inquiry against the First Deputy Prosecutor General and Deputies of the Prosecutor General and decide on the issue of applying a disciplinary sanction or prematurely revoking it in relation to those officials and the members of the Prosecutorial Council elected by the Conference of Prosecutors. The mandate of the Prosecutorial Council also includes hearing a report of the Prosecutor General, First Deputy Prosecutor General or Deputy Prosecutor General on the activities of the Prosecution Service (except for individual criminal cases), giving recommendations to the Prosecutor General and deciding the matters of early termination of membership of its members.

**The Career Management, Ethics and Incentives Council** is competent to conduct reviews and issue recommendations for the Prosecutor General on the matters of career management, incentives and discipline of prosecutors. The Council plays an important role in promotion, evaluation and discipline of prosecutors. The Prosecutor General may disagree with the recommendation of the Council, but he/she is required to substantiate the disagreement.

In exceptional cases (for high-level performance of duties and/or achieving best results), the Prosecutor General is authorized to decide on the promotion of a prosecutor without a recommendation of the Council.

The Prosecutor General is competent to adopt the Code of Ethics. The Career Management, Ethics and Incentives Council proposes amendments to the Code.

**The Strategic Development and Criminal Justice Policy Council** is in charge of developing the PSG Strategy and Action Plan and monitoring their implementation.

**The Grading Council** is responsible for deliberating and recommending the Prosecutor General on the matters of assigning grades to prosecutors.

**The Internship Commission** is in charge of selection and recruitment of new prosecutors through internship.

15. Please describe briefly the competence, if any, or any role played by the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance in:

- performance assessment of prosecutors, both in terms of substance and procedure, and including relationship/ interactions with other bodies if those are competent on performance assessment;
- disciplinary measures against prosecutors, also both in terms of substance and procedure, and including relationship/ interactions with other bodies if those are competent on disciplinary measures.

PSG reply:

*Regarding performance assessment of prosecutors*

The PSG specialised department<sup>9</sup> carries out the performance evaluation of prosecutors. If a prosecutor is not satisfied with the results of the assessment, he/she has the right to appeal it to the Complaints Council. If the decision of this body is not satisfactory, a prosecutor may appeal it to the Career Management, Ethics and Incentives Council. The decision of the Council can be appealed in the court.

*Regarding disciplinary measures*

The Career Management, Ethics and Incentives Council is competent to conduct disciplinary hearing against prosecutor. The concerned prosecutor has a right to have a lawyer, attend the hearing and give an explanation.

The Council decides by the majority of votes whether person has committed the violation. If he/she was found guilty, the Council also selects the applicable sanction. The decision of the Council is recommendatory for the Prosecutor General, who is competent to formally find a person guilty in the disciplinary violation and apply sanction. The Prosecutor General might disagree with the recommendation and make a different decision. However, in this case, he/she is required to provide reasons.

The Prosecutorial Council has the authority to conduct disciplinary hearing and impose sanction against its investigator and prosecutor members, the First Deputy Prosecutor General and Deputies of the Prosecutor General. All of them have a right to have a lawyer, attend the hearing and give an explanation. The Prosecutorial Council needs votes of not less than 2/3 of its full membership to apply a disciplinary penalty.

The concerned prosecutor/investigator has a right to appeal to the court the decisions delivered through both proceedings.

16. 16. Do the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance have the power to consider situations of conflict within the prosecution system, for example in case of instructions to reverse the view of a prosecutor?

PSG reply: The legislation prohibits giving unlawful instructions to prosecutors. If prosecutor believes that he/she was given an unlawful instruction by a superior prosecutor, he/she has a

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Department for Supervision over the Prosecutorial Activities and Strategic Development at the Office of the Prosecutor General of Georgia.

right to report it to the PSG General Inspectorate, Prosecutorial Council or Parliament, depending on the rank of an implicated superior prosecutor. In particular, if the report is about the Prosecutor General, it should be addressed to the Parliament, if it is about the deputies of the Prosecutor General – to the Prosecutorial Council and if it is about any other superior prosecutor – to the PSG General Inspectorate. The Career Management, Ethics and Incentives Council is competent to deliberate about the latter.

If a prosecutor believes that due to a non-compliance with an instruction of a superior, he/she was unjustifiably imposed a disciplinary sanction, he/she has a right to appeal the decision on imposing disciplinary sanction to the court.

17. Can prosecutors apply to the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance with an allegation of illegal instructions from their superior prosecutors or any other actors, both from within and outside of the prosecution system?

PSG reply: The answer is yes. Please see the answer to Question 16.

18. Please describe briefly the decision-making process of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance, including any aspects related to voting rights of members (for example, whether all members have the same right to vote), and applicable procedures and thresholds for a decision to be adopted.

PSG reply:

All prosecutors and the PSG investigators are the members of the **Conference of Prosecutors**. The Conference of Prosecutors may conduct its meeting, if more than half of prosecutors and PSG investigators attend. It elects the investigator and prosecutor members of the Prosecutorial Council through closed ballot by a majority of the prosecutors and PSG investigators present.

The **Prosecutorial Council** has 15 members. It has an authority to conduct a meeting if the half of its full composition is present. The Prosecutorial Council needs votes of not less than 2/3 of its full membership for electing the candidate for the Prosecutor General. The same number of votes is necessary for the Prosecutorial Council to impose disciplinary sanctions against the First Deputy Prosecutor General, Deputy Prosecutor General and elected prosecutor/investigator members of the Prosecutorial Council. For any other decision, the Prosecutorial Council needs the support of half of its members present at the meeting. Every member of the Council has the right to vote.

The **Career Management, Ethics and Incentives Council**, the **Strategic Development and Criminal Justice Policy Council** and the **Grading Council** have the authority to conduct meetings if more than half of their full composition is present. They make decisions by open ballot by a majority of the members who are present at a session. Every member can participate in voting. They also have the right to abstain from voting. In case of splitting vote, it is recorded in the minute of the session and submitted to the Prosecutor General.

The **Internship Commission** has the right to decide on issues under its competence, if more than half of the members of the Commission attend a meeting. The decisions are made by open

ballot, by a majority of the members present at a session. In case of splitting vote, the chairperson of the Commission has the decisive role.

19. What is the legal force of the final decisions taken by the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance? Are such decisions of only a consultative nature, not being legally obligatory, or are they of a binding nature, being legally obligatory/mandatory, or is there a mixture depending on the nature of a decision?

PSG reply: The decisions of the Conference of Prosecutors and the Prosecutorial Council are final. The decisions of an Internship Commission are of an obligatory nature.

The decisions of the Career Management, Ethics and Incentives Council, the Career Management, Ethics and Incentives Council and the Grading Council are recommendatory for the Prosecutor General. However, if he/she disagrees, there is an obligation to provide reasoning.

The above-mentioned decisions can be subject to the court review, through the appeal proceedings.

20. Are the final decisions taken by the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance subject to judicial review by a court?

PSG reply: The decisions of prosecutorial collegial bodies can be subject to judicial review in the framework of appeal procedures, if the concerned individuals initiate such procedures.

21. Which mechanisms ensure the independent functioning of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance?

PSG reply: The Constitution of Georgia guarantees the independence of the Prosecutorial Council and the Prosecution Service. The legislation authorises no one to give instructions to the members of the prosecutorial collegial bodies or otherwise influence their activities.

22. Are there any other institutions outside of the prosecution system which have a role with respect to the functioning and decision-making process of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance?

PSG reply: There are no institutions outside the PSG having the role in the functioning and decision-making process of the PSG collegial bodies.

23. How is the transparency of the work of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance guaranteed?  
- are they accountable to the public through widely disseminated reports and information?

- do they have publicly accessible websites providing essential information on their functioning and decision-making?
- any other measures for transparency? (i.e. public briefings, press releases etc.)

PSG reply: The Constitution of Georgia provides for the requirement for the transparency of the Prosecutorial Council. It stipulates that the Prosecutorial Council shall ensure the independence, transparency and efficiency of the Prosecution Service.

The Prosecutorial Council publishes information on the website.<sup>10</sup> It streams its sessions online.

The PSG publishes on the website the information on the activities of the Conference of Prosecutors, the Career Management, Ethics and Incentives Council, the Strategic Development and Criminal Justice Policy Council, the Grading Council and the Internship Commission. The information about the appointment and promotion of prosecutors is also subject to publishing.<sup>11</sup>

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<sup>10</sup> <http://pc.gov.ge/>

<sup>11</sup> <https://pog.gov.ge/>

## France

### I. Questions générales

1. Existe-t-il un Conseil de procureurs et/ou d'autres organes traitant de l'autonomie de gestion des procureurs dans votre pays ? Si oui, quel est le titre exact/la dénomination de cet organe ou de ces organes, s'il y en a plusieurs ? (par exemple, Conseil des procureurs, Conférence/Congrès des procureurs, Commission de qualification et de discipline des procureurs, etc.) Existe-t-il une association professionnelle de procureurs qui s'occupe de l'autonomie des procureurs d'une manière ou d'une autre ?

En France, **le parquet ne bénéficie pas de l'indépendance** reconnue aux juges. Il jouit d'un statut hybride ou dual, car ses membres sont des magistrats qui prennent leurs décisions en toute indépendance mais sont aussi tenus d'appliquer une politique pénale à la fois conforme aux instructions nationales du ministère de la justice et à leurs déclinaisons locales par le procureur général, même si le magistrat apporte des réponses pénales individualisées en fonction des circonstances de faits, humaines et juridiques.

Par suite, **il n'existe pas** de Conseil de procureurs et/ou d'autres organes traitant de l'autonomie de gestion des procureurs **en France**.

En revanche, et pour mémoire, le parquet français relève de deux institutions, l'une à ancrage constitutionnel (le Conseil Supérieur de la Magistrature/CSM) et la seconde à dimension associative (la Conférence nationale des Procureurs de la République/CNPR).

#### **1/ Le Conseil Supérieur de la Magistrature (CSM)**

Le Conseil supérieur de la magistrature (CSM) est une institution originale dont le statut résulte de l'article 65 de la Constitution de 1958. Depuis la révision constitutionnelle du 23 juillet 2008, le CSM n'est plus présidé par le président de la République et le garde des Sceaux, ministre de la justice, n'est plus son vice-président. Outre sa formation plénière, le CSM est composé de **deux formations** différentes :

- la première, compétente pour les **magistrats du siège**, comprend, outre le premier président de la Cour de cassation (qui la préside), cinq magistrats du siège et un magistrat du parquet élus par leurs pairs, un conseiller d'État, un avocat et six personnalités qualifiées qui n'appartiennent ni au Parlement, ni à l'ordre judiciaire, ni à l'ordre administratif. Ces personnalités sont désignées par le président de la République et les présidents des assemblées ;
- la seconde formation, compétente à l'égard des **magistrats du parquet**, comprend, outre le procureur général près la Cour de cassation (qui la préside), cinq magistrats du parquet et un magistrat du siège, ainsi que le conseiller d'État, l'avocat et les six personnalités précédemment mentionnées.

S'agissant du rôle des formations du CSM, celui-ci peut être résumé comme suit :

- La formation du CSM compétente à l'égard des magistrats du siège émet des propositions sur la nomination des plus hauts magistrats du siège et pour les chefs de juridictions. Les autres magistrats du siège sont nommés par le pouvoir exécutif après son avis conforme. La formation statue en outre comme conseil de discipline des magistrats du siège (elle est alors composée d'un magistrat du siège supplémentaire).
- La formation du CSM compétente à l'égard des **magistrats du parquet** donne son avis pour les nominations concernant tous les magistrats du parquet, y compris les postes hiérarchiques les plus importants (ce qui n'était pas le cas avant 2008). Elle donne également un avis simple sur les sanctions disciplinaires concernant les magistrats du parquet, qui sont prises par le garde des Sceaux. Cette formation disciplinaire comprend alors, outre les membres mentionnés ci-dessus, le magistrat du parquet appartenant à la formation compétente à l'égard des magistrats du siège.
- La formation plénière du CSM peut être réunie pour connaître des demandes d'avis formulées soit par le président de la République, dans son rôle de garant de l'indépendance de l'autorité judiciaire, soit par le garde des Sceaux, en matière de déontologie ou de fonctionnement de la justice.

## **2/ La Conférence Nationale des Procureurs de la République (CNPR)**

La Conférence Nationale des Procureurs de la République (CNPR) est née de manière informelle en 2002 puis s'est constituée en association en 2006. Il ne s'agit pas d'une structure syndicale. Tous les procureurs de la République, c'est-à-dire les chefs des 166 parquets de première instance, en sont membres de droit. Lors de la dernière assemblée générale extraordinaire du 16 septembre 2022, 70 % des procureurs de la République ont participé à l'élection des membres du conseil d'administration de la CNPR qui compte 18 procureurs.

Les différents acteurs institutionnels, dont le Gouvernement et le Parlement, ainsi que les médias, considèrent la CNPR comme étant l'organe représentatif des procureurs de la République, dont ils sollicitent très régulièrement les avis et les analyses sur tout sujet concernant le ministère public, notamment ceux relatifs au statut de la magistrature, aux missions, compétences et organisation des parquets de première instance, aux moyens de l'institution judiciaire et à la défense des intérêts moraux et matériels de ses membres.

Pour autant, la CNPR n'a aucune attribution institutionnelle qui lui permettrait d'intervenir dans la gestion du corps des procureurs d'une manière ou d'une autre.

L'indépendance de la justice, de la magistrature et en particulier des parquets sont des questions essentielles pour la CNPR. En juin 2017, elle avait rendu public un « livre noir du ministère public » opérant un état des lieux et listant de nombreuses préconisations. Il aborde la question cruciale de l'indépendance, qui est déterminante pour les magistrats du parquet, car l'appréciation de l'opportunité de poursuites ne peut relever de l'exécutif mais seulement d'une



autorité judiciaire indépendante. La CNPR appelle ainsi de ses vœux une réforme du statut pour sécuriser l'unicité du corps des magistrats (juges et procureurs), mais aussi pour garantir une direction de la police judiciaire et une accusation pleinement judiciaire, qui permettrait d'éviter les trop fréquents procès d'intention en manque d'indépendance.

Au regard des développements qui précèdent, les questions suivantes sont, en l'état, sans objet pour la France.

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2. Si oui, quand un Conseil de procureurs et/ou tout autre organe traitant de l'autonomie de gestion des procureurs a-t-il été introduit dans le système des poursuites de votre pays ? Veuillez décrire brièvement, le cas échéant, les réformes importantes entreprises depuis la mise en place, visant à renforcer l'efficacité, l'indépendance et la responsabilité de ce(s) organe(s).
3. Si un tel Conseil de procureurs et/ou d'autres organes traitant de l'autonomie de gestion des procureurs existent dans votre pays, sont-ils uniquement destinés aux procureurs ou à d'autres professionnels de la justice ? Ces organes sont-ils séparés ou fonctionnent-ils au sein d'un organe commun aux juges et aux procureurs ?
4. A quel niveau législatif ou normatif le statut d'un Conseil de procureurs et/ou de tout autre organe traitant de l'autonomie de gestion des procureurs est-il établi et comment son/leur fonctionnement est-il réglementé ? (par exemple, par le biais de la Constitution, de lois, de règlements ou d'autres réglementations).
5. Ces Conseils de procureurs et/ou tout autre organe traitant de l'autonomie de gestion des procureurs disposent-ils des ressources nécessaires (humaines, financières et autres) pour fonctionner correctement ?
6. Si, dans votre pays, il n'existe pas de Conseil de procureurs et/ou d'autres organes traitant de l'autonomie de gestion des procureurs, y a-t-il des discussions pour introduire un ou plusieurs de ces organes ? Si oui, quels sont les arguments en faveur et contre son/leur introduction ?

## **II. Composition du Conseil de procureurs et/ou de tout autre organe traitant de l'autonomie de gestion des procureurs et statut de ses/leurs membres**

7. Veuillez décrire la composition du Conseil de procureurs et/ou de tout autre organe traitant de l'autonomie de gestion des procureurs dans votre pays. Veuillez indiquer :
  - Combien de membres sont des procureurs ?

- Combien de membres, s'il y en a, ne sont pas des procureurs et qui sont-ils ? (par ex. universitaires, juges, avocats, société civile, autres)
- 8. Veuillez décrire la procédure d'élection ou de nomination des membres du Conseil de procureurs et/ou de tout autre organe traitant de l'autonomie de gestion des procureurs (y compris les membres procureurs et les membres non-procureurs), la durée de leur mandat et la procédure de révocation, y compris, le cas échéant, les motifs de résiliation anticipée du mandat ou de révocation des membres.
- 9. Y a-t-il des membres de droit dans la composition ? (c'est-à-dire ceux qui sont membres d'office en raison de la position qu'ils occupent, par exemple, le Procureur général, le ministre de la Justice ou autres)
- 10. Existe-t-il des règles ou des procédures pour prévenir d'éventuelles situations de conflit d'intérêts pendant le processus d'élection ou de nomination des membres du Conseil de procureurs et/ou de tout autre organe traitant de l'autonomie de gestion des procureurs? Existe-t-il une incompatibilité entre certaines fonctions au sein du ministère public et l'appartenance à un Conseil des procureurs ?
- 11. Existe-t-il des exigences spécifiques pour les membres qui sont des procureurs afin d'assurer une représentation proportionnelle et équitable de tous les niveaux du système de poursuites ?
- 12. Veuillez décrire brièvement le processus d'élection/de nomination du président et des vice-présidents, le cas échéant, du Conseil de procureurs et/ou de tout autre organe traitant de l'autonomie de gestion des procureurs, y compris les processus et les motifs de révocation.

### **III. Compétence et fonctionnement du Conseil de procureurs et/ou tout autre organe traitant de l'autonomie de gestion des procureurs**

- 13. Dans votre pays, le Conseil de procureurs et/ou tout autre organe traitant de l'autonomie de gestion des procureurs ont-ils le pouvoir exclusif d'exercer l'administration du ministère public ou ce pouvoir est-il partagé avec les organes exécutifs (ceux qui ne font pas partie du ministère public, par exemple le ministère de la Justice) ?
- 14. Veuillez décrire brièvement les fonctions et les pouvoirs du Conseil de procureurs et/ou de tout autre organe traitant de l'autonomie de gestion des procureurs, notamment en ce qui concerne le recrutement, la promotion, le transfert, l'évaluation, la discipline ou d'autres aspects concernant les procureurs, ainsi que les aspects budgétaires (y compris l'élaboration du budget du ministère public, la systématisation de la législation sur les activités du ministère public, l'approbation des plans de travail et des rapports annuels du ministère public, l'adoption du code d'éthique des procureurs, etc.).

15. Veuillez décrire brièvement la compétence, le cas échéant, ou le rôle joué par le Conseil de procureurs et/ou tout autre organe traitant de l'autonomie de gestion des procureurs dans :
- l'évaluation des performances des procureurs, tant sur le fond que sur la procédure, et notamment les relations/interactions avec d'autres organismes si ceux-ci sont compétents en matière d'évaluation des performances ;
  - les mesures disciplinaires à l'encontre des procureurs, tant sur le fond que sur la procédure, y compris les relations/interactions avec d'autres organes si ceux-ci sont compétents en matière de mesures disciplinaires.
16. Le Conseil de procureurs et/ou tout autre organe traitant de l'autonomie de gestion des procureurs ont-ils le pouvoir d'examiner les situations de conflit au sein du ministère public, par exemple en cas d'instructions visant à inverser l'opinion d'un procureur ?
17. Les procureurs peuvent-ils s'adresser au Conseil de procureurs et/ou à tout autre organe traitant de l'autonomie de gestion des procureurs en cas d'allégation d'instructions illégales de la part de leurs supérieurs ou de tout autre acteur, tant à l'intérieur qu'à l'extérieur du ministère public ?
18. Veuillez décrire brièvement le processus de prise de décision du Conseil de procureurs et/ou de tout autre organe traitant de l'autonomie de gestion des procureurs, y compris tout aspect lié aux droits de vote des membres (par exemple, si tous les membres ont le même droit de vote), et les procédures et seuils applicables pour l'adoption d'une décision.
19. Quelle est la force juridique des décisions finales prises par le Conseil de procureurs et/ou tout autre organe traitant de l'autonomie de gestion des procureurs ? Ces décisions sont-elles seulement de nature consultative, n'étant pas légalement obligatoires, ou sont-elles de nature contraignante, étant légalement obligatoires, ou y a-t-il un mélange selon la nature de la décision ?
20. Les décisions finales prises par le Conseil de procureurs et/ou tout autre organe traitant de l'autonomie de gestion des procureurs sont-elles soumises à un contrôle judiciaire par un tribunal ?
21. Quels mécanismes garantissent le fonctionnement indépendant du Conseil de procureurs et/ou de tout autre organe traitant de l'autonomie de gestion des procureurs ?
22. Y a-t-il d'autres institutions en dehors du ministère public qui ont un rôle à jouer dans le fonctionnement et le processus de prise de décision du Conseil de procureurs et/ou de tout autre organe traitant de l'autonomie de gestion des procureurs ?

23. Comment est garantie la transparence des travaux du Conseil de procureurs et/ou de tout autre organe traitant de l'autonomie de gestion des procureurs :

- rendent-ils compte au public par le biais de rapports et d'informations largement diffusés ?
- disposent-ils de sites web accessibles au public fournissant des informations essentielles sur leur fonctionnement et leur prise de décision ?
- d'autres mesures de transparence ? (par exemple, séances d'information publiques, communiqués de presse, etc.)

## Hungary / Hongrie

### I. General questions

1. Is there a council of prosecutors and/or any other bodies dealing with prosecutorial self-governance in your country? If yes, what is the exact title/denomination of such body or bodies, if several? (i.e. Council of Prosecutors or Prosecutorial Council, Conference/Congress of Prosecutors, Qualification and Disciplinary Commission of Prosecutors etc.) Is there a professional association of prosecutors dealing with prosecutorial self-governance in any way?

In the Prosecution Service of Hungary, a prosecutors' council operates at the Office of the Prosecutor General, at the appellate chief prosecution offices, and at the chief prosecution offices, respectively – in the latter case with their competences also extending to the subordinated district prosecution offices.

A council of prosecution employees (hereinafter: "employee council") operates at the Office of the Prosecutor General, at the appellate chief prosecution offices, at the chief prosecution offices, respectively – in the latter case with their competences also extending to the subordinated district prosecution offices – as well as at the National Institute of Criminology. The National Council of Prosecution Employees consists of delegates of these employee councils. In addition to prosecutors, other prosecution employees take part in the work and activity of the employee councils. The employee councils are not specifically interest representative organizations for prosecutors, but their tasks relate to the representation of all prosecution employees' interests.

The National Association of Prosecutors functions as a professional organization of prosecutors, but only prosecutors applying for membership in it can participate in its work. The International Association of Prosecutors represents and protects the interests of its members, it facilitates the members' professional, scientific, training, social, cultural and leisure activities.

The National Trade Union of Prosecution Employees (Hungarian abbreviation: ÜDOSZ) protects prosecution employees' interests relating to their service, informs them of their rights and obligations relating to living and working conditions, represents its members against employers in certain cases, issues its opinion on measures affecting a larger group of employees before a decision is made on them. The ÜDOSZ is not specifically an interest representative organization for prosecutors, either. Act CLXIV of 2011 on the Status of the Prosecutor General, Prosecutors and other Prosecution Employees and the Prosecution Career of Hungary (Hungarian abbreviation: "Üjt"/Legal Status Act) does not provide for its organization, but the general provisions of the Labour Code are applicable for it.

The Pro Iustitia Association represents the interests of its members – trainee and junior prosecutors, and prosecution employees doing more complex administrative work – facilitates professional and scientific training, and it organizes community programs.

2. If so, when was a council of prosecutors and/or any other bodies dealing with prosecutorial self-governance introduced in the prosecutorial system in your country? Please describe briefly, if applicable, any significant reforms undertaken since the establishment, aimed at strengthening effectiveness, independence and accountability of such body(ies).

It was Act LXXX of 1994 on the Employment Relations and Data Processing in the Prosecutions Service (Hungarian abbreviation : „Üsztv”), having entered into force on 1<sup>st</sup> January 1995, which regulated the prosecutors’ councils and employee councils in the way as they function currently. The Üjt, which entered into force on 1<sup>st</sup> January 2012, adopted most of the relevant regulation of the Üsztv in an unchanged way. The relevant regulation has remained the same since the Üjt entered into force.

The most important change regarding the prosecutors’ councils and employee councils occurred with the entry into force of the Üjt, which modified the 4-5 person membership of the prosecutors’ councils and the 5 person membership of the employee councils so, that the number of members should be three, four or five persons, depending on the number of prosecutors and/or total number of employees working at the given organizational unit of the prosecution service.

3. If such a council of prosecutors and/or any other bodies dealing with prosecutorial self-governance exist in your country, are they only for prosecutors or for other professionals of justice? Are such bodies separate or do they operate within a body common to judges and prosecutors?

Prosecutors’ councils are only established for prosecutors. As to the employee councils, if the number of members in the employee council is three, at least one of them, whereas if the number of members is four or five, at least two of them should be elected from among the prosecutors. The other members of the employee councils are prosecution employees who are not prosecutors (e.g. non-prosecutor administrative staff).

4. At what legislative or normative level is the status of a council of prosecutors and/or any other bodies dealing with prosecutorial self-governance established and how is its/their functioning regulated? (e.g. through Constitution, laws, by-laws or other regulations).

Act CLXIV of 2011 on the Status of the Prosecutor General, Prosecutors and other Prosecution Employees and the Prosecution Career of Hungary (Üjt.) and Act I of 2012 on the Labour Code

(Mt.), which serves as background legislation, contains provisions relevant for prosecutors' councils and employee councils.

The operation of prosecutors' council and employee councils are provided for by the internal rules of operation within the framework of the Act CLXIV of 2011 on the Status of the Prosecutor General, Prosecutors and other Prosecution Employees and the Prosecution Career of Hungary (Üjt.) and Act I of 2012 on the Labour Code (Mt.)

5. Are such council of prosecutors and/or any other bodies dealing with prosecutorial self-governance provided with the required resources (human, financial and other) to function properly?

Yes, under the Labour Code, the justified costs of the election and functioning of the prosecutors' council and the employee council are borne by the employer. The members of the councils are entitled to a working time reduction for the time necessary for their activities, for which they receive a salary.

6. If in your country there is no council of prosecutors and/or any other bodies dealing with prosecutorial self-governance, is there any discussion to introduce such a body(ies)? If so, what are the arguments in favour and against its/their introduction?

(Question 6 is irrelevant for the Prosecution Service of Hungary, as it only addresses countries where there are no prosecutors' councils.)

## **II. Composition of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance and status of its/their members**

7. Please describe the composition of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance in your country. Please indicate:

- How many of the members are prosecutors?
- How many, if any, are non-prosecutor members and who are they? (e.g. scholars, judges, lawyers, civil society, others)

The number of the members of the prosecutors' council if the number of prosecutors at the time of the election

- a) does not exceed seven: three,
- b) does not exceed sixty: four,
- c) exceeds sixty: five.

The prosecutors' council has a chair and a vice-chair.

The number of the members of the employee council if the number of prosecution employees at the time of the election

- a) does not exceed twenty: three,
- b) does not exceed one hundred: four,

c) exceeds one hundred: five.

If the number of the members of an employee council is three, at least one of them, while if the number of the members of an employee council is four or five, at least two of them, shall be elected from among non-prosecutors.

Employee councils shall delegate one person from among their members to the National Council of Prosecution Employees for a period of five years.

8. Please describe the procedure for the election or appointment of the members of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance (including both prosecutor members and non-prosecutor members), the duration of their mandate and the dismissal procedure, including, if applicable, the grounds for early termination of mandate or dismissal of members.

The members of the prosecutors' council and the chair and vice-chair from among them shall be elected from among prosecutors for a period of five years by secret ballot by

- a) the pan-prosecution meeting of the Office of the Prosecutor General;
- b) the pan-prosecution meeting of the appellate chief prosecution office;
- c) the joint pan-prosecution meeting of the chief prosecution office and the subordinated district prosecution offices.

In the order of the number of votes cast, candidates, who received the largest number of valid votes in excess of one quarter of the valid votes cast may become the members of the prosecutors' council. If the election is not successful, the vote shall be repeated until the majority necessary for election is attained.

A prosecutor who obtained minimum twenty per cent of the votes validly cast shall be regarded as a deputy member of the prosecutors' council. If the mandate of a member of the prosecutors' council ceases, an appropriate number of elected deputy members shall be invited to the prosecutors' council, - in the order of the votes attained -, to replace the departing member or members.

Membership of the prosecutors' council shall cease upon the expiry of the mandate; upon the cessation of the prosecutor's service relationship or the prosecutor being definitively exempted from his work-related duties; upon the transfer of the prosecutor to the Ministry headed by the Minister responsible for justice for a period of more than six months; upon an appointment of the prosecutor for long-term service abroad for a period of more than six months, upon the election of the prosecutor as Prosecutor General or promotion to a senior position; upon the resignation of membership; upon exemption from membership; upon a decision establishing the prosecutor's penal or disciplinary liability becoming final and absolute, or by adopting a final decision with no further possibility of judicial remedy on the suspension of the criminal procedure with the aim of conditional prosecutorial suspension or mediation.



The pan-prosecution meeting shall decide on exemption from prosecutors' council membership by secret ballot. More than half of the valid votes cast shall be required for exemption from membership.

Employee councils shall be elected for each of the organisations listed in the answer to Question 1 by the prosecution employees serving at the respective organisations for a period of five years. The election is valid if more than half of the eligible voters have participated. Candidates who obtain thirty per cent of the votes cast shall be considered elected members of the council. A new election for the remaining positions shall be held within thirty days. The repeat election is valid if more than one third of the eligible voters have participated. This time, the employee of the prosecution office who obtains the highest number of valid votes cast, but not less than thirty per cent of the votes cast, shall be elected as a member of the council.

The term of office of a member of the employee council shall end upon resignation, recall and termination of the employee council. The membership of any person exercising the right of employer or who is a relative of a senior employee shall end.

A ballot on the recall of the employee council or a member of the employee council shall be held if at least thirty per cent of the employees entitled to vote so request in writing. The ballot shall be valid if it is attended by more than half of the employees entitled to vote. Recall shall require more than two-thirds of the valid votes cast.

The prosecutors' council and the employee council shall be dissolved if the employer ceases to exist without legal succession, its term of office expires, it resigns, it is recalled, the number of its members is reduced by more than one third or the court annuls the result of the election.

9. Are there ex officio members in the composition? (i.e. those who are members automatically due to the position they occupy, for example, the Prosecutor General, the Minister of Justice or others)

No.

10. Are there rules or procedures to prevent possible conflict of interest situations during the process of election or appointment of the members of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance? Is there an incompatibility between certain functions in the prosecution service and membership in a council of prosecutors?

The Prosecutor General and prosecutors in senior positions (e.g. appellate chief prosecutor, deputy appellate chief prosecutor, chief prosecutor, deputy chief prosecutor) may not be elected as members of the prosecutors' council. Also, prosecutors under the effect of disciplinary sanctions may not be elected as members of the prosecutors' council.

Membership of the prosecutors' council shall cease upon the cessation of the prosecutor's service relationship or upon the prosecutor being definitively exempted from his work-related duties; upon the transfer of the prosecutor to the Ministry headed by the Minister responsible for justice for a period of more than six months; upon an appointment of the prosecutor for long-term service abroad for a period of more than six months, upon the election of the prosecutor as Prosecutor General or promotion to a senior position; upon a decision establishing the prosecutor's penal or disciplinary liability becoming final and absolute, or by adopting a final decision with no further possibility of judicial remedy on the suspension of the criminal procedure with the aim of conditional prosecutorial suspension or mediation.

Membership of the prosecutors' council shall be suspended as of the institution of disciplinary proceedings until the conclusion thereof and during the suspension of the prosecutor's service relationship.

A person who exercises the right of employer, a relative of a senior employee or a member of the election committee responsible for the election of the employee council shall not be eligible for the election as a member of the employee council or shall cease to be a member of the employee council.

11. Are there any specific requirements for prosecutor members in order to ensure a proportional and fair representation of all levels of the prosecution system?

No, since prosecutors' councils and employee councils function at prosecution offices of different levels.

12. Please describe briefly the election/appointment process of the president and vice-presidents, if applicable, of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance, including dismissal processes and grounds.

The members of the prosecutors' council and the chair and vice-chair shall be elected from among prosecutors for a period of five years by secret ballot by the pan-prosecution meeting of the Office of the Prosecutor General; the pan-prosecution meeting of the appellate chief prosecution office, and the joint pan-prosecution meeting of the chief prosecution office and the subordinated district prosecution offices.

In the order of the number of votes cast, candidates, who received the largest number of valid votes in excess of one quarter of the valid votes cast may become the members of the prosecutors' council. If the election is not successful, the vote shall be repeated until the majority necessary for election is attained.

Membership of the prosecutors' council, including the chair and vice-chair, shall cease in the cases indicated in the answer to Question 8. If the number of the members of the prosecutors'

council falls below three or the membership of both the chair and the vice-chair ceases, new elections shall be held.

The employee council shall meet within fifteen days of its election and it elects a chair from among its members at its first session. The termination of the mandate of the chair shall also be governed by the general rules set out in the answer to Question 8.

### **III. Competence and functioning of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance**

13. In your country, do the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance have exclusive power to exercise the administration of the prosecution service or whether this power is divided with the executive bodies (those outside of the prosecution service, e.g. the ministry of justice)?

Prosecutors' councils and the employee councils do not have exclusive power to exercise the administration of the prosecution service, but in certain cases they have the right to give their consent and opinions, as described in the answer to Question 14.

14. Please describe briefly the functions and powers of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance, in particular as regards the recruitment, promotion, transfer, evaluation, discipline or other aspects regarding prosecutors, and budgetary aspects (including the development of the prosecution service's budget, systematisation of the legislation on the activities of the prosecution service, approval of the prosecution service's task plans and annual reports, adoption of the code of ethics for prosecutors etc.).

The prosecutors' council shall state its opinion with respect to the appointment (promotion) and exemption of prosecutors, not including the Prosecutor General and the Deputy Prosecutor General, as well as with respect to any further issues on which the person exercising the employer's rights seeks its opinion or where consultation with the prosecutors' council is ordered under the Üjt. or by the Prosecutor General.

Under the Üjt., the Prosecutor General shall, for the first time, appoint prosecutors to prosecution offices via vacant position advertisements, and the Prosecutor General shall fill via vacant position advertisements the posts of prosecutors in senior and managerial positions in prosecution offices falling within his competence of appointment as well as the prosecutor positions at the Office of the Prosecutor General and the Appellate Chief Prosecution Offices. Prior to the evaluation of the application, the Prosecutor General shall obtain the opinion of the prosecutors' council on the candidate, in addition to the opinion of the head of the respective prosecution office.

Managerial appointments falling within the Prosecutor General's competence shall be valid for an indefinite term and may be revoked at any time without justification. Prior to the revocation of a managerial appointment, the prosecutors' council shall be consulted.

The Üjt. regulates reasons for conflicts of interest for prosecutors, e.g. political activity or – as a general rule – the prohibition of the performance of other gainful activities. If a prosecutor does not comply with his/her obligation to eliminate the cause of the conflict of interest within the prescribed period, the Prosecutor General establishes the conflict of interest after obtaining the preliminary opinion of the prosecutor's council.

The employee council of the Prosecution Service is entitled to the right of consent with regard to the adoption of plans related to the use of funds for welfare purposes and the utilization of such institutions and real estates.

Right of consent means a right to participate in a decision making; the decision is not valid without the agreement (consent) of the holder of that right.

Employee councils have the power to issue their opinions in respect of drafts concerning employer measures with an impact on the substantial interests or larger groups of prosecution employees, in particular, concepts relating to organisational changes falling within the competence of prosecution bodies, the introduction of new work organisation methods, applications for financial or moral rewards called for by prosecution organisations as well as work scheduling.

At the request of a prosecutor subjected to disciplinary or compensation proceedings, participation and the exercise of the right of representation must be ensured for the employee interest representation body operating at the given prosecution office – such as the prosecutors' council and the employee council – during the disciplinary or compensation proceedings.

The prosecutors' council or the employee council can apply to the court for the declaration of the invalidity of a measure that violates the exercise of the right of consent or right to express an opinion. The statement of claim shall have a suspensory effect on the implementation of the measure.

At the Prosecution Service of Hungary, the members of the National Leaders Meeting include the presidents of the National Council of Prosecution Employees, of ÜDOSZ and of the Pro Iustitia Association. On 3<sup>rd</sup> December 2014, the National Leaders Meeting adopted the recommendation of the Prosecutor General on the ethical rules of the prosecutor's profession.

15. Please describe briefly the competence, if any, or any role played by the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance in:

- performance assessment of prosecutors, both in terms of substance and procedure, and including relationship/ interactions with other bodies if those are competent on performance assessment;

- disciplinary measures against prosecutors, also both in terms of substance and procedure, and including relationship/ interactions with other bodies if those are competent on disciplinary measures.

Relating to the assessment of the prosecutors' activity the prosecutors' council and the employee council have no competence. At the request of a prosecutor subject to disciplinary or compensation proceedings, the participation and exercise of their rights of representation must be ensured for the prosecutors' council or the employee council during the disciplinary proceedings.

16. Do the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance have the power to consider situations of conflict within the prosecution system, for example in case of instructions to reverse the view of a prosecutor?

The prosecutors' council and the employee council do not have power for discretion in the case of conflict situations within the Prosecution Service.

17. Can prosecutors apply to the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance with an allegation of illegal instructions from their superior prosecutors or any other actors, both from within and outside of the prosecution system?

Üjt. does not contain expressed provisions in this context. In the case of illegal instructions, prosecutors can primarily take the following measures defined in the Legal Status Act.

Prosecutors are obliged to refuse to carry out instructions, if by carrying them out, they would commit a crime or an administrative offence. Prosecutors may refuse to execute an instruction if the execution thereof were to directly and grossly endanger their life, health or physical state. If the prosecutor finds the instruction incompatible with a law or his/her legal conviction, he/she may request exemption from the administration of the given matter in writing while also expressing his/her legal position. Any such request may not be refused; in this case, the administration of the given matter shall be entrusted to another prosecutor, or the superior prosecutor may take over the given matter and place it within his/her own competence. If the execution of an instruction may cause unlawful damage or an infringement of rights relating to personality, and the prosecutor may foresee this, the prosecutor shall draw the attention of the person giving the instruction thereto.

18. The decision-making process of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance, including any aspects related to voting rights of members.

The prosecutors' council to which the prosecutor is appointed or where the prosecutor proposed to be dismissed serves shall be competent to give opinion in the case of appointment or dismissal of the prosecutor.

The members of the prosecutors' council shall be entitled to state their opinions collectively. The prosecutors' council has a quorum if more than one half of the members are present at the meeting.

The prosecutors' council shall adopt its decisions by a simple majority. The chair (vice-chair) of the meeting shall only cast a vote if there is a tie in the votes of the rest of the members of the prosecutors' council.

Similar provisions are not contained in the legislation about the employee council, the rules of its operation are established by its internal rules of procedure.

If a decision (measure) with respect to any of the subject-matters falling into the competence of the employee councils concerns the power of at least two thirds of the employee councils, the National Council shall proceed on behalf of the employee councils. The National Council shall also be consulted in cases where the employee councils did not issue a concordant declaration with respect to the contemplated decision (measure).

19. What is the legal force of the final decisions taken by the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance? Are such decisions of only a consultative nature, not being legally obligatory?

As written above in Point 14, according to the Üjt, decisions of the prosecutors' council have the character of stating opinions, but they are not binding and have no legal force.

At the same time, in connection with the measure belonging to the power of the prosecutors' council or the employee council, the opinion is communicated within eight days or fifteen days of the receipt of the request to the employer. In the event of failure to observe this time limit, a decision may also be adopted in the absence of the opinion and it should be regarded as if the employee council would agree with the measure.

20. Are the final decisions taken by the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance subject to judicial review by a court?

In accordance with the answer given to Question 19, decisions of the prosecutors' council and the employee council are not binding and have no legal force.

A prosecutor may turn to court to assert his/her claim arising from his/her prosecution service relationship as well as from a measure implemented by the person exercising the employer's rights or the non-implementation of a measure. A legal dispute cannot be initiated due to a decision falling within the discretion of the person exercising the employer's right or the failure to do so, unless he/she violated the rules governing the formation of his decision, for example, if it had not allowed the prosecutors' council or the employee council to exercise its rights.

21. Which mechanisms ensure the independent functioning of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance?

The independence of the prosecutors' councils and employee councils is ensured by the order of election of the members of the councils, which takes place by secret and direct ballot. It is also a guarantee rule that reasonable costs related to the election and operation of the prosecutor's council and the employee council are borne by the employer, moreover, for the time necessary for their activities, the members of the councils are entitled to a working time reduction, for which time they are paid.

The consent of the prosecutors' council and the employee council is necessary for the dismissal, secondment (for which no consent of the involved person is required under the law) and temporary posting of the chair of the council by his/her employer for a duration exceeding 15 days.

The employee, the employer, and the trade union having representation at the employer's premises may apply to the court in connection with the nomination, the process of the election or the establishment of the result. The prosecutors' council or the employee council can also turn to court for violating the rule on information or consultation.

22. Are there any other institutions outside of the prosecution system which have a role with respect to the functioning and decision-making process of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance?

No.

23. How is the transparency of the work of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance guaranteed (are they accountable to the public through widely disseminated reports and information? do they have publicly accessible websites providing essential information on their functioning and decision-making?)

According to practice, the statement of opinions of the prosecutors' council or the employee council, as well as the statement regarding the right to consent, are made in writing, which forms part of the documents of the case concerned by the statement of the opinion.

Prosecutors' councils and employee councils do not have a website, however, their most important data are available on the website of the Prosecution Service of Hungary at <http://ugyeszseg.hu/karrier/erdekkepviseleti-szerveztek/>.

The website of the National Association of Prosecutors is available at <http://www.ugyeszek.hu/>

## Iceland / Islande

### I. General questions

1. Is there a council of prosecutors and/or any other bodies dealing with prosecutorial self-governance in your country? If yes, what is the exact title/denomination of such body or bodies, if several? (i.e. Council of Prosecutors or Prosecutorial Council, Conference/Congress of Prosecutors, Qualification and Disciplinary Commission of Prosecutors etc.) Is there a professional association of prosecutors dealing with prosecutorial self-governance in any way?

Answer: No there are no prosecutorial self-governance in the prosecution service in Iceland.

2. If so, when was a council of prosecutors and/or any other bodies dealing with prosecutorial self-governance introduced in the prosecutorial system in your country? Please describe briefly, if applicable, any significant reforms undertaken since the establishment, aimed at strengthening effectiveness, independence and accountability of such body(ies).

Answer: Not relevant

3. If such a council of prosecutors and/or any other bodies dealing with prosecutorial self-governance exist in your country, are they only for prosecutors or for other professionals of justice? Are such bodies separate or do they operate within a body common to judges and prosecutors?

Answer: Not relevant

4. At what legislative or normative level is the status of a council of prosecutors and/or any other bodies dealing with prosecutorial self-governance established and how is its/their functioning regulated? (e.g. through Constitution, laws, by-laws or other regulations).

Answer: Not relevant

5. Are such council of prosecutors and/or any other bodies dealing with prosecutorial self-governance provided with the required resources (human, financial and other) to function properly?

Answer: Not relevant



6. If in your country there is no council of prosecutors and/or any other bodies dealing with prosecutorial self-governance, is there any discussion to introduce such a body(ies)? If so, what are the arguments in favour and against its/their introduction?

Answer: No

**II. Composition of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance and status of its/their members**

7. Please describe the composition of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance in your country. Please indicate:
- How many of the members are prosecutors?
  - How many, if any, are non-prosecutor members and who are they? (e.g. scholars, judges, lawyers, civil society, others)

Answer: Not relevant

8. Please describe the procedure for the election or appointment of the members of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance (including both prosecutor members and non-prosecutor members), the duration of their mandate and the dismissal procedure, including, if applicable, the grounds for early termination of mandate or dismissal of members.

Answer: Not relevant

9. Are there ex officio members in the composition? (i.e. those who are members automatically due to the position they occupy, for example, the Prosecutor General, the Minister of Justice or others)

Answer: Not relevant

10. Are there rules or procedures to prevent possible conflict of interest situations during the process of election or appointment of the members of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance? Is there an incompatibility between certain functions in the prosecution service and membership in a council of prosecutors?

Answer: Not relevant

11. Are there any specific requirements for prosecutor members in order to ensure a proportional and fair representation of all levels of the prosecution system?

Answer: Not relevant

12. Please describe briefly the election/appointment process of the president and vice-presidents, if applicable, of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance, including dismissal processes and grounds.

Answer: Not relevant

**III. Competence and functioning of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance**

13. In your country, do the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance have exclusive power to exercise the administration of the prosecution service or whether this power is divided with the executive bodies (those outside of the prosecution service, e.g. the ministry of justice)?

Answer: Not relevant

14. Please describe briefly the functions and powers of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance, in particular as regards the recruitment, promotion, transfer, evaluation, discipline or other aspects regarding prosecutors, and budgetary aspects (including the development of the prosecution service's budget, systematisation of the legislation on the activities of the prosecution service, approval of the prosecution service's task plans and annual reports, adoption of the code of ethics for prosecutors etc.).

Answer: Not relevant

15. Please describe briefly the competence, if any, or any role played by the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance in:
- performance assessment of prosecutors, both in terms of substance and procedure, and including relationship/ interactions with other bodies if those are competent on performance assessment;
  - disciplinary measures against prosecutors, also both in terms of substance and procedure, and including relationship/ interactions with other bodies if those are competent on disciplinary measures.

Answer: Not relevant

16. Do the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance have the power to consider situations of conflict within the prosecution system, for example in case of instructions to reverse the view of a prosecutor?

Answer: Not relevant

17. Can prosecutors apply to the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance with an allegation of illegal instructions from their superior prosecutors or any other actors, both from within and outside of the prosecution system?

Answer: Not relevant

18. Please describe briefly the decision-making process of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance, including any aspects related to voting rights of members (for example, whether all members have the same right to vote), and applicable procedures and thresholds for a decision to be adopted.

Answer: Not relevant

19. What is the legal force of the final decisions taken by the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance? Are such decisions of only a consultative nature, not being legally obligatory, or are they of a binding nature, being legally obligatory/mandatory, or is there a mixture depending on the nature of a decision?

Answer: Not relevant

20. Are the final decisions taken by the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance subject to judicial review by a court?

Answer: Not relevant

21. Which mechanisms ensure the independent functioning of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance?

Answer: Not relevant

22. Are there any other institutions outside of the prosecution system which have a role with respect to the functioning and decision-making process of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance?

Answer: Not relevant

23. How is the transparency of the work of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance guaranteed:

- are they accountable to the public through widely disseminated reports and information?
- do they have publicly accessible websites providing essential information on their functioning and decision-making?
- any other measures for transparency? (i.e. public briefings, press releases etc.)

Answer: Not relevant

## Latvia / Lettonie

### I. General questions

1. Is there a council of prosecutors and/or any other bodies dealing with prosecutorial self-governance in your country? If yes, what is the exact title/denomination of such body or bodies, if several? (i.e. Council of Prosecutors or Prosecutorial Council, Conference/Congress of Prosecutors, Qualification and Disciplinary Commission of Prosecutors etc.) Is there a professional association of prosecutors dealing with prosecutorial self-governance in any way?

In Latvia, the bodies dealing with prosecutorial self-governance are Council of the Prosecutor General, Attestation Commission, and the Qualification Commission. Besides these bodies within the Prosecution Office, there is also the Council of Justice, which could be called the self-governing institution for the judiciary. The purpose of establishing the Judicial Council is to balance the relationship between the executive power, the judicial power, and the legislative power, giving it an important role in matters affecting the judicial system. The Council of Justice plays a decisive role in evaluating and appointing a candidate for the post of Prosecutor General for approval.

2. If so, when was a council of prosecutors and/or any other bodies dealing with prosecutorial self-governance introduced in the prosecutorial system in your country? Please describe briefly, if applicable, any significant reforms undertaken since the establishment, aimed at strengthening effectiveness, independence and accountability of such body(ies).

Council of the Prosecutor General, Attestation Commission and the Qualification Commission were introduced on 1 July 1994. Until then questions of self-governance were within the competence of the panel of the Prosecution Office. The Council of Justice was established in 2010.

3. If such a council of prosecutors and/or any other bodies dealing with prosecutorial self-governance exist in your country, are they only for prosecutors or for other professionals of justice? Are such bodies separate or do they operate within a body common to judges and prosecutors?

The aforementioned bodies dealing with prosecutorial self-governance operate only within the framework of the Prosecution Office and are not intended for other professionals of justice. The Council of Justice is a collegial institution that participates in the development of the policy and strategy of the entire judicial system, as well as in the improvement of the work organization of the judicial system.

4. At what legislative or normative level is the status of a council of prosecutors and/or any other bodies dealing with prosecutorial self-governance established and how is its/their functioning regulated? (e.g. through Constitution, laws, by-laws or other regulations).

The status of the Council of the Prosecutor General's determined by and its activity is regulated by the Office of the Prosecutor Law. The status of the Attestation Commission and the Qualification Commission is determined by the Office of the Prosecutor Law, but the activity is regulated by the By-law of the Attestation Commission and the By-law of the Qualification Commission. The functions of the Council of Justice are defined in the Law "On Judicial Power".

5. Are such council of prosecutors and/or any other bodies dealing with prosecutorial self-governance provided with the required resources (human, financial and other) to function properly?

All necessary resources are provided for the proper functioning of the self-governing institutions of the Prosecution Office.

6. If in your country there is no council of prosecutors and/or any other bodies dealing with prosecutorial self-governance, is there any discussion to introduce such a body(ies)? If so, what are the arguments in favour and against its/their introduction?

As mentioned above, there are institutions in the Republic of Latvia dealing with the self-governance of the Prosecution Office.

## **II. Composition of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance and status of its/their members**

7. Please describe the composition of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance in your country. Please indicate:

- How many of the members are prosecutors?
- How many, if any, are non-prosecutor members and who are they? (e.g. scholars, judges, lawyers, civil society, others)

The Council of the Prosecutor General consists of sixteen members, only one of whom is not a prosecutor, that is the administrative director of the Prosecution Office.

This year, the Attestation Commission and the Qualification Commission each have eight members, all of whom are prosecutors. Until 2023, there were ten members in each commission, all prosecutors.

8. Please describe the procedure for the election or appointment of the members of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance (including both prosecutor members and non-prosecutor members), the duration of their mandate and the dismissal procedure, including, if applicable, the grounds for early termination of mandate or dismissal of members.

The Council of the Prosecutor General is established by the order of the Prosecutor General, without a specific term of operation. The Attestation Commission and the Qualification

Commission are composed from specific prosecutors and established by the Council of the Prosecutor General, for the term of one year, determining the number and composition of their members.

9. Are there *ex officio* members in the composition? (i.e. those who are members automatically due to the position they occupy, for example, the Prosecutor General, the Minister of Justice or others)

All members of the Council of the Prosecutor General are *ex officio* members, due to the position they hold automatically. During the absence of any of the members of the Council, the prosecutor or an employee of the Prosecution Office, fulfilling the basic duties of the relevant council member, takes part in the council.

There are no *ex officio* members in the composition of the Attestation Commission and the Qualification Commission. They are freely chosen from among prosecutors.

10. Are there rules or procedures to prevent possible conflict of interest situations during the process of election or appointment of the members of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance? Is there an incompatibility between certain functions in the prosecution service and membership in a council of prosecutors?

Members of the Council of the Prosecutor General, Attestation Commission, and the Qualification Commission are obliged to recuse themselves from participating in the decision-making of issues in which there is a possibility of a conflict of interest.

11. Are there any specific requirements for prosecutor members in order to ensure a proportional and fair representation of all levels of the prosecution system?

There are no special requirements for proportional representation in self-governing bodies, but traditionally, the composition of the commissions is completed in such a way that members from all regions of the country and different levels of prosecution offices are represented.

12. Please describe briefly the election/appointment process of the president and vice-presidents, if applicable, of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance, including dismissal processes and grounds.

The chairman of the Council of the Prosecutor General is the Prosecutor General. The work of the Attestation Commission and the Qualification Commission is led by the chairpersons, who are appointed by the Council of the Prosecutor General for one year upon the creation of the relevant commission.

### **III. Competence and functioning of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance**

13. In your country, do the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance have exclusive power to exercise the administration of the prosecution service or whether this power is divided with the executive bodies (those outside of the prosecution service, e.g. the ministry of justice)?

The powers exercised by the Council of the Prosecutor General, the Attestation Commission and the Qualification Commission are exclusive, they are determined by laws and regulations and are not shared with executive institutions outside the prosecution office system. The composition of the Council of Justice includes representatives from both the judiciary and the self-governing organizations of liberal legal professions, as well as from the executive branch, and also from the parliament. Nine of the fifteen representatives are *ex officio* members (including the Prosecutor General, as well as the President of the Supreme Court, the President of the Legal Commission of the Parliament, the Minister of Justice), while seven representatives are elected.

14. Please describe briefly the functions and powers of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance, in particular as regards the recruitment, promotion, transfer, evaluation, discipline or other aspects regarding prosecutors, and budgetary aspects (including the development of the prosecution service's budget, systematisation of the legislation on the activities of the prosecution service, approval of the prosecution service's task plans and annual reports, adoption of the code of ethics for prosecutors etc.).

In accordance with the Office of the Prosecutor Law, the Council of the Prosecutor General develops and adopts the by-laws of the Attestation Commission and the Qualification Commission, Code of Ethics of Prosecutors, the By-laws Regarding Wearing of Prosecutor's Robe and Insignia and their Standards, the by-laws for selection, apprenticeship and qualification examination of candidates for the office of a prosecutor, the By-laws for Evaluation of the Professional Activity of Prosecutors, the By-laws for the Use of the Coat of Arms of the Office of the Prosecutor, the By-laws for Awarding, the By-laws Regarding Assistant to a Prosecutor, establishes the Attestation Commission and the Qualification Commission, determines the number and composition of their members. Also, the Council of the Prosecutor General develops and adopts the Operational Strategy of the Prosecution Office of the Republic of Latvia and the Working plan of the Prosecution Office.

Before appointing or promoting a prosecutor, the Attestation Commission provides an opinion on his/her suitability for this position, makes a proposal to the Prosecutor General on the application of disciplinary punishment to the prosecutor, evaluates the professional performance of prosecutors.

The Qualification commission evaluates and gives an opinion on the implementation of the internship program of the candidate for the position of prosecutor, on the suitability of the knowledge and professional skills of the candidate for the position of prosecutor.



15. Please describe briefly the competence, if any, or any role played by the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance in:

- performance assessment of prosecutors, both in terms of substance and procedure, and including relationship/ interactions with other bodies if those are competent on performance assessment;
- disciplinary measures against prosecutors, also both in terms of substance and procedure, and including relationship/ interactions with other bodies if those are competent on disciplinary measures.

The evaluation of prosecutors' performance and possible disciplinary violations by prosecutors are reviewed by the Attestation Commission in accordance with the procedure established by the By-law, without involving other bodies or institutions. The decisions of the Attestation commission, both regarding disciplinary measures against prosecutors and also regarding the evaluation of prosecutors' performance, are of a recommendatory nature and acquire legal force only after they are approved by the Prosecutor General. The Prosecutor General can make a decision on the dismissal of the prosecutor both as a disciplinary punishment and in case the prosecutor has repeatedly received negative evaluation during the course of professional performance evaluation. The decision of the Prosecutor General can be appealed to the Disciplinary Court (the Disciplinary Court evaluates the legality of the decisions made by the Prosecutor General and the Disciplinary Board of Judges in the cases specified in the laws, it consists of six judges of the Supreme Court, the operation of the court is regulated by the Judicial Disciplinary Liability Law).

16. Do the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance have the power to consider situations of conflict within the prosecution system, for example in case of instructions to reverse the view of a prosecutor?

In his activities, the prosecutor is independent from the influence of other institutions or officials implementing state power and administration, and obeys only the law. A higher-ranking prosecutor is entitled to give instructions or take over into his or her proceedings any case, but is not entitled to give instructions or to assign a prosecutor to carry out actions against his or her convictions. Consequently, the Council of the Prosecutor General, the Attestation Commission or the Qualification Commission do not have the competence to resolve jurisdictional or subordination disputes between prosecutors of different levels. At the same time, the Attestation Commission examines cases of disciplinary responsibility in situations where a disciplinary violation can be seen in the actions of a prosecutor (giving illegal instructions; unlawfully refusing to comply with instructions; allowing the situation of the conflict of interest), as well as at the initiative of any prosecutor, the Attestation Commission provides explanation of the provisions contained in the Code of Ethics of Prosecutors.

17. Can prosecutors apply to the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance with an allegation of illegal instructions from their superior prosecutors or any other actors, both from within and outside of the prosecution system?

Jurisdiction and subordination disputes are dealt with in accordance with procedural laws and regulations, without involving self-governing institutions. At the same time, the Attestation Commission, when providing an explanation about the compliance of the prosecutor's actions with the requirements of the Code of Ethics of Prosecutors, is not limited to facts that have already happened, but is also entitled to explain the compliance of planned or expected actions.

18. Please describe briefly the decision-making process of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance, including any aspects related to voting rights of members (for example, whether all members have the same right to vote), and applicable procedures and thresholds for a decision to be adopted.

The Council of the Prosecutor General makes decisions by a simple majority vote through open voting. All council members have equal voting rights, as there are no rules of procedure that determine the course of decision-making, applicable procedures and thresholds.

The Attestation commission makes decisions by a simple majority vote, with open voting. If the votes are divided equally, the vote of the chairman of the commission meeting is decisive. If the commission's decision is taken on an issue that, according to the Office of the Prosecutor Law, is the basis for the removal or dismissal of the prosecutor from the office, more than half of the elected members of the commission must vote for it.

The decision of the Qualification commission is considered adopted if more than half of the present members of the commission have voted for it. If the votes are divided equally, the chairman of the commission meeting has the decisive vote.

19. What is the legal force of the final decisions taken by the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance? Are such decisions of only a consultative nature, not being legally obligatory, or are they of a binding nature, being legally obligatory/mandatory, or is there a mixture depending on the nature of a decision?

The Council of the Prosecutor General is a collegiate advisory body, and its decisions acquire legal force after they are approved by the Prosecutor General.

Decisions and opinions of the Attestation Commission and the Qualification Commission have a recommendatory nature, they are interim decisions in the sense of the Administrative Procedure Law. The final decision on the findings of these commissions is taken by the Prosecutor General.

20. Are the final decisions taken by the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance subject to judicial review by a court?

Objections to the opinions of the Attestation Commission and the Qualification Commission can be raised to the Prosecutor General. Decisions of the Prosecutor General, made on the basis of

the opinion of the Attestation Commission on the application of disciplinary punishment or dismissal due to a negative professional performance evaluation, are subject to review by the Disciplinary Court. Other decisions of the Prosecutor General that contain features of an administrative act (including those adopted on the basis of the opinion of the Qualification Commission) are subject to review by the Administrative Court (the essence of the administrative process in the court is the court's control over the legality or considerations usefulness of the administrative act issued by the institution or the actual actions of the institution within the scope of freedom of action, as well as clarifying the public legal obligations or rights of a private person and examining disputes arising from a public law contract, the competence of the Administrative Court is regulated by the Administrative Procedure Law).

21. Which mechanisms ensure the independent functioning of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance?

Independent functioning of the Council of the Prosecutor General, Attestation Commission, and the Qualification Commission is ensured by the fact that only the officials of the Prosecution Office are members, the functioning of these bodies does not depend to any extent on any external influence.

22. Are there any other institutions outside of the prosecution system which have a role with respect to the functioning and decision-making process of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance?

There are no other institutions outside the prosecution office system that would be relevant to the functioning and decision-making process of the Council of the Prosecutor General, the Attestation Commission and the Qualification Commission.

23. How is the transparency of the work of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance guaranteed:

- are they accountable to the public through widely disseminated reports and information?
- do they have publicly accessible websites providing essential information on their functioning and decision-making?
- any other measures for transparency? (i.e. public briefings, press releases etc.)

Meetings of the Attestation commission, where the question of the prosecutor's violation of the provisions of the Code of Ethics of Prosecutors are considered, are open. Also anonymised decisions of the Attestation Commission can be made public if requested. The Attestation Commission and the Qualification Commission provide an activity report to the Council of the Prosecutor General at least once a year, while the Prosecutor General submits a report to the Saeima (Parliament) by March 1 of each year on the achievements of the previous year and the priorities of the next year's activities, which is the most important and most complete report to the public about the Prosecution Office work. The report also includes information on the activity of the commissions, the strategy of the Prosecution Office, completed and planned tasks. The Prosecutor General's report to the Parliament is discussed at a public parliamentary committee

meeting, the annual report, as well as the strategy of the Prosecution Office are publicly available on the website of the Prosecution Office. Based on the goals set in the strategy, the further operation process of the prosecution office is organized.

## Lithuania / Lituanie

### I. General questions

1. Is there a council of prosecutors and/or any other bodies dealing with prosecutorial self-governance in your country? If yes, what is the exact title/denomination of such body or bodies, if several? (i.e. Council of Prosecutors or Prosecutorial Council, Conference/Congress of Prosecutors, Qualification and Disciplinary Commission of Prosecutors etc.) Is there a professional association of prosecutors dealing with prosecutorial self-governance in any way?

Under the current legislation, the head of the Prosecution Service of the Republic of Lithuania is the Prosecutor General, who also decides on all matters related to the work of prosecutors, but discussions are already underway on the prerequisites for the establishment of a self-governing body, the possible functions, the structure and the legal status of this institution.

For example, the Public Prosecutor's Office is considering the transformation of its current advisory body, the Collegium of Public Prosecutors, into a Collegium of Public Prosecutors, representing prosecutors, with a majority of elected members, which would deal with fundamental issues relating to the work of the Public Prosecutor's Office.

Although there is no self-governance in the prosecution system of the Republic of Lithuania today, there are some elements of self-governance in the management of the prosecutor's service: the evaluation of the performance of prosecutors, the investigation of breaches of the Code of Ethics of Prosecutors, and the selection of prosecutors are all carried out by commissions set up by the Prosecutor General (7 members - 4 prosecutors and 3 representatives of the public), the conclusions of which are partly binding on the Prosecutor General:

- the Prosecutor General cannot aggravate the decision of the Prosecutors' Evaluation Commission;
- the Prosecutor General can only appoint a person from the list of candidates proposed by the Selection Commission;
- the Prosecutor General may not impose a disciplinary sanction on a prosecutor if the Prosecutors' Ethics Commission finds that the prosecutor has not committed a violation of the law, an official misconduct, an act demeaning to the prosecutor's name or any other violation of the Code of Ethics of Prosecutors.

The Prosecutor's Office is considering extending the competence of the Prosecutors' Ethics Commission, giving it even more powers, e.g. to decide on the imposition of the most severe disciplinary penalties on prosecutors.

The Prosecutor's Office has two trade unions representing the interests of prosecutors, as well as a Labour Council, which actively defend the interests of prosecutors and seek to participate in the management of the prosecution service. Their representatives are members of the College, as well as of the commissions set up by the Prosecutor General.

There are several regional associations of prosecutors in Lithuania, but they do not participate in the management of the prosecution service.

2. If so, when was a council of prosecutors and/or any other bodies dealing with prosecutorial self-governance introduced in the prosecutorial system in your country? Please describe briefly, if applicable, any significant reforms undertaken since the establishment, aimed at strengthening effectiveness, independence and accountability of such body(ies).

Not applicable

3. If such a council of prosecutors and/or any other bodies dealing with prosecutorial self-governance exist in your country, are they only for prosecutors or for other professionals of justice? Are such bodies separate or do they operate within a body common to judges and prosecutors?

Not applicable

4. At what legislative or normative level is the status of a council of prosecutors and/or any other bodies dealing with prosecutorial self-governance established and how is its/their functioning regulated? (e.g. through Constitution, laws, by-laws or other regulations).

Not applicable

5. Are such council of prosecutors and/or any other bodies dealing with prosecutorial self-governance provided with the required resources (human, financial and other) to function properly?

Not applicable

6. If in your country there is no council of prosecutors and/or any other bodies dealing with prosecutorial self-governance, is there any discussion to introduce such a body(ies)? If so, what are the arguments in favour and against its/their introduction?

Not applicable

## **II. Composition of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance and status of its/their members**

Not applicable

7. Please describe the composition of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance in your country. Please indicate:
  - How many of the members are prosecutors?
  - How many, if any, are non-prosecutor members and who are they? (e.g. scholars, judges, lawyers, civil society, others)
8. Please describe the procedure for the election or appointment of the members of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance (including both prosecutor members and non-prosecutor members), the duration of their mandate and the dismissal procedure, including, if applicable, the grounds for early termination of mandate or dismissal of members.
9. Are there ex officio members in the composition? (i.e. those who are members automatically due to the position they occupy, for example, the Prosecutor General, the Minister of Justice or others)
10. Are there rules or procedures to prevent possible conflict of interest situations during the process of election or appointment of the members of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance? Is there an incompatibility between certain functions in the prosecution service and membership in a council of prosecutors?
11. Are there any specific requirements for prosecutor members in order to ensure a proportional and fair representation of all levels of the prosecution system?
12. Please describe briefly the election/appointment process of the president and vice-presidents, if applicable, of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance, including dismissal processes and grounds.

## **III. Competence and functioning of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance**

Not applicable

13. In your country, do the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance have exclusive power to exercise the administration of the prosecution service or whether this power is divided with the executive bodies (those outside of the prosecution service, e.g. the ministry of justice)?

14. Please describe briefly the functions and powers of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance, in particular as regards the recruitment, promotion, transfer, evaluation, discipline or other aspects regarding prosecutors, and budgetary aspects (including the development of the prosecution service's budget, systematisation of the legislation on the activities of the prosecution service, approval of the prosecution service's task plans and annual reports, adoption of the code of ethics for prosecutors etc.).
15. Please describe briefly the competence, if any, or any role played by the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance in:
  - performance assessment of prosecutors, both in terms of substance and procedure, and including relationship/ interactions with other bodies if those are competent on performance assessment;
  - disciplinary measures against prosecutors, also both in terms of substance and procedure, and including relationship/ interactions with other bodies if those are competent on disciplinary measures.
16. Do the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance have the power to consider situations of conflict within the prosecution system, for example in case of instructions to reverse the view of a prosecutor?
17. Can prosecutors apply to the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance with an allegation of illegal instructions from their superior prosecutors or any other actors, both from within and outside of the prosecution system?
18. Please describe briefly the decision-making process of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance, including any aspects related to voting rights of members (for example, whether all members have the same right to vote), and applicable procedures and thresholds for a decision to be adopted.
19. What is the legal force of the final decisions taken by the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance? Are such decisions of only a consultative nature, not being legally obligatory, or are they of a binding nature, being legally obligatory/mandatory, or is there a mixture depending on the nature of a decision?
20. Are the final decisions taken by the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance subject to judicial review by a court?
21. Which mechanisms ensure the independent functioning of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance?



22. Are there any other institutions outside of the prosecution system which have a role with respect to the functioning and decision-making process of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance?
23. How is the transparency of the work of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance guaranteed:
- are they accountable to the public through widely disseminated reports and information?
  - do they have publicly accessible websites providing essential information on their functioning and decision-making?
  - any other measures for transparency? (i.e. public briefings, press releases etc.)

## Republic of Moldova / République de Moldavie

### I. General questions

1. Is there a council of prosecutors and/or any other bodies dealing with prosecutorial self-governance in your country? If yes, what is the exact title/denomination of such body or bodies, if several? (i.e. Council of Prosecutors or Prosecutorial Council, Conference/Congress of Prosecutors, Qualification and Disciplinary Commission of Prosecutors etc.) Is there a professional association of prosecutors dealing with prosecutorial self-governance in any way?

In the Republic of Moldova the self-administrative bodies of the Prosecutor's Office are:

- **General Assembly of Prosecutors**
- **Superior Council of Prosecutors (SCP)**
- **the boards subordinated to the SCP:**

- a) College for the selection and career of prosecutors;
  - b) College for the evaluation of prosecutors' performance;
  - c) The Discipline and Ethics College.
- 

#### **The General Assembly of Prosecutors has the following powers:**

- a) the election, from among the prosecutors, of the members of the High Council of Prosecutors and its colleges, as well as their alternates;
  - b) hearing the report on the work of the Prosecutor's Office, presented by the Prosecutor General, and the report on the work of the High Council of Prosecutors, presented by the President of the Council;
  - c) presentation by the Prosecutor General and discussion of the priorities for the work of the Office of the Prosecutor for the coming year, after consultation with the High Council of Prosecutors;
  - d) approval of the Code of Ethics for Prosecutors and amendments thereto, which shall be published on the official website of the Supreme Public Prosecutors' Council;
  - e) adopting or amending the rules of procedure of the General Assembly of Prosecutors;
  - f) examining and deciding on other matters relating to the work of the Office of the Prosecutor.
- 

The Superior Council of Prosecutors is an independent body. Its activity is provided by Constitution, which ensures the appointment, promotion, transfer and disciplinary responsibility of prosecutors.

The following professional associations, with the status of public associations, also operate in the Republic of Moldova:

- Association of Prosecutors of the Republic of Moldova ;
- Association of Prosecutors for Order and Justice;
- Association of Women Prosecutors.

2. If so, when was a council of prosecutors and/or any other bodies dealing with prosecutorial self-governance introduced in the prosecutorial system in your country? Please describe briefly, if applicable, any significant reforms undertaken since the establishment, aimed at strengthening effectiveness, independence and accountability of such body(ies).

**Short history:**

For the first time in the Republic of Moldova, the Superior Council of Prosecutors was introduced in 2009. The composition of the SCP had 12 members and was represented as follows:

- 6 member-prosecutors (elected by their prosecutors colleagues);
- The Prosecutor General (ex officio member);
- President of the Superior Council of Magistracy (ex officio member);
- Minister of Justice (ex officio member);
- 3 members from among the full professors of law, selected by Parliament.

In **2016**, the composition of the SCP was changed by law (a new Law on the Prosecutor's Office was adopted) and included 12 members:

- 5 members – prosecutors (elected by their prosecutors colleagues);
- The Prosecutor General (ex officio member);
- The Chief Prosecutor of the Prosecutor's Office of ATU Gagauzia;
- President of the Superior Council of Magistracy (ex officio member);
- Minister of Justice (ex officio member);
- 3 members from civil society (one - elected by the President of the Republic of Moldova, one - elected by the Parliament and one - elected by the Academy of Sciences).

In **September 2019**, amendments to the Law on the Prosecutor's Office were introduced and the composition of the SCP and included 15 members (more ex officio members were added):

- 5 members-prosecutors (elected by their prosecutors colleagues);
- the Prosecutor General (ex officio member);
- The Chief Prosecutor of the Prosecutor's Office of the UTA Gagauzia (ex officio member);
- President of the Superior Council of Magistracy (ex officio member);
- Minister of Justice (ex officio member);
- President of the Union of Lawyers (ex officio member);
- Ombudsman (ex officio member);
- 4 members elected by civil society (one - elected by the President of the Republic of Moldova, one - by the Parliament, one - by the Government, one - by the Academy of Sciences).

In **September 2021**, the composition of the CSP was again changed and the number of members was reduced to 12 members, excluding the Prosecutor General, the Chief Prosecutor of ATU Gagauzia and the President of the Lawyers' Union and became:

- 5 members-prosecutors (elected by their prosecutors colleagues);
- Minister of Justice (ex officio member);

- President of the Superior Council of Magistracy (ex officio member);
- Ombudsman (ex officio member);
- 4 members elected by civil society (one elected - by the President of the Republic of Moldova, one - by the Parliament, one - by the Government, one - by the Academy of Sciences).

In **October 2022** the law was changed again and it was established that there are 13 members with the re-introduction of the Prosecutor General as an ex officio member.

In conclusion: Over three years (September 2019 - October 2022), the composition of the SCP was changed 3 times, with significant changes (as described).

This may raise concerns about respect for legal certainty and the legal security of the PSC mandate, as changes are disproportionately frequent. The issues given have been analysed by the Venice Commission, GRECO and the CCPE:

- 1) Report of the Group of States against Corruption (GRECO) on the fourth round of the evaluation of the Republic of Moldova "Prevention of corruption with regard to members of Parliament, judges and prosecutors, adopted on 01.07.2016, (§§148, 189 - Rec.XV).
- 2) Opinion of the Bureau of the Consultative Council of European Prosecutors on the independence of prosecutors in the context of legislative changes regarding the prosecution system, CCPE-BU(2020)2 of 20.02.2020, (§37-39);
- 3) Opinion No. 1058/2021 on the amendments of 24 August 2021 to the Law on Public Prosecution adopted by the Venice Commission on 13 December 2021.

3. If such a council of prosecutors and/or any other bodies dealing with prosecutorial self-governance exist in your country, are they only for prosecutors or for other professionals of justice? Are such bodies separate or do they operate within a body common to judges and prosecutors?

In the Republic of Moldova, the self-administration of the prosecution system is the exclusive competence of the Superior Council of Prosecutors, and for judges there is the Superior Council of Magistracy. These two institutions function separately, being distinct public authorities.

4. At what legislative or normative level is the status of a council of prosecutors and/or any other bodies dealing with prosecutorial self-governance established and how is its/their functioning regulated? (e.g. through Constitution, laws, by-laws or other regulations).

The functioning of the Superior Council of Prosecutors is provided for by the Constitution of the Republic of Moldova and by the Law no.3/2016 on the Prosecutor's Office. There is also an Internal Regulation stipulating the activity of the Superior Council of Prosecutors.

5. Are such council of prosecutors and/or any other bodies dealing with prosecutorial self-governance provided with the required resources (human, financial and other) to function properly?

In its activity the Superior Council of Prosecutors is assisted by an Apparatus that includes civil servants and technical staff. Also, SCP has a separate budget allocated from the state budget. SCP headquarters is separate from the prosecutor's office and has the necessary logistics to carry out its activities.

6. If in your country there is no council of prosecutors and/or any other bodies dealing with prosecutorial self-governance, is there any discussion to introduce such a body(ies)? If so, what are the arguments in favour and against its/their introduction?

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**II. Composition of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance and status of its/their members**

7. Please describe the composition of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance in your country. Please indicate:
- How many of the members are prosecutors?
  - How many, if any, are non-prosecutor members and who are they? (e.g. scholars, judges, lawyers, civil society, others)

Starting with 10.10.2022 the Superior Council of Prosecutors is composed of **13 members**, of which:

- 5 prosecutor members - elected by the General Assembly of Prosecutors;
- the Prosecutor General - ex officio member;
- 7 non-prosecutor members, as follows:
  - a) the President of the Superior Council of Magistracy (including interim) - ex officio member;
  - b) Minister of Justice (including interim) - ex officio member;
  - c) the Ombudsman - ex officio member;
- 4 elected civil society members:
  - a) one by the President of the Republic,
  - b) one by the Parliament,
  - c) one by the Government
  - d) one by the Academy of Sciences of Moldova.

Under the Council's authority are:

- **College for the Selection and Career of Prosecutors**
- **College for the evaluation of prosecutors' performance**
- **the Discipline and Ethics College.**

Each college consists of 7 members, as follows:

- 5 prosecutor members (elected by the General Assembly of Prosecutors, other than those of the High Council of Prosecutors);
- 2 members, elected by the Superior Council of Prosecutors from among representatives of civil society.

8. Please describe the procedure for the election or appointment of the members of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance (including both prosecutor members and non-prosecutor members), the duration of their mandate and the dismissal procedure, including, if applicable, the grounds for early termination of mandate or dismissal of members.

**5 members of the Superior Council of Prosecutors** are elected by the General Assembly of Prosecutors from among the prosecutors in office - by secret, direct and freely expressed vote.

Candidates for the position of member of the Superior Council of Prosecutors shall submit their applications to the Superior Council of Prosecutors at least 30 days before the date of the meeting of the General Assembly of Prosecutors. The list of candidates and the applications submitted shall be published on the official website of the Superior Council of Prosecutors

Candidates for membership of the Superior Council of Prosecutors from among the prosecutors are entitled to conduct a promotional campaign. Upon request, the candidate shall be granted a 50% reduction of the workload during the promotion campaign.

The first prosecutors who have accumulated the highest number of votes at the General Assembly of Prosecutors are considered elected as members of the Superior Council of Prosecutors. The next prosecutors on the list of candidates are substitute members and may take over the mandate if a position becomes vacant. Candidates for membership of the Superior Council of Prosecutors must be of impeccable reputation and be a recognized authority in their fields of activity.

During their term of office, prosecutors elected as members of the Superior Council of Prosecutors are detached from their position (they do not perform specific prosecution functions, but only deal with self-administration powers).

**4 non-prosecutor members of the Superior Council of Prosecutors** are elected by competition from civil society as follows:

- one by the President of the Republic,
- one by the Parliament,
- one by the Government,
- - one by the Academy of Sciences of Moldova.

Elected candidates must have a higher legal education, at least 3 years' experience in the field of law and be no more than 65 years old.

The mandate of the elected members is 4 years. The same person may not serve two consecutive terms as a member of the Superior Council of Prosecutors. Elected members of the Superior Council of Prosecutors shall serve until the election of new members.

Membership of the Superior Council of Prosecutors shall cease as appropriate:

- by submitting the request to renounce the membership of the Council;
- upon expiry of the term of office;
- on becoming a member of a college subordinate to the Superior Council of Prosecutors;
- in case of suspension or release from the position of prosecutor;

- in case of a final decision establishing incompatibility;
- in case if the definitive act establishes that he had adopted an act in breach of the legal provisions on conflict of interest;
- if the decision finding him/her guilty of an offence becomes definitive;
- if the Superior Council of Prosecutors finds it impossible for him/her to exercise the functions of a member for a period of more than four months;
- if one of the circumstances which would not have allowed him/her to be elected or appointed as a member of the Council is established;
- in the event of reaching the age of 65;
- in the event of death.

Members of the Superior Council of Prosecutors may not be dismissed. In the circumstances indicated, their term of office shall cease automatically.

*Election of members to the colleges, which operate under the Superior Council of Prosecutors:*

**5 member-prosecutors** are elected by the General Assembly of Prosecutors (the provisions on procedure and alternates are similar as for the Superior Council of Prosecutors).

Candidates for membership of the College are prosecutors who have no outstanding disciplinary sanctions, as well as persons who enjoy an irreproachable reputation, are a recognised authority in their fields of activity, have not been convicted of a criminal offence.

**2 non-prosecutors members** of the College are elected by the Superior Council of Prosecutors, by public competition, from among representatives of civil society.

It is forbidden to be a member of the Superior Council of Prosecutors and a member of one or more colleges at the same time. Members of the College are elected for a period of 4 years. Elected members serve until new members are elected.

Membership of the College shall cease under the same conditions as for members of the Superior Council of Prosecutors.

In the event of termination of membership of the College before the expiry of the four-year term, an alternate member shall continue to hold office.

9. Are there ex officio members in the composition? (i.e. those who are members automatically due to the position they occupy, for example, the Prosecutor General, the Minister of Justice or others)

The Superior Council of Prosecutors has the following ex officio members:

- the President of the Superior Council of Magistracy (including interim),
- the Minister of Justice (including interim),
- the Ombudsman,
- - the Prosecutor General.

*Remark 1:* We consider it necessary to draw the attention of the CCPE to the fact that there are several recommendations on the composition of the Superior Council of Prosecutors which have not yet been fully implemented in practice:

- *Opinion of the CCPE Bureau concerning the independence of prosecutors in the context of legislative changes as regards the prosecution service, CCPE-BU(2020)2 din 20.02.2020, (§37-39)<sup>12</sup>;*
- *Anti-Corruption Reforms in Moldova, Pilot 5th Round of Monitoring Under the Istanbul Anti-Corruption Action Plan - from 17.01.2022, (§6.4.3)<sup>13</sup> – reiterating the excessive number of ex officio members of the Superior Council of Prosecutors;*
- *REVIEW OF THE Composition and Operation of the Superior Council of Prosecutors of the Republic of Moldova – Technical Paper (prepared by Council of Europe experts) – with reference to the ex officio members of the Superior Council of Prosecutors. (pct.6.1.2 – Minister of Justice, pct.6.1.4 – President of the SCM, pct.6.1.6 – Ombudsman, pct.6.1.7 – Conclusions on the legal members)<sup>14</sup>;*
- *Evaluation GRECO Report Corruption prevention in respect of members of Parliament, judges and prosecutors (fourth evaluation round), from 01.07.2016, (§§148, 189 – Rec.XV)<sup>15</sup> and the three subsequent compliance reports adopted respectively at 07.12.2018 (§§89, 92-93)<sup>16</sup>, 25.09.2020 (§§90-91, 93-94)<sup>17</sup> and 03.12.2021 (§§59-63)<sup>18</sup> – for the exclusion of ex officio members - the Minister of Justice and the President of the SCM.*

However, the Minister of Justice and the President of the SCM continue to be ex officio members of the Superior Council of Prosecutors.

*Remark 2:* From the analysis of the national regulatory framework it can be concluded that the symmetry between the structure of the self-governing body of judges and that of prosecutors is not respected. There are no ex officio members in the Superior Council of Magistracy, while in the Superior Council of Prosecutors the situation is different. The Superior Council of Magistracy is composed of **12 members: 6 judges** elected by the General Assembly of Judges, representing all levels of courts, and 6 persons of high professional reputation and personal integrity, with experience in law or other relevant field, who are not active in legislative, executive or judicial bodies and are not politically affiliated.

10. Are there rules or procedures to prevent possible conflict of interest situations during the process of election or appointment of the members of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance? Is there an incompatibility between certain functions in the prosecution service and membership in a council of prosecutors?

Prosecutors who have outstanding disciplinary sanctions and persons who have been convicted of a criminal offence cannot be members of the Superior Council of Prosecutors. In other words,

<sup>12</sup> <https://rm.coe.int/ccpe-bureau-s-opinion/16809c9386>

<sup>13</sup> [Anti-Corruption Reforms in Moldova \(oecd-ilibrary.org\)](https://www.oecd-ilibrary.org/anti-corruption-reforms-in-moldova)

<sup>14</sup> <https://rm.coe.int/eccd-mld-tp1-scp-composition-and-operation-eng/1680a2b153>

<sup>15</sup> <https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/168075bb45>

<sup>16</sup> <https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/168096812d>

<sup>17</sup> <https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/16809fec2b>

<sup>18</sup> <https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/1680a5722f>



these prosecutors cannot be included in the list of candidates for membership of the Superior Council of Prosecutors.

Prosecutors elected as members of the Superior Council of Prosecutors shall be detached from office for the duration of their term of office (their powers and duties during this period are exclusively related to the self-administration of prosecutors).

Members of the Superior Council of Prosecutors, with the exception of ex officio members, may not engage in any other remunerated activity except teaching, creative, scientific, sporting or public associations. Members of the Superior Council of Prosecutors may not simultaneously be members of subordinate colleges.

Note: There is currently legal uncertainty about the mandate of the Superior Council of Prosecutors, which could be seen as a vulnerability. Indeed, the law states that a prosecutor who has been elected as a member of the Superior Council of Prosecutors is detached from his/her position.

However, the law does not clarify what position this prosecutor will hold after leaving office. Nor does the law establish a minimum guarantee that this prosecutor will at least return to the position he/she held before joining the Superior Council of Prosecutors.

It would follow from the law that there is a wide margin of discretion for the Prosecutor General in appointing prosecutor-members of the Superior Council of Prosecutors to the position they will occupy after the end of their mandate.

There is a risk that the prosecutor's independence may be impaired in the exercise of his or her self-administrative powers, as there is no certainty regarding the position to which the prosecutor who has served as a member of the High Council of Prosecutors belongs.

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Members of the Colleges of Prosecutors continue to exercise specific prosecutorial functions concurrently,.

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11. Are there any specific requirements for prosecutor members in order to ensure a proportional and fair representation of all levels of the prosecution system?

Of the 5 member-prosecutors of the Superior Council of Prosecutors, who are elected by the General Assembly of Prosecutors from among the prosecutors in office, the distribution is as follows:

- a) one member from among the prosecutors of the Office of the Public Prosecutor;
- b) four members from among the prosecutors from the territorial and specialised prosecutors' offices.

12. Please describe briefly the election/appointment process of the president and vice-presidents, if applicable, of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance, including dismissal processes and grounds.

The law establishes that the President of the Superior Council of Prosecutors is elected by secret vote from among the member-prosecutors for a term of 4 years by a majority vote of the members of the Council.

The President is elected at the first meeting of the new composition of the Superior Council of Prosecutors or, possibly, at the first meeting after the position has become vacant.

The meeting to elect the President of the Council shall be chaired by the senior dean from among the members of the Council who are not candidates for the office of President.

Members of the Council who wish to stand for the office of President shall submit the following documents to the Council office no later than the day before the day of the Council meeting:

(a) the request to stand as a candidate;

(b) the vision for the exercise of the mandate;

(c) other documents which the candidate considers relevant. Candidates shall be entered on the ballot paper in alphabetical order. The Head of the Council Apparatus shall print the ballot papers corresponding to the number of Council members.

At the meeting at which the election of the President of the Council takes place, each candidate is given equal time to present his/her vision of the work as President of the Council. Each member of the Council may put questions to the candidates.

Voting by secret ballot shall be carried out by each member of the Council present at the meeting completing the ballot paper in confidence and placing it in the sealed ballot box. Postal voting is not possible.

The votes cast shall be counted by the Head of the Council Apparatus after the voting procedure. He shall show each ballot paper to the members of the Council.

The candidate who has received more than half of the votes of the members of the Council in office shall be deemed to be elected President. If no candidate has obtained the required number of votes, a second ballot shall be held between the candidates who obtained the highest number of votes in the first ballot. If no candidate has obtained the required number of votes in the second ballot, the third ballot shall be held between those two candidates. If no candidate has obtained the required number of votes in the third round, the election procedure starts again from the beginning.

After the votes for the election of the President have been counted, the Council shall, by decision, confirm that the procedure and the result of the vote have been followed. This decision shall be signed by the Chairperson of the meeting.

The President-elect of the Council shall take office immediately after the Council's decision electing the President has been announced.

In the absence of the President of the Superior Council of Prosecutors, his duties shall be exercised by a member appointed by the Council.

The term of office of the President may be terminated prematurely under the general conditions for termination of membership of the Council, by resignation or dismissal.

The term of office of the President shall in any event expire at the first meeting of the newly elected Council.

The President of the Council may resign as President by submitting a written request to the Council. The resignation shall take effect upon acceptance by decision of the Council.

The President of the Council may be removed from office by a decision of the Council adopted by a vote of 2/3 of the members in office.

In the event of a vacancy occurring in the office of President, the Council shall appoint a member of the Council to act as interim President until a new President is elected. The new President shall serve for the remainder of the term of office of the replaced President.

### **III. Competence and functioning of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance**

13. In your country, do the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance have exclusive power to exercise the administration of the prosecution service or whether this power is divided with the executive bodies (those outside of the prosecution service, e.g. the ministry of justice)?

The Superior Council of Prosecutors ensures the appointment, transfer, promotion and disciplinary measures against prosecutors.

Therefore, competitions for the selection of candidates for the post of prosecutor, promotion and transfer are announced by the Superior Council of Prosecutors.

The evaluation in these competitions is carried out by the College for the Evaluation of Prosecutors' Performance and the College for the Selection and Career of Prosecutors.

The Superior Council of Prosecutors designates the winners of the competitions and proposes their appointment/promotion/transfer to the Prosecutor General.

The Prosecutor General has the right to reject with reasons the candidacy proposed by the Superior Council of Prosecutors.

If the High Council of Prosecutors repeatedly proposes the same candidate by a vote of 2/3 of its members, this proposal shall be binding on the Prosecutor General.

Disciplinary investigations are carried out by the Inspectorate of Public Prosecutors (which is subordinate to the Prosecutor General).

Subsequently, the disciplinary procedure is examined by the College of Discipline and Ethics, which operates under the Superior Council of Prosecutors.

If the decision of the College of Discipline and Ethics is contested, the disciplinary procedure is then examined by the Superior Council of Prosecutors.

14. Please describe briefly the functions and powers of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance, in particular as regards the recruitment, promotion, transfer, evaluation, discipline or other aspects regarding prosecutors, and budgetary aspects (including the development of the prosecution service's budget, systematisation of the legislation on the activities of the prosecution service, approval of the prosecution service's task plans and annual reports, adoption of the code of ethics for prosecutors etc.).

The Superior Council of Prosecutors has the following powers:

- it draws up and approves regulations concerning its work, the functioning of its colleges and other regulations concerning it;
- it draws up and approves regulations on the selection procedure and the career of prosecutors;
- it draws up the draft regulations of the General Assembly of Prosecutors and draft amendments thereto;

- organises the competition for the selection of the candidate for the post of Prosecutor General, which it proposes to the President of the Republic;
- organises competitions, selects and appoints the members of its colleges from civil society;
- examines appeals against decisions taken by its colleges;
- makes proposals to the Prosecutor General on the appointment, transfer, promotion, secondment or suspension of prosecutors under the terms of the Code of Criminal Procedure and this Law, as well as on the dismissal of prosecutors;
- participates in the swearing in of prosecutors and the Prosecutor General;
- determines the number of prosecutors in each prosecutor's office;
- appoints prosecutors to the Council of the National Institute of Justice;
- approves the strategy for the initial and continuous training of prosecutors and gives its opinion on the action plan for the implementation of this strategy;
- examines and submits opinions on the regulations for the organisation of the entrance examination to the National Institute of Justice, on the teaching programmes and curricula for the initial and continuing training courses of the National Institute of Justice, on the regulations for the organisation of the competition for the replacement of teaching posts, as well as on the composition of the committees for the entrance and graduation examinations of the National Institute of Justice;
- determines the number of places to be offered in the entrance examination for the initial training of prosecutors at the National Institute of Justice;
- examines the addresses of citizens and prosecutors on matters within its competence;
- prepares the draft Code of Ethics for Prosecutors, as well as draft amendments thereto, and proposes them to the General Assembly of Prosecutors for approval;
- approves its draft budget, which it submits to the Ministry of Finance;
- approves the structure of the apparatus of the High Council of Prosecutors;
- participates in the preparation of the draft budget of the Prosecutor's Office and approves it;
- participates in the elaboration of the strategic development plans of the Prosecutor's Office; endorses the draft annual priorities for the work of the Public Prosecutor's Office drawn up by the Prosecutor General.

15. Please describe briefly the competence, if any, or any role played by the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance in:

- performance assessment of prosecutors, both in terms of substance and procedure, and including relationship/ interactions with other bodies if those are competent on performance assessment;
- disciplinary measures against prosecutors, also both in terms of substance and procedure, and including relationship/ interactions with other bodies if those are competent on disciplinary measures.

Superior Council of Prosecutors:

- adopts the Regulation establishing the organisation and functioning of the College for the selection and career of prosecutors, the criteria and procedure for the selection and career of prosecutors and the evaluation sheets used in the selection procedure, which are annexed to the said Regulation;
  - adopt the Regulation laying down the organisation and functioning of the College for the evaluation of prosecutors' performance, the criteria and procedure for the evaluation of prosecutors' performance and the evaluation sheets for the evaluation of prosecutors' performance annexed to that Regulation;
  - hear the annual activity reports of the College for the Selection and Career of Prosecutors and of the College for the Evaluation of Prosecutors' Performance;
- examines appeals against decisions taken by these colleges.

The notification of the act that may constitute disciplinary misconduct shall be submitted to the Office of the Superior Council of Prosecutors. All complaints shall be registered and forwarded to the Inspectorate of Public Prosecutors within 3 working days of receipt. The Inspectorate of Public Prosecutors carries out disciplinary investigations.

The disciplinary case is then examined by the Disciplinary and Ethics College, with the compulsory summons of the prosecutor concerned in the complaint about the act that may constitute disciplinary misconduct, the representative of the Public Prosecutors' Inspectorate and the person who lodged the complaint.

After examining the disciplinary case, the Disciplinary and Ethics College may adopt one of the following decisions:

- (a) finding disciplinary misconduct and imposing a disciplinary penalty;
- (b) finding disciplinary misconduct and discontinuing the disciplinary procedure if the time limits for disciplinary proceedings have expired;
- (c) on a finding of disciplinary misconduct and discontinuance of disciplinary proceedings, if the prosecutor has terminated his or her employment before the disciplinary case has been decided;
- d) on the termination of disciplinary proceedings, if no disciplinary offence has been committed.

The High Council of Prosecutors examines appeals against the decision of the Disciplinary and Ethical Board, without limiting itself to the grounds and reasons in the appeal. After examining the appeal against the decision of the Disciplinary and Ethics Board, the High Council of Prosecutors shall decide:

- a) to reject the appeal and uphold the contested decision;
- b) to uphold the appeal, quash the contested decision and adopt a new decision resolving the case.

16. Do the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance have the power to consider situations of conflict within the prosecution system, for example in case of instructions to reverse the view of a prosecutor?

The Superior Council of Prosecutors is not empowered to conduct procedural-criminal investigations or to exercise superior hierarchical control and to verify the solutions adopted by prosecutors.

The competence to designate, verify and, where appropriate, annul acts and/or procedural actions of prosecutors lies with the superior prosecutor or the court, as prescribed by law.

17. Can prosecutors apply to the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance with an allegation of illegal instructions from their superior prosecutors or any other actors, both from within and outside of the prosecution system?

The Prosecutor may refer to the Superior Council of Prosecutors any act likely to affect his independence, impartiality or professional reputation.

However, the power to designate, verify and, where appropriate, annul the acts and/or procedural actions of prosecutors in criminal proceedings shall lie with the superior prosecutor or the court, as prescribed by law.

18. Please describe briefly the decision-making process of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance, including any aspects related to voting rights of members (for example, whether all members have the same right to vote), and applicable procedures and thresholds for a decision to be adopted.

The meeting of the Superior Council of Prosecutors is deliberative if at least 2/3 of the members participate.

Decisions shall be adopted in a public meeting, with an open vote of the majority of the members of the Superior Council of Prosecutors present. The members of the Superior Council of Prosecutors have equal voting rights.

Any member of the Superior Council of Prosecutors has the right to a separate opinion. He shall announce his separate opinion immediately after the voting procedure has been completed.

As of October 2022, the law stipulates that the Prosecutor General shall participate in the meetings of the Superior Council of Prosecutors without the right to vote in the adoption of decisions, except for those concerning the drafting and adoption of normative acts and policy documents on the development of the Prosecutor's Office.

19. What is the legal force of the final decisions taken by the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance? Are such decisions of only a consultative nature, not being legally obligatory, or are they of a binding nature, being legally obligatory/mandatory, or is there a mixture depending on the nature of a decision?

The decisions of the Superior Council of Prosecutors are mandatory and legally binding once they become final (if not challenged or if the solution is validated by the court).

The Superior Council of Prosecutors also issues advisory decisions in the following areas:

- the number of places in the admission competition for the initial training of prosecutors at the National Institute of Justice,
- the rules for the organisation of the entrance examination to the National Institute of Justice,
- the teaching programmes and curricula for the initial and continuous training courses at the National Institute of Justice,
- the regulations for the organisation of the competition for the replacement of teaching posts, as well as the composition of the committees for the admission and graduation examinations of the National Institute of Justice.

The decisions of the Council of normative character take effect from the moment of publication on the official website of the Supreme Council of Prosecutors.

The decisions of the Superior Council of Prosecutors may be challenged in court.

20. Are the final decisions taken by the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance subject to judicial review by a court?

The decision of the Superior Council of Prosecutors may be challenged under Article 191 of the Administrative Code at the Chisinau Court of Appeal, within 30 days of its communication or notification.

Decisions of the court of Appeal may be appealed to the Supreme Court of Justice within 30 days of notification of the decision of the court of appeal.

21. Which mechanisms ensure the independent functioning of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance?

The Superior Council of Prosecutors has its own budget, financed within the budgetary allocations approved by the annual budget law.

The President of the Superior Council of Prosecutors administers the budget.

The Superior Council of Prosecutors has an Apparatus (secretariat) which ensures the work of the Council and its colleges.

**Remark:** Regarding the vulnerability of prosecutors in the composition of the Superior Council of Prosecutors, we consider it necessary to reiterate the opinion of the CCPE:

"The Bureau of the CCPE recognises that there can be no generally accepted requirement for a majority of prosecutor-members in the Councils of Prosecutors so far. At the same time, it wishes to reiterate the recommendation of the CCPE mentioned above in Opinion No 13 (2018) on the independence, accountability and ethics of prosecutors, namely that an - absolute and not relative - majority in such Councils should be represented by prosecutors elected by their peers. The CCPE believes that this is essential to ensure the practical implementation of the principle of independence of prosecutors."

**Note:** The law does not clarify what position/function the member of the Superior Council of Prosecutors elected from among prosecutors will occupy after the end of his/her mandate. As there is no certainty as to the position of the prosecutor who has served as a member of the Superior Council of Prosecutors, there is a risk that the independence of these members in the adoption of solutions is affected.

22. Are there any other institutions outside of the prosecution system which have a role with respect to the functioning and decision-making process of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance?

Authorities appointing non-prosecutor members to the Superior Council of Prosecutors are:

- **Parliament** - appoints a member from civil society;
- **Government** - appoints a member from civil society;
- The **President** of the Republic of Moldova - appoints a member from civil society.

23. How is the transparency of the work of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance guaranteed:

- are they accountable to the public through widely disseminated reports and information?
- do they have publicly accessible websites providing essential information on their functioning and decision-making?
- any other measures for transparency? (i.e. public briefings, press releases etc.)

The Superior Council of Prosecutors has an official website <https://csp.md/> (available since 2019), where it regularly publishes:

- the normative acts governing the work of the Council, as well as of its subordinate boards;
- the annual activity reports of the Council and its subordinate boards;
- the decisions of the Council and the decisions of its subordinate boards;
- press releases and announcements concerning core activity;
- Register of candidates for the office of Prosecutor;
- the situation of vacant prosecutor posts;
- announcements of competitions;
- video recordings of Council meetings;
- agendas and minutes of meetings of the Council and its subordinate boards;
- the possibility of submitting complaints online;
- opinions and views of the Superior Council of Prosecutors on draft legislation;
- information on the budget and its implementation;
- procurement plans and monitoring reports;
- international and national cooperation protocols;
- contact details of the institution.

Additionally, the Superior Council of Prosecutors:

- Has a page on communication networks (Facebook <https://www.facebook.com/www.csp.md>) ,
- publishes information and articles in the Journal of Public Prosecutions;
- publishes information and articles in the newspaper "Dreptul".



## Montenegro / Monténégro

### I. General questions

1. Is there a council of prosecutors and/or any other bodies dealing with prosecutorial self-governance in your country? If yes, what is the exact title/denomination of such body or bodies, if several? (i.e. Council of Prosecutors or Prosecutorial Council, Conference/Congress of Prosecutors, Qualification and Disciplinary Commission of Prosecutors etc.) Is there a professional association of prosecutors dealing with prosecutorial self-governance in any way?

In Montenegro we have Prosecutorial Council.

2. If so, when was a council of prosecutors and/or any other bodies dealing with prosecutorial self-governance introduced in the prosecutorial system in your country? Please describe briefly, if applicable, any significant reforms undertaken since the establishment, aimed at strengthening effectiveness, independence and accountability of such body(ies).

Prosecutorial Council is introduced by Constitution of Montenegro which was adopted 2007 following the independence of Montenegro. Amendment XI from 2013 further elaborated position and competencies of the Prosecutorial Council and its functioning

3. If such a council of prosecutors and/or any other bodies dealing with prosecutorial self-governance exist in your country, are they only for prosecutors or for other professionals of justice? Are such bodies separate or do they operate within a body common to judges and prosecutors?

Prosecutorial Council is dealing only with prosecutorial self-governance. Judicial council dealing with judges is separate.

4. At what legislative or normative level is the status of a council of prosecutors and/or any other bodies dealing with prosecutorial self-governance established and how is its/their functioning regulated? (e.g. through Constitution, laws, by-laws or other regulations).

Prosecutorial Council in Montenegro is Constitutional category and further elaborated by Law on State Prosecution and other regulations.

5. Are such council of prosecutors and/or any other bodies dealing with prosecutorial self-governance provided with the required resources (human, financial and other) to function properly?

Yes. Secretariat of Prosecutorial Council as administrative support is provided with all necessary resource in order to allow Prosecutorial Council to perform its competencies properly.

6. If in your country there is no council of prosecutors and/or any other bodies dealing with prosecutorial self-governance, is there any discussion to introduce such a body(ies)? If so, what are the arguments in favour and against its/their introduction?

**II. Composition of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance and status of its/their members**

7. Please describe the composition of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance in your country. Please indicate:
- How many of the members are prosecutors?
  - How many, if any, are non-prosecutor members and who are they? (e.g. scholars, judges, lawyers, civil society, others)

Prosecutorial Council shall have a president and ten members. Supreme State Prosecutor shall be the President of the Prosecutorial Council. Four state prosecutors, four eminent lawyers as well as one representative of the Ministry of Justice appointed by the Minister of Justice from among the employees of the Ministry of Justice.

8. Please describe the procedure for the election or appointment of the members of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance (including both prosecutor members and non-prosecutor members), the duration of their mandate and the dismissal procedure, including, if applicable, the grounds for early termination of mandate or dismissal of members.

In a secret vote Conference of Prosecutors (all prosecutors in Montenegro) elect and dismiss members of the Prosecutorial Council from among state prosecutors. Three of whom from the Supreme State Prosecution Office, Special State Prosecution Office and high state prosecution offices, and one from basic state prosecution offices elected and dismissed by the Prosecutorial Conference. Four eminent lawyers are elected and dismissed by the Parliament of Montenegro upon proposal of the relevant working body and representative of the Ministry of Justice appointed by the Minister of Justice from among the employees of the Ministry of Justice.

Duration of the mandate of Prosecutorial Council is 4 years.

Early termination of mandate shall be applied on grounds of termination of the office which was basis for his/her election, resignation, or conviction to the prison sentence.

9. Are there ex officio members in the composition? (i.e. those who are members automatically due to the position they occupy, for example, the Prosecutor General, the Minister of Justice or others)

Supreme State Prosecutor shall be the President of the Prosecutorial Council ex officio. Ex officio member is representative of the Ministry of Justice but it is to be decided by Minister of Justice which one of the employees will be appointed.

10. Are there rules or procedures to prevent possible conflict of interest situations during the process of election or appointment of the members of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance? Is there an incompatibility between certain functions in the prosecution service and membership in a council of prosecutors?

Member of Prosecutorial Council from among the state prosecutors cannot be spouse or close relative to the member of the Parliament, member of the Government or of the President of Montenegro.

The state prosecutor who was given the grade unsatisfactory or the state prosecutor who has been imposed a disciplinary sanction cannot be elected to the position of a member of the Prosecutorial Council from among the state prosecutors.

11. Are there any specific requirements for prosecutor members in order to ensure a proportional and fair representation of all levels of the prosecution system?

Yes. Three of state prosecutors will be elected from the Supreme State Prosecution Office, Special State Prosecution Office and high state prosecution offices, and one from basic state prosecution offices in order to ensure a proportional and fair representation of all levels of prosecution organisation.

12. Please describe briefly the election/appointment process of the president and vice-presidents, if applicable, of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance, including dismissal processes and grounds.

### **III. Competence and functioning of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance**

13. In your country, do the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance have exclusive power to exercise the administration of the prosecution service or whether this power is divided with the executive bodies (those outside of the prosecution service, e.g. the ministry of justice)?

In Montenegro Prosecutorial Council have exclusive power to exercise the administration of the prosecution service.

14. Please describe briefly the functions and powers of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance, in particular as regards the recruitment, promotion, transfer, evaluation, discipline or other aspects regarding prosecutors, and budgetary aspects (including the development of the prosecution service's budget, systematisation of the legislation on the activities of the prosecution

service, approval of the prosecution service's task plans and annual reports, adoption of the code of ethics for prosecutors etc.).

Prosecutorial Council determines proposal for election of Supreme State Prosecutor, elects and dismiss heads of prosecution offices as well as state prosecutors, pronounce termination of function both for head of prosecution offices as well as of the state prosecutors, proposes to the Government Budget necessary for functioning of prosecution organization and delivers to the Parliament Annual report of the functioning of Prosecution organization. Prosecutorial Council can establish commissions in order to ensure higher efficiency in discharging duties from within its competences. One of them is Commission for the Code of Prosecutorial Ethics competent to determine whether state prosecutors breached the provisions of the Code of Ethics. Prosecutorial council will determine number of State Prosecutors and decide on transfer of state prosecutors within the organization. Rendering decisions on disciplinary liability of the state prosecutors, is responsible for training of the state prosecutors, ensuring use, functioning and uniformity of the Judicial Information System in its part that is related to the State Prosecution Service; keeping records of data related to the state prosecutors and heads of state, adopting the Rules of Procedure of the Prosecutorial Council; issuing opinions on incompatibility of certain activities with the office of a state prosecutor; considering complaints of the work of the state prosecutors and take positions regarding any jeopardy to their independence; considering complaints against the work of the state prosecutors regarding the lawfulness of their work; forming the Commission for Evaluation of Performance of State Prosecutors, electing the disciplinary plaintiff; adopting the methodology for developing the report on the operation of the State Prosecution Service and annual schedule of activities etc.

15. Please describe briefly the competence, if any, or any role played by the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance in:

- performance assessment of prosecutors, both in terms of substance and procedure, and including relationship/ interactions with other bodies if those are competent on performance assessment;

Prosecutorial Council will establish Commission for assessment for prosecutors, conduct testing in written for those who are applying for the post of state prosecutor for the first time, make ranking list and decision on election, also will conduct assessment of the performance of state prosecutors on regular basis.

- disciplinary measures against prosecutors, also both in terms of substance and procedure, and including relationship/ interactions with other bodies if those are competent on disciplinary measures.

The motion for establishing disciplinary liability shall be filed to the Prosecutorial Council in writing. Prosecutorial Council shall submit the motion for establishing disciplinary liability to the

disciplinary plaintiff, who shall conduct the investigation within 45 days from the day of receiving the motion for establishing disciplinary liability. If the Disciplinary Panel i.e. Prosecutorial Council does not agree with the proposal of the Disciplinary Panel i.e. Prosecutorial Council may oblige the disciplinary Plaintiff to conduct the investigation and to file the motion to indict. In the procedure for establishing disciplinary liability of a state prosecutor, the Disciplinary Panel i.e. Prosecutorial Council may decide to:

- 1) reject the motion to indict as ill-founded;
- 2) grant the motion to indict and impose a disciplinary sanction.

Disciplinary Panel i.e. Prosecutorial Council have to finish the procedure for establishing disciplinary liability of the state prosecutor within 60 days from the day of receiving the motion from the disciplinary plaintiff.

16. Do the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance have the power to consider situations of conflict within the prosecution system, for example in case of instructions to reverse the view of a prosecutor?

No.

17. Can prosecutors apply to the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance with an allegation of illegal instructions from their superior prosecutors or any other actors, both from within and outside of the prosecution system?

Yes.

18. Please describe briefly the decision-making process of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance, including any aspects related to voting rights of members (for example, whether all members have the same right to vote), and applicable procedures and thresholds for a decision to be adopted.

Decisions are taken by majority. All members of Prosecutorial Council have the same right to vote.

19. What is the legal force of the final decisions taken by the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance? Are such decisions of only a consultative nature, not being legally obligatory, or are they of a binding nature, being legally obligatory/mandatory, or is there a mixture depending on the nature of a decision?

Decisions of the Prosecutorial Council shall be final and administrative dispute may be initiated against them, unless this Law requires otherwise.

Decision of the Commission for the Code of Prosecutorial Ethics is of a consultative nature. However, it can be ground for initiating disciplinary procedure in some cases. Disciplinary sanctions are legally obligatory, but can be subject by review by Supreme Court.

20. Are the final decisions taken by the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance subject to judicial review by a court?

Disciplinary sanctions imposed by Prosecutorial Council are subject to the review by Supreme Court of Montenegro.

21. Which mechanisms ensure the independent functioning of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance?

Prosecutorial Council in Montenegro is constitutional category. Prosecutorial council by constitutional provisions provides autonomous functioning of prosecutorial organisation. In the composition of Prosecutorial council are state prosecutors as well as eminent lawyers and representative of the Ministry of justice. Law on State prosecution from 2021 changed the ratio of members in the Prosecutorial council in favour of members which are not state prosecutors. Previously we had majority of state prosecutors in the prosecutorial Council and in our opinion that was better solution and better mechanism to provide independent functioning of the prosecutorial Council.

22. Are there any other institutions outside of the prosecution system which have a role with respect to the functioning and decision-making process of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance?

No.

23. How is the transparency of the work of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance guaranteed:

- are they accountable to the public through widely disseminated reports and information?
- do they have publicly accessible websites providing essential information on their functioning and decision-making?
- any other measures for transparency? (i.e. public briefings, press releases etc.)

All of the above. Secretariat of the Prosecutorial Council appoints public relation officer responsible for the transparent work of Prosecutorial Council who communicate to the public by regular press releases and publishing all relevant information to the website

## Netherlands / Pays-Bas

### I. General questions

1. Is there a council of prosecutors and/or any other bodies dealing with prosecutorial self-governance in your country? If yes, what is the exact title/denomination of such body or bodies, if several? (i.e. Council of Prosecutors or Prosecutorial Council, Conference/Congress of Prosecutors, Qualification and Disciplinary Commission of Prosecutors etc.) Is there a professional association of prosecutors dealing with prosecutorial self-governance in any way?

There is indeed a body that deals with prosecutorial self-governance, namely the Board of Prosecutors-General.

2. If so, when was a council of prosecutors and/or any other bodies dealing with prosecutorial self-governance introduced in the prosecutorial system in your country? Please describe briefly, if applicable, any significant reforms undertaken since the establishment, aimed at strengthening effectiveness, independence and accountability of such body(ies).

The Board of Prosecutors-General in its current form (steering one organization) was introduced in 1998. The Board is concerned with general policy on investigation and prosecution. The courts review the conduct of the Public Prosecution Service (PPS). The PPS informs the Minister of Justice and Security, who bears political responsibility for the Service's conduct and performance.

Before 1998, the Netherlands was organized according to the Napoleonic model.

Not much has changed since 1998.

3. If such a council of prosecutors and/or any other bodies dealing with prosecutorial self-governance exist in your country, are they only for prosecutors or for other professionals of justice? Are such bodies separate or do they operate within a body common to judges and prosecutors?

They are only the Board for prosecutors. They operate separately from the courts. The PPS and the courts together make up the judiciary.

4. At what legislative or normative level is the status of a council of prosecutors and/or any other bodies dealing with prosecutorial self-governance established and how is its/their functioning regulated? (e.g. through Constitution, laws, by-laws or other regulations).

The Judicial Organization Act governs the Board of Prosecutors-General. In the Judicial Organization Act, it states the composition of board members, their tasks (in general), how they vote, the instructions they can give and the relationship with the Minister of Justice and Security.

5. Are such council of prosecutors and/or any other bodies dealing with prosecutorial self-governance provided with the required resources (human, financial and other) to function properly?

Yes.

6. If in your country there is no council of prosecutors and/or any other bodies dealing with prosecutorial self-governance, is there any discussion to introduce such a body(ies)? If so, what are the arguments in favour and against its/their introduction?

Not applicable

## **II. Composition of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance and status of its/their members**

7. Please describe the composition of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance in your country. Please indicate:
- How many of the members are prosecutors?
  - How many, if any, are non-prosecutor members and who are they? (e.g. scholars, judges, lawyers, civil society, others)

The Board consists of at least three and at most five Prosecutors-General. One of the Prosecutors-General is appointed as President of the Board for a maximum period of three years by internal selection and with approval of the minister of Justice and Security. The President can be reappointed once.

All of the Prosecutors-General are judicial officer. Only one member may not be a judicial officer (because of expertise in the field of business management and ICT). This Prosecutor-General can, however, not be appointed as President of the Board.

8. Please describe the procedure for the election or appointment of the members of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance (including both prosecutor members and non-prosecutor members), the duration of their mandate and the dismissal procedure, including, if applicable, the grounds for early termination of mandate or dismissal of members.

The Board is selected through a job application procedure. Before one can apply to become a Prosecutor-General, one must be eligible to become a prosecutor. To become a member of the Board, there is, thus, a job application. Afterwards a selection commission will select the new Board member.

After one is selected as member, the council of ministers ("Koninklijk Besluit") has to formally approve the proposal from the minister of Justice and Security to appoint someone as a member of the Board.



The non-prosecutor member of the Board is selected by the minister of Justice. The dismissal or termination of the non-prosecutor member of the Board is also done by the minister of Justice and Security. The non-prosecutor member of the Board as well as the prosecutor members do not have a limited duration of their mandate.

The other members of the Board are dismissed, suspended or terminated by the Supreme Court (Legal Status of Judicial Officers Act).

9. Are there ex officio members in the composition? (i.e. those who are members automatically due to the position they occupy, for example, the Prosecutor General, the Minister of Justice or others)

No.

10. Are there rules or procedures to prevent possible conflict of interest situations during the process of election or appointment of the members of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance? Is there an incompatibility between certain functions in the prosecution service and membership in a council of prosecutors?

There is a selection commission who will select a member for the Board. In principle, everyone who is eligible to become a prosecutor can apply to become a Board member.

In this context, it may be reported that certain functions are subject to a screening for involvement in (possibly) criminal activities. There is also a duty to report on ancillary activities. Furthermore, there is an independent integrity bureau of the PPS, which supervises the integrity of the PPS.

11. Are there any specific requirements for prosecutor members in order to ensure a proportional and fair representation of all levels of the prosecution system?

The PPS is focused on diversity and inclusivity.

12. Please describe briefly the election/appointment process of the president and vice-presidents, if applicable, of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance, including dismissal processes and grounds.

See previous answer about the President of the Board.

### **III. Competence and functioning of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance**

13. In your country, do the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance have exclusive power to exercise the administration of the prosecution service or whether this power is divided with the executive bodies (those outside of the prosecution service, e.g. the ministry of justice)?

In principle has the Board of Prosecutors-General exclusive power to exercise the administration of the prosecution service. However, due to the fact that the minister of Justice

and Security bears political responsibility for the PPS's conduct and performance and may be called upon to render account to both houses of parliament, the president of the Board meets on a regular basis with the minister in which the president informs the minister.

The minister has the legal power to intervene in an individual case, by issuing a directive to the PPS. If the minister orders the prosecution service to prosecute a particular case, it has to be in writing so the court will be informed of the directive. If the minister orders the prosecution service to abstain from prosecuting a case, parliament will always be informed. Until now no minister ever issued such a directive.

14. Please describe briefly the functions and powers of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance, in particular as regards the recruitment, promotion, transfer, evaluation, discipline or other aspects regarding prosecutors, and budgetary aspects (including the development of the prosecution service's budget, systematisation of the legislation on the activities of the prosecution service, approval of the prosecution service's task plans and annual reports, adoption of the code of ethics for prosecutors etc.).

The Board determines the national investigation and prosecution policy of the Public Prosecution Service. The Board ensures that there is cohesion, consistency and quality in the criminal enforcement of the legal order.

The Board is responsible for the policy and management of the Public Prosecution Service. This includes:

- Ensuring an effective and efficient organization
- Aligning priorities in prosecution
- Providing internal guidelines (including public policy rules for criminal procedure) so that all public prosecutors set equal criminal demands in comparable cases as far as possible.

In addition, the Board gives advice on legislation related to criminal prosecution.

Furthermore, the "Rijksrecherche" comes under the authority of the PPS. This independent body investigates alleged cases of criminal conduct within the government, including when a public servant is suspected of a criminal offence such as fraud or bribery. The Rijksrecherche conducts investigations when the integrity of the government is at stake, in event of a sensitive case and when any appearance of partiality has to be avoided.

15. Please describe briefly the competence, if any, or any role played by the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance in:

- performance assessment of prosecutors, both in terms of substance and procedure, and including relationship/ interactions with other bodies if those are competent on performance assessment;

The Board of Prosecutors-General do not have a role in the assessment of the performance of prosecutors. They do have a role in the assessment of the functioning of the Chief prosecutors

and their substitutes. The Chief prosecutors are in charge of certain regions. The Chief Prosecutors assess the prosecutors in their region. The role of the Board is only about the functionality of the head prosecutors and their substitutes. They do not assess individual cases done by the head prosecutors or other prosecutors.

- disciplinary measures against prosecutors, also both in terms of substance and procedure, and including relationship/ interactions with other bodies if those are competent on disciplinary measures.

A disciplinary measure may be imposed on a prosecutor who fails to comply with an obligation imposed on him/her or who is otherwise guilty of dereliction of duty. Dereliction of duty comprises both the violation of any regulation as well as the performance or omission which a responsible prosecutor in similar circumstances should omit or should do.

Disciplinary sanctions applicable to integrity violations are the following (article 34b, Law on the organization of the judiciary):

- a) Letter of admonishment;
- b) Reduction of leave;
- c) Special duties on unusual days;
- d) Fine (max. € 22) ;
- e) (partial) attachment of pay ;
- f) Reduction of pay grade ;
- g) Denial of annual pay rise;
- h) Reduction of salary tier ;
- i) Transfer to another district;
- j) Suspension with or without denial of pay;
- k) Dismissal.

The sanctions are initiated by the following authorities:

Sanctions:

a-c: Chief Prosecutor

d-j: Board of Prosecutors-General, following the recommendation of the Chief Prosecutor

K: the Crown, following the recommendation of the Chief Prosecutor / Board of Procurators-General

Thus the Board of Prosecutors-General play a role in the sanctioning d-j.

16. Do the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance have the power to consider situations of conflict within the prosecution system, for example in case of instructions to reverse the view of a prosecutor?

Yes they have a general and special powers to do so, but they may not revoke a decision of a prosecutor in an individual case.

17. Can prosecutors apply to the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance with an allegation of illegal instructions from their superior prosecutors or any other actors, both from within and outside of the prosecution system?

Yes this is possible.

18. Please describe briefly the decision-making process of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance, including any aspects related to voting rights of members (for example, whether all members have the same right to vote), and applicable procedures and thresholds for a decision to be adopted.

The Board of Prosecutors-General cannot take decisions unless at least three members are present. The Board takes decisions by simple majority vote. In the event of a tie, the President's vote shall be decisive.

The Board can set further rules with regard to its working method and decision-making. The regulations or an amendment thereof will be published in the government gazette.

19. What is the legal force of the final decisions taken by the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance? Are such decisions of only a consultative nature, not being legally obligatory, or are they of a binding nature, being legally obligatory/mandatory, or is there a mixture depending on the nature of a decision?

It depends on the nature of the decision. Most are legally binding and published in the government gazette.

20. Are the final decisions taken by the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance subject to judicial review by a court?

No

21. Which mechanisms ensure the independent functioning of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance?

First of all, there is a mechanism in place, as explained before, that the minister can give in general written and motivated directives to the Board. The Board can give its opinion on this. The minister has the possibility to give an instruction in an individual case, by issuing a directive to the PPS in that particular case. If the minister orders the prosecution service to prosecute a particular case, it has to be in writing so the court and everyone involved in the case will be informed of the directive. If the minister orders the prosecution service to abstain from prosecuting a case, parliament has to be informed. The board experiences this mechanism as a guarantee for its independency because, if the minister wants to influence the board in an informal way, it is possible for the board to stand up by saying: if you want to do otherwise, give an instruction. Until now no minister ever issued such a directive in an individual case.

Secondly, the Procurator General (who is not part of the PPS) at the Supreme Court supervises the quality of the PPS's work on criminal procedure. They do not supervise individual cases, but look at the PPS in a more general manner. The Procurator General assesses the way of working of the PPS and lays down the results in a report. The aim of the investigation is to establish whether the PPS properly enforces and implements the legal requirements in the performance of its duties.

There is an entire Protocol on this matter which lays down in which situations the Procurator General can do an investigation and how the roles of all parties involved (Board and Procurator General) are divided.

Thirdly, the prosecutors-general are appointed by the government (the ministers) on the recommendation of the Minister of Justice and Security. The candidates are selected through a job application procedure. The Board can select their President from within their own board. The Minister of Justice and Security has to formally approve the selection of the President.

Finally, the Board is the head of the PPS (art. 130 paragraph 2 law RO) and not the minister. The Board decides the investigation and prosecution policy.

22. Are there any other institutions outside of the prosecution system which have a role with respect to the functioning and decision-making process of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance?

Yes, see above. The minister of Justice and Security and the Procurator General of the Supreme Court may play a role.

23. How is the transparency of the work of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance guaranteed:

- are they accountable to the public through widely disseminated reports and information?
- do they have publicly accessible websites providing essential information on their functioning and decision-making?
- any other measures for transparency? (i.e. public briefings, press releases etc.)

We have laws in place which state how the Board works. There is also a public prosecution website. The rest is mostly provided through annual reports, briefings, interviews and press releases.

## North Macedonia / Macédoine du Nord

### I. General questions

1. Is there a council of prosecutors and/or any other bodies dealing with prosecutorial self-governance in your country? If yes, what is the exact title/denomination of such body or bodies, if several? (i.e. Council of Prosecutors or Prosecutorial Council, Conference/Congress of Prosecutors, Qualification and Disciplinary Commission of Prosecutors etc.) Is there a professional association of prosecutors dealing with prosecutorial self-governance in any way?

-In Republic of North Macedonia (RNM) there is a Council of Public Prosecutors as a self-standing organ that secures and guaranties the independence of the public prosecutors in executing their function.

-Also, there is an Association of Public Prosecutors of RNM, where all public prosecutors can become members, on a volunteer basis. This Association, mostly deals with organization of certain trainings and seminars for public prosecutors.

-According to the Law on public Prosecutors Office, Disciplinary Commissions are formed with 5 members (4 Higher Public Prosecutors and one public prosecutor from the General Public Prosecutor's Office) when a disciplinary procedure is initiated against a public prosecutor, on a proposal of the General Public Prosecutor or the Chief Higher Public Prosecutor. These are ad-hoc Commissions formed for each individual case.

2. If so, when was a council of prosecutors and/or any other bodies dealing with prosecutorial self-governance introduced in the prosecutorial system in your country? Please describe briefly, if applicable, any significant reforms undertaken since the establishment, aimed at strengthening effectiveness, independence and accountability of such body(ies).

The Council of Public Prosecutors was introduced in the prosecutorial system in RNM in 2004, with the new Law on Public prosecutor Office, that was enacted on 9 June 2004 by the Parliament. Later, a special Law on the Council of Public Prosecutors was enacted in December 2007, and the Council evolved with new regulations and authorizations. With time, it became more transparent and open institution to the public, especially with the upgraded web page, where all the sessions and decisions of the Council became available to the public.

3. If such a council of prosecutors and/or any other bodies dealing with prosecutorial self-governance exist in your country, are they only for prosecutors or for other professionals of justice? Are such bodies separate or do they operate within a body common to judges and prosecutors?

The Council of Public Prosecutors is only for prosecutors and is a separate body from the Judicial Council of RNM.

4. At what legislative or normative level is the status of a council of prosecutors and/or any other bodies dealing with prosecutorial self-governance established and how is its/their functioning regulated? (e.g. through Constitution, laws, by-laws or other regulations).

The position and the status of the Council of public prosecutors in RNM is regulated with the Constitution, the Law on Public prosecutor's Office and the Law on Council of public prosecutors. Its functioning is additionally regulated with others inner regulations and rulebooks.

5. Are such council of prosecutors and/or any other bodies dealing with prosecutorial self-governance provided with the required resources (human, financial and other) to function properly?

The Council of public prosecutors is functioning in its full capacity, with the prescribed number of members of the Council, and with provided human, financial, technical and office capacities.

6. If in your country there is no council of prosecutors and/or any other bodies dealing with prosecutorial self-governance, is there any discussion to introduce such a body(ies)? If so, what are the arguments in favour and against its/their introduction?

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## **II. Composition of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance and status of its/their members**

7. Please describe the composition of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance in your country. Please indicate:
  - How many of the members are prosecutors?
  - How many, if any, are non-prosecutor members and who are they? (e.g. scholars, judges, lawyers, civil society, others)

The Council of public prosecutors in RNM is consisted of 11 members, from which 7 members are public prosecutors, three members are from the lines of university law professors, lawyers and eminent jurists, and one member is the Minister of Justice.

8. Please describe the procedure for the election or appointment of the members of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance (including both prosecutor members and non-prosecutor members), the duration of their mandate and the dismissal procedure, including, if applicable, the grounds for early termination of mandate or dismissal of members.

- By their function, members of the Council are the Public Prosecutor of the Public Prosecutor's Office of RNM and the Minister of justice;
- one member of the Council is elected by the public prosecutors of the Public Prosecutor's Office of RNM, from its members prosecutors;
- one member each is elected by the public prosecutors of the Higher Public Prosecutors Offices in Bitola, Gostivar, Skopje and Shtip, from its members prosecutors (total 4 members);
- one member of the Council - a public prosecutor that belongs to a minority ethnic group is elected by all public prosecutors in RNM; and
- three members of the Council are elected by the Parliament of RNM, from the lines of university law professors, lawyers and eminent jurists, from which two are members that belong to a minority ethnic group in RNM.

The prosecutorial members are elected by the public prosecutors, on general elections that are conducted in one day in 5 election places: in the 4 Higher Public Prosecutors Offices and in the Public Prosecutors Office of RNM.

The mandate of the elected members of the Council lasts for 4 years, with the right to another re-election. The mandate of the member of the Council that is elected on an additional election, because of an early termination of the mandate of a member of the Council, lasts for 4 years.

During the mandate of the elected members of the Council, that are public prosecutors, their function as public prosecutors is in rest. Regarding the members of the Council by function, with the termination of their function, their mandate in the Council is also terminated.

The members that are elected by the parliament of RNM, are elected from the lines of university law professors, lawyers and eminent jurists. The Parliament must elect these members on an urgent session, in a time period of 30 days, after the election of the members of the Council elected by the public prosecutors.

The mandate of the members of the Council ends: when the time period for which they are elected ends; on their request; with the fulfilment of the conditions for retirement according to the law; if they are convicted for a crime with at least 6 months imprisonment or with another sanction that makes them unworthy of executing the function of a member of the Council; if they permanently lose the capacity for executing the function; or on their request or with their agreement they are elected or appointed on another public function or profession.

9. Are there ex officio members in the composition? (i.e. those who are members automatically due to the position they occupy, for example, the Prosecutor General, the Minister of Justice or others)

Yes, by their function, members of the Council are the Public Prosecutor of the Public Prosecutor Office of RNM (Prosecutor General) and the Minister of justice.



10. Are there rules or procedures to prevent possible conflict of interest situations during the process of election or appointment of the members of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance? Is there an incompatibility between certain functions in the prosecution service and membership in a council of prosecutors?

The procedure for electing the members of the Council of prosecutors, from the lines of public prosecutors is clearly regulated in the Law on Council of public prosecutors, it is a democratic election procedure, with secret voting, that ensures that the best candidates will represent the public prosecutors in the Council. The other three candidates that are elected by the Parliament, represent the position of the executive and legislative branch in our country. All conflict of interest should be eliminated.

According to the Law on Council of public prosecutors, during the mandate of the elected members of the Council, that are public prosecutors, their function as public prosecutors is in rest.

11. Are there any specific requirements for prosecutor members in order to ensure a proportional and fair representation of all levels of the prosecution system?

Yes, according to the Law on Council of public prosecutors, four members - public prosecutor are elected from the four Higher Prosecutors offices, meaning these candidates can be prosecutors from the first instance level - Basic Public Prosecutor Offices or from the second instance level - Higher public prosecutor's offices.

One member is elected from the third instance level - the Public Prosecutors Office of RNM. Also one member is elected from the minority ethnic group and this prosecutor can be from all three instance levels.

The main condition for applying on a position for a Council member is that the public prosecutor must have at least 8 years of completed mandate as a public prosecutor and in the last 2 years he/she must not have a disciplinary measure against them.

12. Please describe briefly the election/appointment process of the president and vice-presidents, if applicable, of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance, including dismissal processes and grounds.

The President of the Council is elected by the members of the Council, from the lines of the elected public prosecutors, with majority votes from the total number of members, by secret voting. The mandate of the president of the Council lasts for two years, without the right for another re-election. The Council on a proposal of the President of the Council, on the same session on which the President is elected, also elects the vice president. The Public Prosecutor of the Public Prosecutor Office of RNM (Prosecutor General) and the Minister of justice can not be elected as the president or vice-president of the Council.

### **III. Competence and functioning of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance**

13. In your country, do the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance have exclusive power to exercise the administration of the prosecution service or whether this power is divided with the executive bodies (those outside of the prosecution service, e.g. the ministry of justice)?

The Council of prosecutors has exclusive power to exercise the administration of the prosecution service. The Minister of justice, by being a member by function in the Council, has certain contribution in the work of the Council, in executing its authorizations.

14. Please describe briefly the functions and powers of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance, in particular as regards the recruitment, promotion, transfer, evaluation, discipline or other aspects regarding prosecutors, and budgetary aspects (including the development of the prosecution service's budget, systematisation of the legislation on the activities of the prosecution service, approval of the prosecution service's task plans and annual reports, adoption of the code of ethics for prosecutors etc.).

The Council is authorized to: give opinion to the Government of RNM on the proposal for appointment and dismissal of the Public Prosecutor of RNM (Prosecutor General); elects and dismisses the public prosecutors, establishes termination of the function of the public prosecutors and decides on second instance in the procedures for establishing disciplinary responsibility of the public prosecutors; decides upon unprofessional and unscrupulous executing of the function of the public prosecutor; follows the work of the public prosecutors on the base of the grades for their work and according to the Law on Public Prosecution Office; decides regarding temporary distancing from the function of the public prosecutors; acts upon complaints of citizens and legal entities regarding the work of the public prosecutors; determines the number of public prosecutors in the Public Prosecutors Offices with a decision; till the end of february in the current year, with a decision, establishes the number of free positions for public prosecutors in the Basic Public Prosecutor's Offices for the next two years and delivers the decision to the Academy for training of judges and public prosecutors; evaluates the yearly reports of the Public Prosecutors Offices, adopts Roolbook for the work of the Council; decides upon resting of the function of the public prosecutors; issues and confiscates the official identification cards of the public prosecutors; leads personal files for the public prosecutors; submittes reports for the work of the Council; gives opinions for the laws regarding its scope of work; gives opinions for the programs of the Academy for training of judges and public prosecutors, publishes advertismment and implement the procedure for election of a public proesecutor for temporary referral to another Public Prosecutors Office; and executes other things according to the law.

15. Please describe briefly the competence, if any, or any role played by the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance in:

- performance assessment of prosecutors, both in terms of substance and procedure, and including relationship/ interactions with other bodies if those are competent on performance assessment;
- disciplinary measures against prosecutors, also both in terms of substance and procedure, and including relationship/ interactions with other bodies if those are competent on disciplinary measures.

The Council, on a basis of a conducted procedure for establishing responsibility, with a decision, can dismiss the public prosecutor, when in a disciplinary procedure is established that a severe disciplinary breach was made that makes the public prosecutor unworthy of executing the function of public prosecutor (after the finalization of the decision) and in case of unprofessional and unscrupulous executing of the function of the public prosecutor, established by the law. As a second instance organ, the Council decides upon the appeal submitted against the decision of the Commission for establishing responsibility of a public prosecutor, according to the Law on Public Prosecutor's Office. The Council can abolish, change or confirm the decision of the Commission. When the Council confirms the decision of the Commission for dismissing the public prosecutor, the Council adopts separate decision which states the termination of the function. The decision for termination of the function of the public prosecutor is delivered to the public prosecutor and the Public Prosecutor's Office of RNM. Against the decisions of the Council, the public prosecutor can initiate administrative dispute before the authorized court.

16. Do the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance have the power to consider situations of conflict within the prosecution system, for example in case of instructions to reverse the view of a prosecutor?

The Council can review cases and conditions within the prosecution service that are a subject of a complaint or a subject of unprofessional and unscrupulous executing of the function of the public prosecutor.

17. Can prosecutors apply to the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance with an allegation of illegal instructions from their superior prosecutors or any other actors, both from within and outside of the prosecution system?

Yes, all unprofessional and unscrupulous executing of the function of the public prosecutor, can be reported to the Council.

18. Please describe briefly the decision-making process of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance, including any aspects related

to voting rights of members (for example, whether all members have the same right to vote), and applicable procedures and thresholds for a decision to be adopted.

All members of the Council have the same right to vote and their vote counts equally. For election of public prosecutors, the Council discusses and decides on a session on which 2/3 of the total number of members of the Council are present. For a public prosecutor, a candidate is elected that has majority votes from the total number of members of the Council.

19. What is the legal force of the final decisions taken by the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance? Are such decisions of only a consultative nature, not being legally obligatory, or are they of a binding nature, being legally obligatory/mandatory, or is there a mixture depending on the nature of a decision?

The final decisions taken by the Council of prosecutors have a binding nature.

20. Are the final decisions taken by the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance subject to judicial review by a court?

Yes, the Administrative Court can review the decisions of the Council of public prosecutors, if an administrative dispute is initiated against the final decisions of the Council.

21. Which mechanisms ensure the independent functioning of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance?

The Council of public prosecutors plays essential role in protection of the rights and freedoms of the citizens. It is a self-standing, independent organ that secures the independence of the public prosecutors in executing their function. In this sense, the principles of transparency and reporting to the public about the work of the Council, play important role in strengthening the confidence of the public, towards this institution.

22. Are there any other institutions outside of the prosecution system which have a role with respect to the functioning and decision-making process of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance?

No, the Council of Public Prosecutors is a self-standing organ that secures and guarantees the independence and the professionalism of the public prosecutors in executing their function.

23. How is the transparency of the work of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance guaranteed:

- are they accountable to the public through widely disseminated reports and information?
- do they have publicly accessible websites providing essential information on their functioning and decision-making?
- any other measures for transparency? (i.e. public briefings, press releases etc.)

Transparency and accountability to the public, are one of the main principles on which the Council of public prosecutors executes its authorizations. The Council has adopted a special Strategy for public relations, which document regulates the ways of communicating between the Council of public prosecutors and the media. In practise, the minutes of all sessions of the Council and all the decisions that are adopted by the Council are publicly published, on the web page of the Council. There are periodical public briefings or press releases by the President of the Council, for issues and conditions in the Public Prosecutor's Office, that are important to the public and the media.

## Portugal

### I. General questions

1. Is there a council of prosecutors and/or any other bodies dealing with prosecutorial self-governance in your country? If yes, what is the exact title/denomination of such body or bodies, if several? (i.e. Council of Prosecutors or Prosecutorial Council, Conference/Congress of Prosecutors, Qualification and Disciplinary Commission of Prosecutors etc.) Is there a professional association of prosecutors dealing with prosecutorial self-governance in any way?

In Portugal, there is a superior management and disciplinary body through which the disciplinary and managerial powers of the Portuguese Public Prosecution Service are exercised - (article 21.º/1, Statute of the Public Prosecution Service (<https://dre.pt/dre/detalhe/lei/68-2019-124220738>)).

It's called the High Council for the Public Prosecution Service (CSMP).

In addition to this body, there is also the Prosecutor General's Office, which is the highest body of the Portuguese Public Prosecution Service.

A professional association of prosecutors – Trade Union of Public Prosecutors (Sindicato dos Magistrados do Ministério Público) exists, devoting its activity to matters relating to the Public Prosecution Service and the status and career of public prosecutors.

2. If so, when was a council of prosecutors and/or any other bodies dealing with prosecutorial self-governance introduced in the prosecutorial system in your country? Please describe briefly, if applicable, any significant reforms undertaken since the establishment, aimed at strengthening effectiveness, independence and accountability of such body(ies).

In 1910, after the fall of the monarchy, a decree of the first Republic (1910-1926) changed the designation of Attorney General of the Crown and Treasury to Prosecutor General.

During the Second Republic (1927-1974), the codification of the judicial system was sketched out, through the Judicial Statute, the attributions of the Public Prosecutors were stabilized, especially in advisory matters, and the High Council for the Judicial System was created (covering both judges and prosecutors). The Public Prosecution Service was, during this period, dependent upon the Minister of Justice.

The Constitution of the Portuguese Republic, adopted by the new democratic regime instituted on April 25, 1974, systematized the Public Prosecution Service in its own chapter and expressly enshrined its autonomy (article 224 of the Constitution of 1976).

The High Council for the Prosecution Service was first established, in the aftermath of the new Constitution, through Decree-Law 917/76, of December 31.

Later, Parliament, through Law 39/78, of July 5, approved the Statutory Law on the Public Prosecution Service (amended by Law 47/86, of October 15 and Law 23/92, of August 20).

The Statute of the Public Prosecution Service was approved by Law 60/98, of August 27 (later amended by Law 42/2005, of August 29, Law 67/2007, of December 31, Law 52/2008, of August 28, Law 37/2009, of July 20, Law 55-A/2010, of December 31, Law 9/2011, of April 12).

The current Law concerning the Statute of the Public Prosecution Service is Law 68/2019, of August 27.

3. If such a council of prosecutors and/or any other bodies dealing with prosecutorial self-governance exist in your country, are they only for prosecutors or for other professionals of justice? Are such bodies separate or do they operate within a body common to judges and prosecutors?

The CSMP is a collegiate body, presided over by the Prosecutor General and further composed of:

- 11 public prosecutors (4 regional Assistants to the Prosecutor General, responsible for the 4 regions in which the Prosecution Service is divided); 1 Assistant to the Prosecutor General elected from and by Assistants to the Prosecutor General (now the second level of the hierarchy of Public Prosecutors); 6 public prosecutors elected from and by the category of public prosecutors (now the first level of the hierarchy of public prosecutors);
- 5 members elected by the Assembly of the Republic (Portuguese Parliament);
- and 2 members appointed by the member of the Government responsible for the area of justice (Minister of Justice).

4. At what legislative or normative level is the status of a council of prosecutors and/or any other bodies dealing with prosecutorial self-governance established and how is its/their functioning regulated? (e.g. through Constitution, laws, by-laws or other regulations).

The High Council for the Public Prosecution Service (CSMP), foreseen in the Constitution of the Republic (CRP) (currently article 220.º/2, CRP - <https://dre.pt/dre/legislacao-consolidada/decreto-aprovacao-constituicao/1976-34520775-49313675>), body for the self-governance of the Public Prosecution Service, is integrated in the Prosecutor General's Office and is the superior body of management and discipline of the Public Prosecution Service, through which the competence is exercised as regards discipline and management of Public Prosecutors (article 21.º/1, Statute of the Public Prosecution Service/EMP).

Its regulation and operation are foreseen in the actual Statute of the Public Prosecution Service, approved by Law 68/2019, of August 27.

5. Are such council of prosecutors and/or any other bodies dealing with prosecutorial self-governance provided with the required resources (human, financial and other) to function properly?

The High Council for the Public Prosecution Service has the number of members provided for by law, has an administrative section and does not have its own financial resources.

It is doubtful whether the current human and financial resources are sufficient for the significant tasks imposed on the High Council.

6. If in your country there is no council of prosecutors and/or any other bodies dealing with prosecutorial self-governance, is there any discussion to introduce such a body(ies)? If so, what are the arguments in favour and against its/their introduction?

In Portugal, the High Council for the Public Prosecution Service was first set up following the adoption of Decree-Law 917/76, of 31 December, and has been performing its functions up to the present moment.

## **II. Composition of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance and status of its/their members**

7. Please describe the composition of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance in your country. Please indicate:

- How many of the members are prosecutors?

12 members are public prosecutors: the Prosecutor General, 4 Regional Assistants to the Prosecutor General and 7 Prosecutors elected by their peers (1 Assistant to the Prosecutor General and 6 public prosecutors).

- How many, if any, are non-prosecutor members and who are they? (e.g. scholars, judges, lawyers, civil society, others)

7 members are non-prosecutor members:

- 5 members elected by the Assembly of the Republic (Parliament) (1 jurist, 1 lawyer, 1 international legal adviser, 1 administrator of a public corporate entity, 1 law professor);
- 2 members appointed by the Minister of Justice (1 law professor, 1 lawyer)

The non-prosecutor Members are all of them chosen as a result of recognized merits.



8. Please describe the procedure for the election or appointment of the members of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance (including both prosecutor members and non-prosecutor members), the duration of their mandate and the dismissal procedure, including, if applicable, the grounds for early termination of mandate or dismissal of members.

The procedure for the election or appointment of prosecutor members of the High Council for the Public Prosecution Service is carried out in accordance with the terms set out in the respective Regulation of the Electoral Process, which can be consulted here:

<https://www.ministeriopublico.pt/iframe/regulamento-do-processo-eleitoral-para-o-conselho-superior-do-ministerio-publico>

The election is made by secret ballot, direct and universal, on the basis of a previous register-based census.

9. Are there ex officio members in the composition? (i.e. those who are members automatically due to the position they occupy, for example, the Prosecutor General, the Minister of Justice or others)

The Prosecutor General is inherently the President and member of the High Council for the Public Prosecution Service.

The 4 Regional Assistants to the Prosecutor General are also ex officio members of the High Council.

10. Are there rules or procedures to prevent possible conflict of interest situations during the process of election or appointment of the members of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance? Is there an incompatibility between certain functions in the prosecution service and membership in a council of prosecutors?

No.

11. Are there any specific requirements for prosecutor members in order to ensure a proportional and fair representation of all levels of the prosecution system?

The Public Prosecutors elected to the High Council for the Public Prosecution Service are in accordance with their category: 6 members elected from and by Public Prosecutors (first level in the hierarchy) and 1 elected from and by the Assistants to the Prosecutor General (second level in the hierarchy).

Of the first level of prosecutor members (6), these members are elected in the following way: 2 are elected from Porto and 2 from Lisboa regions (considering the high number of prosecutors working in those judicial areas), 1 from Coimbra and 1 from Évora.

12. Please describe briefly the election/appointment process of the president and vice-presidents, if applicable, of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance, including dismissal processes and grounds.

The Prosecutor General is inherently the President of the High Council for the Prosecution Service.

The appointment of the Prosecutor General is carried out by the President of the Republic upon appointment by the Government - articles 133.º/m),CRP and 175.º/1 of the Statute of the Public Prosecution Service/EMP).

The Deputy Prosecutor General is appointed by the Prosecutor General.

### **III. Competence and functioning of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance**

13. In your country, do the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance have exclusive power to exercise the administration of the prosecution service or whether this power is divided with the executive bodies (those outside of the prosecution service, e.g. the ministry of justice)?

The High Council for the Public Prosecution Service has exclusive powers to exercise the administration of the Portuguese Public Prosecution Service.

14. Please describe briefly the functions and powers of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance, in particular as regards the recruitment, promotion, transfer, evaluation, discipline or other aspects regarding prosecutors, and budgetary aspects (including the development of the prosecution service's budget, systematisation of the legislation on the activities of the prosecution service, approval of the prosecution service's task plans and annual reports, adoption of the code of ethics for prosecutors etc.).

The High Council for the Public Prosecution Service has a wide range of competences, included in article 21 of the EMP, which can be consulted here:

<https://dre.pt/dre/legislacao-consolidada/lei/2019-127728219>

These competences include:

- To appoint, place, transfer, promote, dismiss and assess the performance of prosecutors, as well as exercise disciplinary competence over Members of the Public Prosecution Service, with the exception of the Prosecutor General;
- To approve the Electoral Regulation of the High Council, the Internal Regulation of the Prosecutor General's Office, the Inspection Regulation of the Public Prosecution Service and the Regulations for the recruitment and appointment of public prosecutors;

- To approve the draft budget of the Prosecutor General's Office;
- To issue instructions on matters relating to the internal organization and management of the Public Prosecution Service;
- To submit, through the Prosecutor General, legislative proposals to the Minister of Justice on matters relating to the efficiency of the Public Prosecution Service and the judicial system;
- To approve the annual plan for inspections, as well as to determine the conduct of enquiries, inspections, investigations and the institution of disciplinary proceedings;
- To decide complaints and appeals brought to its attention;
- To prepare opinions in matters relating to the organization of the judicial system and the judicial administration.

The High Council for the Public Prosecution Service works in plenary or in sections (permanent, disciplinary and performance assessment sections) – article 33 of the EMP.

The High Council for the Public Prosecution Service doesn't have financial autonomy.

On March 25, 2022, the High Council for the Public Prosecution Service adopted the Code of Conduct for Public Prosecutors, which can be consulted here: <https://www.ministeriopublico.pt/pagina/codigo-de-conduta-dos-magistrados-do-ministerio-publico>

15. Please describe briefly the competence, if any, or any role played by the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance in:
- performance assessment of prosecutors, both in terms of substance and procedure, and including relationship/ interactions with other bodies if those are competent on performance assessment;

The public prosecutors' performance is assessed by the High Council for the Public Prosecution Service, through a performance assessment section, after examination of a report drawn up by an inspector (a Public Prosecutor) designated to assess the work carried out by the prosecutor whose performance is being evaluated.

As a result, a rating (from Mediocre to Very Good) is conferred on the public prosecutor being assessed.

- disciplinary measures against prosecutors, also both in terms of substance and procedure, and including relationship/ interactions with other bodies if those are competent on disciplinary measures.

Disciplinary measures against public prosecutors are applied only by the disciplinary section of the High Council for the Public Prosecution Service and by the High Council for the Public Prosecution Service itself.

16. Do the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance have the power to consider situations of conflict within the prosecution system, for example in case of instructions to reverse the view of a prosecutor?

The High Council for the Public Prosecution Service has no powers to give instructions to public prosecutors in concrete situations or concrete files.

17. Can prosecutors apply to the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance with an allegation of illegal instructions from their superior prosecutors or any other actors, both from within and outside of the prosecution system?

Public Prosecutors may appeal to the High Council for the Public Prosecution Service on orders received from their hierarchical superiors.

18. Please describe briefly the decision-making process of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance, including any aspects related to voting rights of members (for example, whether all members have the same right to vote), and applicable procedures and thresholds for a decision to be adopted.

High Council's decisions are taken by a majority vote.

All members of the High Council have the same voting rights. In the event of a tie, the Prosecutor General has a casting vote and may break the tie.

19. What is the legal force of the final decisions taken by the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance? Are such decisions of only a consultative nature, not being legally obligatory, or are they of a binding nature, being legally obligatory/mandatory, or is there a mixture depending on the nature of a decision?

The High Council's decisions are binding.

However, these decisions may be challenged before the administrative courts.

20. Are the final decisions taken by the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance subject to judicial review by a court?

Yes, but only if they are challenged by the parties concerned.

21. Which mechanisms ensure the independent functioning of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance?

The High Council is independent from any other Public Prosecution body and is not subject to orders or instructions from another body or entity, not even the Prosecutor General.

22. Are there any other institutions outside of the prosecution system which have a role with respect to the functioning and decision-making process of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance?

No

23. How is the transparency of the work of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance guaranteed:

- are they accountable to the public through widely disseminated reports and information?

Information on the work of the Public Prosecution Service is mainly disseminated through the publication of Annual Reports prepared by the Prosecutor General, covering all of the activities undertaken by the Public Prosecution Service.

Decisions of the disciplinary section of the High Council for the Public Prosecution Service are published and accessible through the following website:

<https://www.ministeriopublico.pt/decisoes-disciplinares?menu=csmp>

- do they have publicly accessible websites providing essential information on their functioning and decision-making?

The High Council's decisions are published in newsletters that can be consulted on the site relating to the Public Prosecution Service (<https://www.ministeriopublico.pt/>)

- any other measures for transparency? (i.e. public briefings, press releases etc.)

Decisions of greater public relevance are communicated by the High Council to the media.

Furthermore, the Prosecutor General's Office prepares regularly press releases on most relevant cases conducted by the Public Prosecution Service, especially those which have a particular impact on the general public.

## Romania / Roumanie

### I. General questions

1. Is there a council of prosecutors and/or any other bodies dealing with prosecutorial self-governance in your country? If yes, what is the exact title/denomination of such body or bodies, if several? (i.e. Council of Prosecutors or Prosecutorial Council, Conference/Congress of Prosecutors, Qualification and Disciplinary Commission of Prosecutors etc.). Is there a professional association of prosecutors dealing with prosecutorial self-governance in any way?

Yes, according to Article 133 of the Romanian Constitution, the Superior Council of Magistracy guarantees the independence of justice, consisting of 19 members, of which:

- 14 are elected in the general assemblies of the magistrates and validated by the Senate; they belong to two sections, one for judges and one for prosecutors; the former section consists of 9 judges and the latter of 5 prosecutors;
- 2 representatives of the civil society, specialists in the field of law, of high professional and moral standing, elected by the Senate; these shall only participate in plenary proceedings;
- the Minister of Justice, the President of the High Court of Cassation and Justice and the Prosecutor General of the Prosecutor's Office attached to the High Court of Cassation and Justice.

The activity of the Superior Council of Magistracy is currently regulated by Law No. 305 of 15 November 2022 (in force since 16 December 2022). According to Article 1 of Law No. 305/2022, the Superior Council of Magistracy guarantees the independence of justice, is independent and subject only to the law regarding its activities; the members of the Superior Council of Magistracy are accountable to judges and prosecutors for the activities carried out in the exercise of their mandate. According to the law, the Superior Council of Magistracy has legal personality and its seat is located in Bucharest.

2. If so, when was a council of prosecutors and/or any other bodies dealing with prosecutorial self-governance introduced in the prosecutorial system in your country? Please describe briefly, if applicable, any significant reforms undertaken since the establishment, aimed at strengthening effectiveness, independence and accountability of such body(ies).

By setting up the Superior Council of Magistracy, according to the previous Law No. 317/2004 (which is currently no longer in force), it was intended, according to the explanatory memorandum, to:

1. establish the role of the Superior Council of Magistracy as the sole authority with attributions in the development of the career of magistrates;

2. strengthen the autonomy of the Superior Council of Magistracy by providing it with its own administrative apparatus and budget;
3. ensure that judges and prosecutors from all levels of courts and prosecutors' offices are represented in the Superior Council of Magistracy;
4. ensure the participation of civil society representatives in the activities of the Plenum of the Superior Council of Magistracy.

From September 2004 to December 2022, the Superior Council of Magistracy of Romania functioned in accordance with the provisions of Law No. 317/2004.

On 16 December 2022, a new law on the Superior Council of Magistracy, Law No. 305/2022, entered into force.

Previously, in 2018 and 2019, through Law No. 234/2018, as well as through several emergency ordinances, Law No. 317/2004 underwent a major process of amendment and supplementation. By Law No. 234/2018, a number of attributions established by law to be exercised by the Plenum of the Superior Council of Magistracy were transferred to the jurisdiction of its sections, with the aim of ensuring the separation of decision making regarding the careers of judges and prosecutors.

The new law on the Superior Council of Magistracy has maintained the solution of separating the decision making regarding the careers of judges and prosecutors, taking into account the dichotomy of judges' section and prosecutors' section. Furthermore, the role of the Superior Council of Magistracy, in its plenary composition, is to defend the independence of the judicial authority as a whole. The Plenum of the Superior Council of Magistracy also exercises the attributions laid down by law with regard to the entrance examination to the National Institute of Magistracy as well as the entrance examination to the judiciary and, with regard to the training of judges and prosecutors, the Plenum is responsible of approving the programme of continuous professional training for the above, at the proposal of the National Institute of Magistracy. At the same time, the Plenum of the Superior Council of Magistracy adopts the Deontological Code for Judges and Prosecutors, the Regulation on the Organisation and Functioning of the Superior Council of Magistracy, the Regulation on the Procedure for the Election of Members of the Superior Council of Magistracy, as well as other regulations and decisions provided for by law, and revokes, under the law, the Chief Inspector and the Deputy Chief Inspector of the Judicial Inspection. A number of legislative provisions have been adopted to simplify the electoral process for the election of judges and prosecutors to the Superior Council of Magistracy, to avoid institutional blockages in the activity of the Plenum of the Superior Council of Magistracy (minimum number of members to constitute a quorum), for the timely organisation of elections for the positions of President and Vice-President of the SCM, provisions on the exercise and settlement of disciplinary action in the area of disciplinary liability of judges and prosecutors (the role of court in the area of disciplinary liability is incumbent on the sections of the Superior Council of Magistracy, by virtue of its role of guaranteeing the independence of justice, enshrined in the constitutional provisions), provisions on the removal of elected membership in the Superior Council of Magistracy, as well as provisions on the organisation and functioning of the Judicial Inspection.

3. If such a council of prosecutors and/or any other bodies dealing with prosecutorial self-governance exist in your country, are they only for prosecutors or for other professionals of justice? Are such bodies separate or do they operate within a body common to judges and prosecutors?

The Superior Council of Magistracy guarantees the independence of justice; it consists of 19 members, 14 of whom are elected in general assemblies of magistrates and validated by the Senate; they belong to two sections, one for judges and one for prosecutors; the former section consists of 9 judges and the latter of 5 prosecutors.

4. At what legislative or normative level is the status of a council of prosecutors and/or any other bodies dealing with prosecutorial self-governance established and how is its/their functioning regulated (e.g. through Constitution, laws, by laws or other regulations).

The role, structure and attributions of the Superior Council of Magistracy are laid down in the Romanian Constitution; there is also Law No. 305/2022 on the Superior Council of Magistracy, as well as a Regulation on the organisation and functioning of the Superior Council of Magistracy (approved by decision of the Plenum of the SCM).

5. Are such council of prosecutors and/or any other bodies dealing with prosecutorial self-governance provided with the required resources (human, financial and other) to function properly?

Yes, according to the legal provisions, the Superior Council of Magistracy has legal personality and its seat in Bucharest. In accordance with Article 60 of Law No. 305/2022, the Superior Council of Magistracy has its own technical administrative apparatus. According to Article 61 of Law No. 305/2022, the financing of the current and capital expenditure of the Superior Council of Magistracy is provided from the State budget; the budgets of the Judicial Inspection, the National Institute of Magistracy and the National School of Clerks are included separately in the budget of the Superior Council of Magistracy; the President of the Superior Council of Magistracy acts in its quality of main credit release authority, which may be delegated to the Vice-President, the Secretary General, the Deputy Secretary General or the Economic Director.

6. If in your country there is no council of prosecutors and/or any other bodies dealing with prosecutorial self-governance, is there any discussion to introduce such a body(ies)? If so, what are the arguments in favour and against its/their introduction?

That is not the case.



## II. Composition of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance and status of its/their members

7. Please describe the composition of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance in your country. Please indicate:
- How many of the members are prosecutors?
  - How many if any are non-prosecutor members and who are they? (e.g. scholars, judges, lawyers, civil society, others).

See answer to question 1.

8. Please describe the procedure for the election or appointment of the members of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance (including both prosecutor members and non-prosecutor members), the duration of their mandate and the dismissal procedure, including, if applicable, the grounds for early termination of mandate or dismissal of members.

In accordance with Section 2 of Law No. 305/2022, **the election of the members of the Superior Council of Magistracy shall be conducted in accordance with the following procedure:**

Article 6 - (1) Judges and prosecutors, members of the Superior Council of Magistracy, as provided for in Article<sup>19</sup> 3 (a), shall be elected in general assemblies of judges or of prosecutors, as the case may be.

(2) The date of the general assemblies of judges and prosecutors shall be set by the Plenum of the Superior Council of Magistracy at least 90 days before the expiry of the term of office of its members and shall be published in the Official Gazette of Romania, Part III, and on the website of the Superior Council of Magistracy.

Article 7 - (1) The members of the Superior Council of Magistracy shall be elected from among the judges and prosecutors appointed by the President of Romania, with at least 7 years of seniority in the position of judge or prosecutor and who have not been sanctioned for disciplinary reasons in the last 3 years, unless the sanction has been erased.

(2) Judges and prosecutors may submit their candidatures for election to the Superior Council of Magistracy before the panels of judges and prosecutors no later than two days before the election date. Candidatures of judges and prosecutors may be supported by the panels of judges and prosecutors and their professional associations.

(3) The period within which the candidatures may be submitted shall be determined by the Plenum of the Superior Council of Magistracy and shall be published in the Official Gazette of Romania, Part III, and on the website of the Superior Council of Magistracy.

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<sup>19</sup> 9 judges and 5 prosecutors, elected in the general assemblies of judges and prosecutors, who make up the two sections of the Superior Council of the Magistracy, one for judges and one for prosecutors;

(4) The candidatures shall be submitted to the governing body of the High Court of Cassation and Justice, respectively to the governing body of the Prosecutor's Office attached to the High Court of Cassation and Justice, including for prosecutors of the National Anti-corruption Directorate and the Directorate for Investigating Organised Crime and Terrorism, as well as to the governing bodies of the courts of appeal or of the prosecutor's offices attached to them, accompanied by:

a) a curriculum vitae;

b) an outline of the main objectives that judges or prosecutors will pursue if elected to the Superior Council of Magistracy, as well as, where appropriate, the documents supporting the candidature;

c) an affidavit that they were neither part of the intelligence services before 1990 nor collaborated with them, in the case of persons who had reached the age of 16 on 1 January 1990;

d) an affidavit that they are not and have not been operatives, including undercover operatives of, informers of or collaborators with the intelligence services;

e) an affidavit that they have no personal interest which affects or could affect the objective and impartial performance of the attributions provided for by law.

(5) Judges and prosecutors seconded to authorities other than courts or public prosecutors' offices may not stand for election to the office of member of the Superior Council of Magistracy, and judges and prosecutors delegated or seconded to other courts or prosecutors' offices may not stand for election except for the court or prosecutor's office from which they were delegated or seconded. Judges and prosecutors who have been part of the intelligence services or have collaborated with them outside the legal framework, as well as those who have a personal interest that influences or could influence the objective and impartial performance of the attributions provided for by law, may not be elected members of the Superior Council of Magistracy.

(6) The governing bodies of the High Court of Cassation and Justice, the Prosecutor's Office attached to the High Court of Cassation and Justice, the courts of appeal and the prosecutor's offices attached to them shall verify the fulfilment of the conditions provided for in paragraphs (1) to (5) by the judges and prosecutors who have submitted their candidatures, within 5 days of the expiry of the deadline for submitting them. The decision of the governing body shall be published immediately on the website of the court or prosecutor's office concerned.

(7) The candidates or, where appropriate, the judges or prosecutors of the courts or prosecutors' offices for which the candidature has been submitted may challenge the decisions of the governing boards provided for in paragraph (6), within five days of publication.

(8) The challenge shall be submitted to the Superior Council of Magistracy and shall be settled by a decision of the appropriate section of the Superior Council of Magistracy within 7 days of registration.

(9) The decision of the appropriate section of the Superior Council of Magistracy provided for in paragraph (8) may be challenged by the persons referred to in paragraph (7) before the Civil Section I of the High Court of Cassation and Justice, within 5 days from the notification. The challenge shall be settled within 7 days from its registration, with the parties being summoned. The statement of defence is not mandatory and the provisions of Articles 200 and 201 of Law No. 134/2010 on the Civil Procedure Code, republished, as subsequently amended and supplemented, are not applicable. The decision is final.

Article 8 - (1) The judges of the High Court of Cassation and Justice shall elect, in a general assembly, by secret, direct and personal vote, two members for the Superior Council of Magistracy, from among the judges who have applied.

(2) The prosecutors of the Prosecutor's Office attached to the High Court of Cassation and Justice, the prosecutors of the National Anti-corruption Directorate and the prosecutors of the Directorate for Investigating Organised Crime and Terrorism shall elect, in the joint general assembly of their prosecutors, by secret, direct and personal vote, one member for the Superior Council of Magistracy from among the prosecutors who have applied. Prosecutors from the territorial structures of these prosecutors' offices also vote in the general assembly.

(3) Two judges from the High Court of Cassation and Justice and one prosecutor from the Prosecutor's Office attached to the High Court of Cassation and Justice or from the National Anti-corruption Directorate or from the Directorate for Investigating Organised Crime and Terrorism, respectively, who have obtained the highest number of votes in the general assemblies, shall be elected as members of the Superior Council of Magistracy.

(4) If two or more candidates have obtained an equal number of votes, the magistrate with the longest effective seniority in the position of judge or prosecutor shall be declared elected.

Article 9 - (1) The governing body of each court of appeal and of each prosecutor's office shall centralise the candidatures submitted by the judges and prosecutors from their constituencies.

(2) The candidatures shall be centralised by category of courts and prosecutors' offices and shall be sent to the courts and prosecutors' offices within the constituency of the court of appeal, accompanied by the documents referred to in Article 7 (4).

(3) The governing bodies of the courts of appeal, tribunals and first instance courts shall organise their own general assembly.

(4) The governing bodies of the prosecutors' offices attached to courts of appeal, prosecutors' offices attached to tribunals and prosecutors' offices attached to first instance courts shall organise their own general assembly.

Article 10 - (1) The judges of each court of appeal, the judges of all tribunals and specialised tribunals within the constituency of each court of appeal, and the judges of all first instance courts within the constituency of each court of appeal shall nominate, by secret, direct

and personal vote, one candidate for the office of member of the Superior Council of Magistracy from among the judges who have applied.

(2) The prosecutors of each prosecutor's office attached to courts of appeal, the prosecutors of all prosecutors' offices attached to tribunals and specialised tribunals within the constituency of each court of appeal and the prosecutors of all prosecutors' offices attached to first instance courts within the constituency of each court of appeal shall nominate, by secret, direct and personal vote, one candidate for the office of member of the Superior Council of Magistracy from among the prosecutors who have applied.

(3) The judges and prosecutors who have obtained the highest number of votes in the general assemblies provided for in Article 9 (3) and (4), shall be nominated for the position of member of the Superior Council of Magistracy. The decisions of the general assemblies shall be sent to the governing body of the court of appeal or the prosecutor's office attached to it, which shall determine the outcome of the vote. The provisions of Article 8 (4) shall apply accordingly.

(4) Military judges and military prosecutors shall apply to the Military Court of Appeal of Bucharest or, as the case may be, to the Military Prosecutor's Office attached to the Military Court of Appeal of Bucharest. The provisions of paragraphs (1) to (3) shall apply accordingly. The Military Court of Appeal of Bucharest and the Military Prosecutor's Office attached to the Military Court of Appeal of Bucharest shall each appoint a candidate to be included on the lists provided for in Article 11 (1) (a) and (b) respectively. The military courts and the prosecutors' offices attached to them shall each nominate one candidate to be included on the lists provided for in Article 11 (1) (c) and (d) respectively.

(5) The Superior Council of Magistracy shall draw up the lists of judges and prosecutors nominated to stand for the office of member of the Superior Council of Magistracy, by category of courts and prosecutor's offices.

(6) The lists provided for in paragraph (5) and the documents provided for in Article 7 (4) shall be published on the website of the Superior Council of Magistracy.

Article 11 - (1) The lists of judges and prosecutors who have been nominated to run for the office of member of the Superior Council of Magistracy shall be sent to the courts or, as the case may be, to the prosecutors' offices by the Superior Council of Magistracy at least 20 days before the date set for the general assemblies, as follows:

- a) the list of candidates from the courts of appeal shall be sent to all courts of appeal;
- b) the list of candidates from the prosecutor's offices attached to courts of appeal shall be sent to all prosecutor's offices attached to courts of appeal;
- c) the list of candidates from the tribunals and specialised tribunals shall be sent to all tribunals and specialised tribunals;
- d) the list of candidates from the prosecutor's offices attached to tribunals and specialised tribunals shall be sent to all prosecutor's offices attached to tribunals and specialised tribunals;

e) the list of candidates from the first instance courts shall be sent to all first instance courts;

f) the list of candidates from the prosecutor's offices attached to first instance courts shall be sent to all prosecutor's offices attached to first instance courts.

(2) The lists provided for in paragraph (1) and the documents provided for in Article 7 (4) shall be displayed at the seats of the courts and prosecutor's offices.

Article 12 - (1) The lists provided for in Article 11 (1) and the documents provided for in Article 7 (4) shall be sent by the Superior Council of Magistracy to the courts and prosecutor's offices, accompanied by ballot papers.

(2) The Superior Council of Magistracy shall transmit to each court and to each prosecutor's office a number of stamped ballot papers equal to the number of judges and prosecutors in the prosecutor's office, plus 10%.

(3) The form and content of the ballot papers shall be determined by the Plenum of the Superior Council of Magistracy.

(4) The printing of the ballot papers shall be carried out by the Superior Council of Magistracy.

Article 13 - (1) In order to elect the members of the Superior Council of Magistracy, a general assembly of judges or, as the case may be, of prosecutors shall be convened in each court and each prosecutor's office.

(2) The judges of the courts of appeal and the prosecutors of the prosecutor's offices attached to them shall elect as members of the Superior Council of Magistracy, in their general assemblies, by secret, direct and personal vote, three judges from the courts of appeal and one prosecutor from the prosecutor's offices attached to them.

(3) The judges of the tribunals and specialised tribunals and the prosecutors of the prosecutors' offices attached to them shall elect as members of the Superior Council of Magistracy, in their general assemblies, by secret direct and personal vote, 2 judges from the tribunals and specialised tribunals and 2 prosecutors from the prosecutors' offices attached to them.

(4) The judges of the first instance courts and the prosecutors of the prosecutor's offices attached to them shall elect as members of the Superior Council of Magistracy, in their general assemblies, by secret, direct and personal vote, 2 judges from the courts and 1 prosecutor from the prosecutor's offices attached to them.

Article 14 - (1) In the procedure for nominating candidates and electing members of the Superior Council of Magistracy, the general assemblies shall be legally constituted in the presence of the majority of the judges or, where appropriate, of the prosecutors in office. Judges and prosecutors delegated or seconded to other courts or prosecutors' offices shall participate in the general assembly of the court or prosecutor's office from which they have been delegated or seconded. If a majority of the judges or, where appropriate, of the prosecutors in office are

not present, the general assembly shall not be legally constituted; on the same day, the president of the general assembly shall convene the general assembly for a later date, to be fixed between the 3rd and the 5th working day of the following week, on which date voting is to take place irrespective of the number of judges or, where appropriate, of prosecutors in office present.

(2) General assemblies shall be chaired by the most senior judge or prosecutor who has not stood for election to the Superior Council of Magistracy.

(3) In the procedure for electing the members of the Superior Council of Magistracy, each judge and prosecutor shall vote for a maximum number of candidates equal to the number of members of the Superior Council of Magistracy, representing the category of courts or prosecutor's offices in which the judge or, where appropriate, the prosecutor works.

(4) If fewer or more persons than those referred to in paragraph (3) have been voted for, the vote shall be deemed invalid.

(5) Judges and prosecutors seconded to authorities other than courts or prosecutors' offices may not participate in the election of members of the Superior Council of Magistracy.

Article 15 - (1) The judge or prosecutor who chaired the general assembly, together with 2 judges or prosecutors appointed before the vote by the general assemblies:

- a) count the votes;
- b) draw up the minutes of the elections and the outcomes of the vote and submit them to the Superior Council of Magistracy;
- c) communicate the names of the judges or prosecutors nominated as candidates for the office of member of the Superior Council of Magistracy in accordance with Article 10 (5) or, where appropriate, compile and transmit to the Superior Council of Magistracy the list of candidates in descending order of the votes obtained in the general assemblies referred to in Article 8 (3) and Article 13 (2) - (4).

(2) For the performance of the attributions provided for in paragraph (1), the judge or prosecutor who chaired the general assembly shall be assisted by two judges or, where appropriate, two prosecutors, designated by the general assemblies, from among the judges or prosecutors who have not stood for election.

Article 16 - (1) The Superior Council of Magistracy centralises the outcomes of the voting in the constituencies of all the courts of appeal and prosecutor's offices attached to them.

- (2) The following are elected as members of the Superior Council of Magistracy:
- a) 3 judges from the courts of appeal, who have obtained the highest number of votes nationwide;
  - b) 2 judges from the tribunals and specialised tribunals, who have obtained the highest number of votes nationwide;

c) 2 judges from the first instance courts, who have obtained the highest number of votes nationwide;

d) 1 prosecutor from the prosecutor's offices attached to courts of appeal, who has obtained the highest number of votes nationwide;

e) 2 prosecutors from the prosecutor's offices attached to tribunals and specialised tribunals, who have obtained the highest number of votes nationwide;

f) 1 prosecutor from the prosecutor's offices attached to first instance courts, who has obtained the highest number of votes nationwide.

(3) The provisions of Article 8 (4) shall apply accordingly.

Article 17 - (1) The Superior Council of Magistracy shall verify the legality of the appointment and election procedures, ex officio or upon the request of any judge or prosecutor.

(2) For the purpose of drawing up the complaint, judges and prosecutors shall have the right to verify the minutes of the proceedings provided for in paragraph (1) and the result thereof, as well as the ballot papers.

(3) Challenges concerning the legality of the appointment and election procedures may be lodged with the Plenum of the Superior Council of Magistracy within 15 days from the date on which the outcome of the vote was established.

(4) Challenges shall be settled by the Plenum of the Superior Council of Magistracy within 5 days from the date of the complaint. The reasoned decision on the challenge shall be communicated to the persons who lodged the complaint.

(5) If violations of the law are found in the appointment and election procedures, the Plenum of the Superior Council of Magistracy shall order the necessary measures for their removal, including the rerun of the elections, only in the courts or prosecutor's offices where the violation of the law had the consequence of influencing the outcome of the elections.

(6) The provisions of Article 7 (9) shall apply accordingly.

Article 18 - (1) The Superior Council of Magistracy shall draw up the final list of judges and prosecutors elected in accordance with the provisions of Article 8 (3) and Article 16 (2) and shall submit it to the Permanent Bureau of the Senate.

(2) Before the list is submitted to the Permanent Bureau of the Senate:

a) the National Council for the Study of Securitate Archives shall verify and communicate, within 15 days of the request of the Superior Council of Magistracy, whether the elected judges and prosecutors were part of the intelligence services before 1990 or collaborated with them;

b) The Supreme Council of National Defence shall verify and communicate to the Superior Council of Magistracy the result of the verification of the status of the elected judges and prosecutors as undercover operatives, collaborators with or informers of the intelligence services, within 15 days of the request of the Superior Council of Magistracy.

(3) The Permanent Bureau of the Senate shall submit the list provided for in paragraph (1) to the Committee on Legal Affairs, Appointments, Discipline, Immunities and Validations for the preparation of a report.

(4) The Senate, in the presence of the majority of its members, on the basis of the report of the Committee on Legal Affairs, Appointments, Discipline, Immunities and Validations, shall validate the list of judges and prosecutors elected as members of the Superior Council of Magistracy.

Article 19 - (1) For the purpose of the election of the 2 representatives of civil society to the Superior Council of Magistracy, professional organisations of lawyers, professional councils of accredited law faculties, associations and foundations whose objective is the defence of human rights may each propose one candidate to the Permanent Bureau of the Senate.

(2) Representatives of the civil society may be elected as members of the Superior Council of Magistracy if they meet the following conditions:

a) they are specialists in the field of law, with at least 10 years of experience in a legal profession or in higher legal education;

b) they enjoy a high professional and moral reputation;

c) they have not been part of the intelligence services before or after 1990, have not collaborated in any way with them and do not have a personal interest that influences or could influence the objective and impartial performance of the attributions provided for by law. They shall make a sworn statement that they have not been operatives of and have not collaborated in any way with any intelligence service before or after 1990;

d) they are not and have not been members of a political party in the last 6 years and have not held public office in the last 6 years.

(3) The nominations for candidature shall be submitted to the Permanent Bureau of the Senate, between the 90th day and the 60th day before the expiry of the term of office of the members of the Superior Council of Magistracy, accompanied by the court decision or, where appropriate, the normative act of establishment, the constitutive act and the statute of legal entities provided for in paragraph (1), as well as their tax records.

(4) The period for the submission of candidatures shall be published in the Official Gazette of Romania, Part III, and on the website of the Superior Council of Magistracy, 30 days before the beginning of the period provided for in paragraph (3).

(5) The proposed candidates shall submit to the Senate the documents provided for in Article 7 (4), as well as their criminal record.

(6) The list of candidates and the documents provided for in Article 7 (4) shall be posted on the websites of the Senate and the Superior Council of Magistracy within 5 days of the expiry of the period for their submission.



Article 20 - (1) The Senate shall elect, from among the candidates provided for in Article 19, the 2 representatives of civil society, according to the procedure laid down in the regulation of this Chamber.

(2) The provisions of Article 18 (2) shall apply accordingly.

Article 21 - The decisions of the Senate on the validation and election of the members of the Superior Council of Magistracy shall be published in the Official Gazette of Romania, Part I.

According to Article 56 of Law No. 305/2022, **the term of office of elected members of the Superior Council of Magistracy is of 6 years**, without the possibility of reappointment.

According to Article 56 (6), **the capacity of a Superior Council of Magistracy member shall cease**, as the case may be, upon expiry of the term of office, by resignation, removal from office, termination, according to law, of the office of judge or prosecutor, failure to resolve the state of incompatibility within 15 days from the date of election as a member of the Superior Council of Magistracy, failure to comply with the provisions relating to the prohibition to be an operative, including an undercover operative of, informer of or collaborator with any intelligence service, impossibility to perform the duties for a period of more than 3 months, as well as by death.

According to Article 57 of Law No. 305/2022, **judges and prosecutors may be removed from the office of elected members of the Superior Council of Magistracy** at any time during their term of office in the following cases:

a) the person in question no longer meets the legal conditions for being an elected member of the Superior Council of Magistracy;

b) the person concerned has been subject to one of the disciplinary sanctions provided by law for judges and prosecutors and the measure has become final;

c) the appropriate section of the Superior Council of Magistracy has found, on the basis of the report drawn up by the Judicial Inspection, that the person concerned has not performed or has performed improperly, in a serious, repeated and unjustifiable manner, the attributions provided for by law.

(2) The Plenum of the Superior Council of Magistracy shall establish the occurrence of one of the hypotheses referred to in paragraph (1) (a) and (b), upon the request of the President or the Vice-President of the Superior Council of Magistracy or of one third of its members, and shall order the removal from office by a majority vote of its members.

(3) In the situation referred to in paragraph (1) (c), the procedure for removal from office shall be as follows:

(a) the request for removal may be initiated by at least two thirds of the number of general assemblies of the courts or prosecutor's offices represented by the member of the Superior Council of Magistracy whose removal is requested;

b) the complaint must contain a concrete indication of the attribution provided for by the law which the person concerned has failed to perform or has performed improperly, in a serious,

repeated and unjustifiable manner, as well as the reasons for this situation. The complaint shall be inadmissible if it concerns the manner in which the elected member exercised his/her right to vote;

c) the request for removal shall be submitted to the appropriate section of the Superior Council of Magistracy, which shall have the necessary verification procedures carried out by the Judicial Inspection. The verification procedures must be carried out within 90 days at the latest from the date of the referral to the Judicial Inspection. The Chief Inspector may order an extension of the time limit for carrying out the verification procedures by a maximum of 30 days if there are grounded reasons justifying this measure, whereby the provisions of Article 47 (1) shall apply accordingly;

d) the report drawn up by the Judicial Inspection shall be submitted to the appropriate section of the Superior Council of Magistracy, which shall communicate it to the judge or prosecutor concerned. The judge or prosecutor may object to the report within 30 days of its communication. The final report shall be communicated to the general assemblies of the courts or prosecutor's offices represented by the member of the Superior Council of Magistracy whose removal is requested;

e) for the purpose of debating the report, the appropriate section of the Superior Council of Magistracy shall convene all the general assemblies of the courts or prosecutor's offices represented by the member of the Superior Council of Magistracy whose removal is requested, setting a single day for their meeting;

f) the person concerned by the removal may address the judges or prosecutors in order to support his or her point of view, in any way, until the date of the general assemblies;

g) if two thirds of the valid votes cast by the judges or prosecutors gathered in the general assemblies of the courts or prosecutor's offices which the member of the Superior Council of Magistracy concerned by the proceedings represents are in favour of upholding the request for removal, the appropriate section of the Superior Council of Magistracy shall take note of the decisions of the general assemblies;

h) the general assemblies of the courts or prosecutor's offices represented by the member of the Superior Council of Magistracy whose removal is requested are legally constituted in the presence of at least two thirds of the judges or prosecutors in office. The general assembly shall be chaired by the judge or prosecutor with the longest seniority in office. Decisions of general assemblies shall be adopted by a vote of at least two thirds of the judges or prosecutors in office.

(4) The provisions of paragraph (3) shall also apply accordingly in the case of removal of elected members of the High Court of Cassation and Justice and of the Prosecutor's Office attached to the High Court of Cassation and Justice.

(5) Removal from office of the President or Vice-President, in case of non-performance or improper performance of the attributions provided for by law, shall be proposed by one third of the members of the Superior Council of Magistracy and shall be decided by a majority vote of the Plenum of the Superior Council of Magistracy, in the presence of at least two thirds of its

members. The decision of the Plenum shall be drawn up within 20 days and shall be communicated immediately.

(6) Elected members of the Superior Council of Magistracy, representatives of civil society, may be removed from office if they no longer meet the legal conditions for being an elected member of the Superior Council of Magistracy or if they fail to perform or perform improperly, in a serious, repeated and unjustifiable manner, the attributions provided for by law; the provisions of paragraph (2) and of paragraph (3) (b) shall apply accordingly.

(7) The settlement of the request for removal from the office of elected member of the Superior Council of Magistracy, as well as of the request for removal from the office of President or Vice-President shall be made only after hearing the person in question; the provisions of Article 47 (1) shall apply accordingly.

(8) The removal decision may be appealed against within 15 days from its communication to the Administrative and Tax Litigation Chamber of the High Court of Cassation and Justice. The appeal shall be heard by a panel of three judges. The lodging of an appeal automatically suspends enforcement of the judgment. The decision on the appeal is final.

9. Are there ex officio members in the composition? (i.e. those who are members automatically due to the position they occupy, for example, the Prosecutor General, the Minister of Justice or others).

Yes, see answer to question 1.

10. Are there rules or procedures to prevent possible conflict of interest situations during the process of election or appointment of the members of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance? Is there any incompatibility between certain functions in the prosecution service and membership in a council of prosecutors?

See answer to question 8.

11. Are there any specific requirements for prosecutor members to ensure a proportional and fair representation of all levels of the prosecution system?

See answer to question 1 and question 8.

12. Please describe briefly the election/appointment process of the president and vice-presidents, if applicable, of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance, including dismissal processes and grounds.

According to Law No. 305/2022, Article 24 (1), the Superior Council of Magistracy is ruled by a President, assisted by a Vice-President, elected by the Plenum, in the presence of at least 15 of its members, by a majority vote of the members present, from among the judges and

prosecutors referred to in Article 3 (a)<sup>20</sup>, belonging to different sections, for a one-year term of office. The President's term of office may not be renewed.

(2) A judge and a prosecutor nominated by the Section for Judges and the Section for Prosecutors of the Superior Council of Magistracy, respectively, from among its members, in the presence of at least two thirds of the members of the sections, by a majority vote of the members present, shall stand for the office of President and Vice-President.

(3) Candidates for the offices of President and Vice-President respectively shall submit their candidatures, accompanied by an outline of the objectives pursued, to the sections which they belong to.

(4) The appropriate sections of the Superior Council of Magistracy will examine and debate the candidatures submitted and then appoint the candidates for the offices of President and Vice-President of the Superior Council of Magistracy.

According to Law No. 305/2022, Article 57 (5), the removal from the office of President or Vice-President, in case of failure to perform or improper performance of the attributions established by law, is proposed by one third of the members of the Superior Council of Magistracy and is decided by a majority vote of the Plenum of the Superior Council of Magistracy, in the presence of at least two thirds of its members. The decision of the Plenum shall be drawn up within 20 days and communicated immediately.

### **III. Competence and functioning of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance**

13. In your country, do the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance have exclusive power to exercise the administration of the prosecution service or whether this power is divided with the executive bodies (those outside of the prosecution service, e.g. the ministry of justice)?

See answer to question 1.

14. Please describe briefly the functions and powers of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance, in particular as regards the recruitment, promotion, transfer, evaluation, discipline or other aspects regarding prosecutors, and budgetary aspects (including the development of the prosecution service's budget, systematisation of the legislation on the activities of the prosecution service, approval of the prosecution service's task plans and annual reports, adoption of the code of ethics for prosecutors etc).

According to Law No. 305/2022, Article 31 (1), the appropriate sections of the Superior Council of Magistracy have the right, respectively the correlative obligation, to take action, ex officio, with a view to protecting judges and prosecutors against any act of interference in their

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<sup>20</sup> 9 judges and 5 prosecutors, elected in the general assemblies of judges and prosecutors, who make up the two sections of the Superior Council of Magistracy, one for judges and one for prosecutors;

professional activity or in connection therewith, which might affect their independence or impartiality, as well as against any act which might create suspicions about both of those. At the same time, the sections of the Superior Council of Magistracy defend the professional reputation of judges and prosecutors. Complaints concerning the defence of the independence of the judicial authority as a whole are dealt with by the Plenum of the Superior Council of the Magistracy, on request or ex officio.

(2) The Plenum of the Superior Council of Magistracy, the sections, the President and the Vice-President of the Superior Council of Magistracy, upon the request of a judge or prosecutor who considers that his or her independence, impartiality or professional reputation is affected in any way or ex officio, shall refer the matter to the Judicial Inspection for verification, with a view to defending the independence, impartiality and professional reputation of judges and prosecutors.

(3) Where the independence, impartiality or professional reputation of a judge or prosecutor is affected, the appropriate section of the Superior Council of Magistracy shall order the required measures and ensure their publication on the website of the Superior Council of Magistracy, it may refer the matter to the body competent to decide on the required measures or may order any other appropriate measure, according to the law.

(4) Upon the request of the judge or prosecutor in question, the announcement published on the website of the Superior Council of Magistracy shall be displayed at the institution where the judge or prosecutor is working and/or published on the website of this institution.

(5) The Superior Council of Magistracy ensures compliance with the law and the criteria of professional competence and ethics in the professional career of judges and prosecutors.

(6) The attributions of the Plenum of the Superior Council of Magistracy and its sections with regard to the career of judges and prosecutors shall be exercised in compliance with the legal provisions concerning the status of judges and prosecutors and those concerning judicial organisation.

In accordance with the provisions of Law No. 305/2022, the attributions of the Plenum of the Superior Council of Magistracy relate to the following aspects:

Article 36 - The Plenum of the Superior Council of Magistracy shall have the following attributions with regard to the career of judges and prosecutors:

- a) defends the independence of the judiciary as a whole, according to Article 31 (1);
- b) appoints and dismisses the Chief Inspector and the Deputy Chief Inspector of the Judicial Inspection, in accordance with the law;
- c) proposes to the President of Romania the awarding of distinctions to judges and prosecutors, in accordance with the law;
- d) performs any other attributions established by law or by the Regulation on the organisation and functioning of the Superior Council of Magistracy.

Article 37 - The Plenum of the Superior Council of Magistracy shall have the following attributions regarding the admission to the magistracy, training and examinations of judges and prosecutors:

a) exercises the attributions provided for by law relating to the organisation and conduct of the entrance examination to the National Institute of Magistracy, issues opinions and adopts regulations, in the cases and under the conditions provided for by law;

b) exercises the attributions established by law in relation to the competition for admission to the magistracy;

c) approves the training programme for the auditors of justice and the programme for the continuous training of judges and prosecutors, upon proposal of the National Institute of Magistracy;

d) appoints and dismisses the Director and Deputy Directors of the National Institute of Magistracy and designates the judges and prosecutors who will be members of the Scientific Council of the National Institute of Magistracy;

e) on the proposal of the Director of the National Institute of Magistracy, approves the organisational structure, the functions and the staffing of the National Institute of Magistracy and adopts, by decision to be published in the Official Gazette of Romania, Part I, the Regulation of the National Institute of Magistracy;

f) appoints and dismisses the Director and Deputy Directors of the National School of Clerks;

g) performs any other attributions established by law or by the Regulation on the organisation and functioning of the Superior Council of Magistracy.

Article 38 - The Plenum of the Superior Council of Magistracy shall have the following attributions regarding the organisation and functioning of the courts and prosecutors' offices:

a) convenes general assemblies of judges and prosecutors in accordance with the law;

b) endorses the draft Government decision on the list of towns that are part of the constituencies of the first instance courts;

c) prepares its own draft budget, with the advisory opinion of the Ministry of Finance, and gives its assent to the draft budgets of the courts and prosecutors' offices;

d) performs any other attributions established by law or by the Regulation on the organisation and functioning of the Superior Council of Magistracy.

Article 39 - (1) The Plenum of the Superior Council of Magistracy shall adopt the Deontological Code for Judges and Prosecutors, the Regulation on the organisation and functioning of the Superior Council of Magistracy, the Regulation on the procedure for the election of members of the Superior Council of Magistracy, as well as other regulations and decisions provided for by law.

(2) The Plenum of the Superior Council of Magistracy shall ensure the publication of the Deontological Code for Judges and Prosecutors and the regulations referred to in paragraph (1)

in the Official Gazette of Romania, Part I, and on the website of the Superior Council of Magistracy.

(3) The Plenum of the Superior Council of Magistracy shall endorse draft legal acts concerning the activity of the judicial authority.

(4) The Plenum of the Superior Council of Magistracy shall endorse draft regulations and orders to be approved by the Minister of Justice under the circumstances provided for by law.

(5) The Plenum of the Superior Council of Magistracy may refer to the Minister of Justice the need to initiate or amend legal acts in the field of justice.

(6) The Superior Council of Magistracy shall draw up an annual report on the state of justice and a report on its own activity, which it shall submit to the reunited Chambers of the Romanian Parliament by 15 February of the following year, and shall publish them in the Official Gazette of Romania, Part III, and on the website of the Superior Council of Magistracy.

In accordance with the provisions of Law No. 305/2022, the attributions of the sections of the Superior Council of Magistracy relate to the following aspects:

Article 40 - (1) The sections of the Superior Council of Magistracy have the following attributions regarding the career of judges and prosecutors:

a) to propose to the President of Romania the appointment and dismissal of judges and prosecutors;

b) to appoint trainee judges and prosecutors on the basis of their results in the graduation examination of the National Institute of Magistracy;

c) to release trainee judges and prosecutors from office;

d) to appoint judges and prosecutors to senior positions, in accordance with the law;

e) to decide on the promotion of judges and prosecutors, in accordance with the law;

f) to decide, in accordance with the law, on the delegation and secondment of judges and prosecutors;

g) to settle appeals against the ratings awarded by the committees for the evaluation of the professional activity of judges and prosecutors set up in accordance with the law;

h) to take measures to settle complaints received from persons subject to judicial review or from other persons concerning misconduct by judges and prosecutors;

i) to decide on the suspension from office of judges and prosecutors;

j) to approve, in accordance with the law, the transfer of judges and prosecutors;

k) to perform any other attributions established by law or by the Regulation on the organisation and functioning of the Superior Council of Magistracy.

(2) The Section for Judges of the Superior Council of Magistracy appoints and removes from office the President, Vice-Presidents and Presidents of sections of the High Court of Cassation and Justice.

(3) The Section for Prosecutors of the Superior Council of Magistracy endorses, in accordance with the law, the proposal of the Minister of Justice for the appointment and removal from office of the Prosecutor General of the Prosecutor's Office attached to the High Court of Cassation and Justice, the First Deputy and his/her Deputy, the Chief Prosecutor of the National Anti-corruption Directorate and of the Directorate for Investigating Organised Crime and Terrorism, their deputies, the prosecutors head of sections of the Prosecutor's Office attached to the High Court of Cassation and Justice, of the National Anti-corruption Directorate and of the Directorate for Investigating Organised Crime and Terrorism.

According to Article 41 (2), the Section for Prosecutors of the Superior Council of Magistracy has the following attributions regarding the organisation and functioning of prosecutors' offices:

a) approves the proposal of the Prosecutor General of the Prosecutor's Office attached to the High Court of Cassation and Justice, of the Chief Prosecutor of the National Anti-corruption Directorate, of the Chief Prosecutor of the Directorate for Investigating Organised Crime and Terrorism to set up and dismantle sections within the prosecutor's offices and specialised directorates;

b) upon the proposal of the Prosecutor General of the Prosecutor's Office attached to the High Court of Cassation and Justice, approves the number of deputy prosecutors general of the prosecutor's offices attached to the courts of appeal and of the chief prosecutors of the prosecutor's offices attached to the tribunals and the first instance courts of the county administrative seats and of the Bucharest municipality, as well as the prosecutor's offices attached to the juvenile and family tribunals and the first instance courts where the first prosecutors are assisted by deputies;

c) approves measures to supplement or reduce the number of staff for prosecutors' offices;

d) adopts, in accordance with the law, the internal regulations of the prosecutor's offices and specialised directorates;

e) performs any other attributions established by law or by the Regulation on the organisation and functioning of the Superior Council of Magistracy.

According to Article 41 (2), the Section for Prosecutors of the Superior Council of Magistracy authorises the search, detention, preventive arrest and house arrest of prosecutors. The Section for Prosecutors of the Superior Council of Magistracy endorses the measure of judicial control and judicial control on bail if the obligation not to act as a prosecutor is to be ordered.

(3) The provisions set out in paragraphs (1) and (2) on search and detention shall not apply in cases of flagrante delicto.

Attributions of the Superior Council of Magistracy in the field of disciplinary liability of judges and prosecutors:



Article 44 - (1) The Superior Council of Magistracy, through its sections, acts as a court of law with regard to disciplinary liability of judges and prosecutors, for acts provided by law as disciplinary misconduct.

(2) Disciplinary action for the misconduct of judges and prosecutors is exercised by the Judicial Inspection through the judicial inspector.

(3) In order for disciplinary action to be taken, a prior disciplinary investigation by the Judicial Inspection is mandatory.

Article 45 - (1) The Judicial Inspection may be notified ex officio or may be notified in writing and groundedly by any interested person, including the Superior Council of Magistracy, about disciplinary misconduct committed by judges and prosecutors.

Article 50 - (1) The sections of the Superior Council of the Magistracy shall settle the disciplinary action by a decision which shall mainly include the following:

- a) description of the act constituting a disciplinary misconduct and its legal classification;
- b) the legal basis for the application of the sanction;
- c) the grounds on which the judge's or prosecutor's defences were rejected;
- d) the sanction applied and the reasons for its application;
- e) the appeal procedure and the time limit within which the judgment may be appealed;
- f) the court with jurisdiction to hear the appeal.

Article 51 - (1) Decisions of the sections of the Superior Council of the Magistracy by which disciplinary action has been decided must be drawn up at the time of ruling and immediately communicated in writing to the judge or prosecutor in question and to the Judicial Inspection. Decisions are communicated by the General Secretariat of the Superior Council of Magistracy. Prior to its communication to the judge or prosecutor in question, the decision shall have no effect on the career and rights of the latter.

(2) The member of the Superior Council of Magistracy against whom disciplinary action is brought shall not take part in the proceedings of the section in which the disciplinary action is being heard.

(3) The decisions referred to in paragraph (1) may be appealed against within 15 days following notification by the sanctioned judge or prosecutor or, where appropriate, by the Judicial Inspection. Jurisdiction to decide the appeal lies with the five-judge panel of the High Court of Cassation and Justice. The five-judge panel may not include the voting members of the Superior Council of the Magistracy or the judge who has been subject to a disciplinary sanction.

(4) The appeal provided for in paragraph (3) is a devolutive means of appeal and suspends the execution of the decision made by the section of the Superior Council of Magistracy applying the disciplinary sanction.

(5) The decision by which the appeal referred to in paragraph (3) is settled shall be final.

(6) The sections of the Superior Council of Magistracy shall ensure the enforcement of the disciplinary sanctions they have ordered.

15. Please describe briefly the competence, if any, or any role played by the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance in:
- performance assessment of prosecutors, both in terms of substance and procedure, and including relationship/interactions with other bodies if those are competent on performance assessment;
  - disciplinary measures against prosecutors, also both in terms of substance and procedure, and including relationship/interactions with other bodies if those are competent on disciplinary measures.

See answer to question 14.

16. Do the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance have the power to consider situations of conflict within the prosecution system, for example in case of instructions to reverse the view of a prosecutor?

See answer to question 14.

17. Can prosecutors apply to the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance with an allegation of illegal instructions from their superior prosecutors or any other actors, both from within and outside of the prosecution system?

See answer to question 14.

18. Please describe briefly the decision-making process of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance, including any aspects related to voting rights of members (for example, whether all members have the same right to vote), and applicable procedures and threshold for a decision to be adopted.

According to Article 23 of Law No. 305/2022:

(1) The Superior Council of Magistracy shall function as a body with permanent activity. Decisions of the Superior Council of Magistracy are taken in plenary session or in sections, according to their attributions.

(2) The members of the Superior Council of Magistracy shall carry out a permanent and unquantifiable activity and do not exercise the activity of judge or prosecutor, except for ex officio members.

(3) The managing positions held by the judges or prosecutors elected as members of the Superior Council of Magistracy shall cease automatically on the date of publication of the Senate's decision in the Official Gazette of Romania, Part I.

(4) The period during which the judge or prosecutor is a member of the Superior Council of the Magistracy shall represent seniority in these positions.

According to Article 26 of Law No. 305/2022:

(1) The sessions of the sections of the Superior Council of Magistracy are legally constituted in the presence of the majority of their members and are chaired by the President or, where appropriate, the Vice-President of the Superior Council of Magistracy. In their absence, the members of the section shall elect a chairperson by a majority vote of those present.

(2) The judge or prosecutor chairing the proceedings of the section shall sign the decisions and other documents issued by the section.

In accordance with Article 27 of Law No. 305/2022:

(1) The Superior Council of Magistracy shall meet in plenum and in sections, convened by the President, the Vice-President or a majority of the members of the plenum or, as the case may be, of the sections.

(2) The proceedings of the Plenum of the Superior Council of Magistracy are held in the presence of at least 15 members. If this quorum is not reached, the next time the Plenum is convened, but not earlier than 24 hours, to discuss the same agenda, it shall be held in the presence of the majority of its members.

(3) Decisions of the Plenum of the Superior Council of Magistracy and decisions of the sections are taken by a majority vote of the members present.

(4) In order to carry out the attributions of the Superior Council of Magistracy, specialised committees, acting as specialised preparatory structures, are organised through the plenum and the sections, made up of members of the Superior Council of Magistracy.

(5) The organisation, functioning and attributions of the specialised committees are established by the Regulation on the organisation and functioning of the Superior Council of Magistracy.

(6) The specialised committees have the following attributions:

a) to examine and submit for decision the items on the agenda of the plenum and the sections, except for disciplinary and career-related matters of an individual nature;

b) to submit draft decisions for inclusion on the agenda and approval in plenum and sections, with the exception of disciplinary and career-related matters of an individual nature;

c) in the event of diverging views in the committees and if the draft settlement cannot be adopted by consensus, a vote will be taken. Alternative draft settlements aimed at resolving items on the agenda of the plenum or the sections shall be placed on the agenda, indicating the majority opinion and the minority opinions, as appropriate;

d) to examine, no later than 30 days after registration, requests from members, professional associations, civil society organisations, other public authorities and institutions in the field of activity of the Superior Council of Magistracy and establish priorities for thematic activity;

e) other attributions established by law and the Regulation on the organisation and functioning of the Superior Council of Magistracy.

According to Article 28 of Law No. 305/2022:

(1) The President of the High Court of Cassation and Justice participates in the proceedings of the Judges' Section, the Prosecutor General of the Prosecutor's Office attached to the High Court of Cassation and Justice participates in the proceedings of the Prosecutors' Section and the Minister of Justice participates in the proceedings of both sections.

(2) The President of the High Court of Cassation and Justice, the Minister of Justice and the Prosecutor General of the Prosecutor's Office attached to the High Court of Cassation and Justice shall not have the right to vote in cases in which the sections act as a court of law with regard to disciplinary liability and when deciding on applications for the authorisation of search, detention, preventive arrest, house arrest, judicial control or judicial control on bail concerning judges or prosecutors.

(3) Civil society representatives participate, with the right to vote, in the activities of the Plenum of the Superior Council of Magistracy.

19. What is the legal force of the final decisions taken by the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance? Are such decisions of only a consultative nature, not being legally obligatory, or are they of a binding nature, being legally obligatory / mandatory, or is there a mixture depending on the nature of a decision?

In accordance with the provisions of Article 133 of the Romanian Constitution, the decisions of the Superior Council of Magistracy are final and irrevocable, with the exception of those provided for in its Article 134 (2)<sup>21</sup>.

According to Article 29 of Law No. 305/2022:

(4) The decisions of the Superior Council of Magistracy, in plenum and in sections, are taken by direct and secret vote and are grounded.

(5) Individual decisions of the plenum and sections concerning the career and rights of judges and prosecutors shall be drawn up within 20 days of their adoption at the latest, communicated immediately and published on the website of the Superior Council of Magistracy within 10 days of their drawing up.

(6) The decisions referred to in paragraph (5) may be challenged by any interested person, within 15 days of their communication or publication, before the Administrative and Tax Litigation Chamber of the High Court of Cassation and Justice. Challenges are heard by a panel of three judges. The decision on the challenge shall be final.

(7) Unless otherwise provided by law, a challenge brought by the judge or prosecutor concerned by the decision referred to in paragraph (5) shall suspend the execution of the measure ordered in respect of his/her career and rights.

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<sup>21</sup> in the field of disciplinary liability of judges and prosecutors, according to the procedure established by its organic law.

Also, according to Article 33 (1) of Law No. 305/2022, in cases where the law provides for the assent, approval or consent of the Superior Council of Magistracy, the option decided by it is binding. If the law provides for the consultation or opinion of the Superior Council of Magistracy, the option decided by the latter is not binding.

According to Article 51 of Law No. 305/2022, disciplinary action may be appealed against by the sanctioned judge or prosecutor or, where appropriate, by the Judicial Inspection, within 15 days from the communication of the decision of the sections of the Superior Council of Magistracy, and the competence to decide on the appeal lies with the five-judge panel of the High Court of Cassation and Justice. The decision on the appeal is final.

At the same time, according to Article 52, during the disciplinary proceedings, the appropriate section of the Superior Council of Magistracy, ex officio or at the proposal of the judicial inspector, may order the suspension from office of the magistrate, until the final settlement of the disciplinary action, if the continued exercise of the function is likely to affect the impartiality of the disciplinary proceedings or if the disciplinary proceedings are likely to seriously undermine the prestige of justice. The decision ordering the suspension from office under the terms of paragraph (1) may be contested by the suspended judge or prosecutor within 5 days of the communication. The competence to decide on the challenge lies with the five-judge panel of the High Court of Cassation and Justice, which may not include voting members of the Superior Council of Magistracy. The decision of the court is final.

20. Are the final decisions taken by the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance subject to judicial review by a court?

See answer to question 19.

21. Which mechanisms ensure the independent functioning of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance.

According to the Romanian Constitution, the Superior Council of Magistracy guarantees the independence of justice, this principle being reiterated in Article 1 of Law No. 305/2022, which also stipulates that this institution is independent and is subject in its activity only to the law.

In addition to the above information on how the career of judges and prosecutors is managed, it should be noted that there are other legal provisions in this regard, such as Law No. 303/2022 on the status of judges and prosecutors and Law No. 304/2022 on the judicial organisation (which, for example, states in its Article 1 (3) - "The Superior Council of Magistracy guarantees the independence of justice and contributes to the proper organisation and administration of justice through its attributions and competences" and Article 5 (3) - "The Ministry of Justice and the Superior Council of Magistracy shall cooperate loyally in the exercise of their respective competences relating to the proper organisation and administration of justice as a public service").

22. Are there any other institutions outside of the prosecution system which have a role with respect to the functioning and decision-making process of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance?

See also the answer to question 1, question 7 and question 9.

23. How is the transparency of the work of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance guaranteed:
- are they accountable to the public through widely disseminated reports and information?
  - do they have publicly accessible websites providing essential information on their functioning and decision-making?
  - any other measures for transparency? (i.e. public briefings, press releases etc.)

According to Article 29 of Law No. 305/2022:

(1) The proceedings of the plenum and of the sections of the Superior Council of Magistracy are, as a rule, public. The members of the plenum or of the sections shall decide, by majority vote, when meetings are not public. Meetings of the sections dealing with the requests for search, detention, preventive arrest or house arrest, judicial control or judicial control on bail of judges or prosecutors, as well as those concerning hearings and deliberations on disciplinary matters are not public.

(2) The professional associations of judges and prosecutors, through their legal representatives, may participate in the proceedings of the plenum and of the sections, expressing, when they deem it necessary, a point of view on the issues under debate, on their own initiative or upon request of the members of the Superior Council of Magistracy.

(3) The agenda of the proceedings of the plenum and of the sections of the Superior Council of Magistracy shall be approved by them on the proposal of the President or, where appropriate, the Vice-President of the Superior Council of Magistracy.

(4) Decisions of the Superior Council of Magistracy, in plenum and in sections, are taken by direct and secret vote and are grounded.

(5) Individual decisions of the plenum and sections concerning the career and rights of judges and prosecutors shall be drawn up within 20 days of their adoption at the latest, communicated immediately and published on the website of the Superior Council of Magistracy within 10 days of their being drawn up.

(6) The decisions referred to in paragraph (5) may be appealed against by any interested person, within 15 days following their communication or publication, to the Administrative and Tax Litigation Chamber of the High Court of Cassation and Justice. Appeals are heard by a panel of three judges. The decision on the appeal is final.

(7) Unless otherwise provided by law, a challenge lodged by the judge or prosecutor concerned against the decision referred to in paragraph (5) shall suspend the execution of the measure ordered in respect of his/her career and rights.

(8) The draft agenda to be put to the vote of the plenum or sections shall be published 3 working days in advance on the website of the Superior Council of Magistracy. The published agenda does not include requests for the authorisation of search, detention, preventive or house arrest, judicial control or judicial control on bail of judges or prosecutors. The decisions of the Superior Council of Magistracy are published on the website of the Superior Council of Magistracy.

(9) With a view to ensuring the transparency of the activity of the Superior Council of Magistracy:

a) public plenum and section meetings shall be broadcast live, by audio-video, on the website of the Superior Council of Magistracy, recorded and published on the website of the Superior Council of Magistracy, except in the cases referred to in paragraph (1);

b) the decisions of a regulatory nature of the Superior Council of Magistracy, adopted in plenum or sections, are adequately subject to the provisions of Law No. 52/2003 on the transparency of decision-making in public administration, republished, as amended;

c) at the end of decisions adopted by the plenum or sections, the number of votes 'for', the number of votes 'against' and the number of votes 'abstain', as the case may be, shall be indicated without affecting the secrecy of the vote.

According to Article 30 of Law No. 305/2022:

(1) If it is objectively impossible for some members to attend meetings [of the plenum] or sections of the Superior Council of Magistracy, meetings may be held by videoconference, using direct remote electronic means of communication, or, where appropriate, in a mixed format, with physical participation and videoconference, while respecting the secret nature of the vote.

(2) Electronic means of distance communication must meet the technical conditions necessary to enable:

a) compatibility with the most common fixed or mobile access technologies, with as many operating systems as possible and connection with public fixed or mobile electronic communications networks;

b) identification of participants and their actual participation in the meeting;

c) continuous real-time transmission, recording and archiving of the meeting;

d) real-time multi-directional communication;

e) the casting of the vote and its recording;

f) subsequent verification of how the vote was cast, without affecting the secrecy of the vote.

In accordance with Article 39 of Law No. 305/2022:

(1) The Plenum of the Superior Council of Magistracy adopts the Deontological Code for Judges and Prosecutors, the Regulation on the organisation and functioning of the Superior Council of Magistracy, the Regulation on the procedure for the election of the members of the Superior Council of Magistracy, as well as other regulations and decisions provided by law.

(2) The Plenum of the Superior Council of Magistracy shall ensure the publication of the Deontological Code for Judges and Prosecutors and of the regulations referred to in paragraph (1) in the Official Gazette of Romania, Part I, and on the website of the Superior Council of Magistracy.

(6) The Superior Council of Magistracy prepares an annual report on the state of justice and a report on its own activity, which it submits to the reunited Chambers of the Romanian Parliament by 15 February of the following year, and publishes them in the Official Gazette of Romania, Part III, and on the website of the Superior Council of Magistracy.

At the same time, in accordance with the provisions of Article 74 of Law No. 305/2022, the Chief Inspector of the Judicial Inspection submits annually to the Plenum of the Superior Council of Magistracy the activity report for the previous year.

Also, according to Article 56 of Chapter IV "Status of the Members of the Superior Council of Magistracy" of Law No. 305/2022:

(8) Elected members of the Superior Council of Magistracy, representatives of civil society, do not take part in the meetings of the sections for judges and prosecutors respectively and have the following specific duties:

a) to ensure that civil society organisations are constantly informed about the activities of the Superior Council of Magistracy;

b) to consult civil society organisations on their proposals and suggestions regarding the steps to be taken at the level of the Superior Council of Magistracy to improve the activity of the judicial institutions as a public service for the benefit of society, by drawing up a quarterly report analysing and summarising the proposals, which they submit to the plenum or sections, as appropriate, for consideration and decision;

c) to monitor compliance with the obligations of the Superior Council of Magistracy in terms of transparency, ensuring public access to information and dealing with petitions in relation to civil society and to draw up an annual report, which they publish on the website of the Superior Council of Magistracy.

According to Article 23 of the Regulation on the organisation and functioning of the Superior Council of Magistracy:

(1) In order to ensure transparency of decision-making in the procedure for drawing up the draft decisions referred to in Article 22 (5) (b), the Council shall publish a notice of this procedure on its website in a special section, display the notice at the Council's seat, in a place



accessible to the public, and order its transmission to the central media, under the conditions provided for by law.

(2) The President of the Council shall designate, by a decision, a person from his own staff responsible for the relationship with civil society. This person shall receive proposals, suggestions and opinions from interested persons on the proposed draft decision and shall record them in a register, indicating the date of receipt, the person from whom the proposal, opinion or recommendation was received and his/her contact details.

(3) In the cases provided for by law, the person designated in accordance with paragraph (2) shall take the necessary measures for the organisation and the holding of meetings at which draft decisions shall be publicly debated.

Also, in accordance with the provisions of the Regulation on the organisation and functioning of the Superior Council of Magistracy, the Council has a Public Information and Media Relations Office. This structure is headed by the Council's spokesperson, who may be a judge or a prosecutor or a graduate of a journalism faculty or a communication specialist.

The Spokesperson carries out the public relations activity, and in this respect, performs the following attributions:

a) identifies, receives and selects information from within the institution, defines spheres of interest, evaluates and selects useful information for the Council and the judiciary that is of interest to the public;

b) prepares the necessary press briefing materials - designs and drafts press briefings, press releases, press kits and the texts of any press statements;

c) ensures the preparation of press releases on court decisions relating to the Council acts;

d) organises and participates in press events - designs the invitation releases for the press conference and organises the event itself (conference, briefing, press seminar, press trip, press visits, etc.);

e) maintains permanent contact with journalists, holding regular meetings with them in order to ensure a constant flow of information to media representatives and to maintain their interest in the activity of the institution he/she represents, and also to ensure correct and prompt information of the public;

f) mediates contacts between the management of the institution and journalists who request interviews or statements for a better documentation of the matter.

(8) In cases where the press reports facts affecting the reputation, independence or impartiality of magistrates, the spokesperson shall immediately inform the President of the Council.

All media activities are of an urgent nature and are dealt with by telephone or in writing, even out of hours. Information of public interest is provided to media representatives via the spokesperson. If the spokesperson is absent from the institution's seat, the President of the

Council will appoint another magistrate to replace him/her. Journalists may contact the spokesperson on all matters concerning the activity of the Council, on fundamental issues concerning the activity of the courts and the prosecutors' offices, and on issues concerning the judiciary. The Council spokesperson provides information to the media on the careers of judges and prosecutors under the terms of the law.

## Serbia / Serbie

### I. General questions

1. Is there a council of prosecutors and/or any other bodies dealing with prosecutorial self-governance in your country? If yes, what is the exact title/denomination of such body or bodies, if several? (i.e. Council of Prosecutors or Prosecutorial Council, Conference/Congress of Prosecutors, Qualification and Disciplinary Commission of Prosecutors etc.) Is there a professional association of prosecutors dealing with prosecutorial self-governance in any way?

There is. The State Council of Prosecutors is an independent body that ensures and guarantees the independence of public prosecutors and deputy public prosecutors in accordance with the Constitution.

2. If so, when was a council of prosecutors and/or any other bodies dealing with prosecutorial self-governance introduced in the prosecutorial system in your country? Please describe briefly, if applicable, any significant reforms undertaken since the establishment, aimed at strengthening effectiveness, independence and accountability of such body(ies).
3. If such a council of prosecutors and/or any other bodies dealing with prosecutorial self-governance exist in your country, are they only for prosecutors or for other professionals of justice? Are such bodies separate or do they operate within a body common to judges and prosecutors?

The State Council of Prosecutors is completely separate and was established only for public prosecutors.

4. At what legislative or normative level is the status of a council of prosecutors and/or any other bodies dealing with prosecutorial self-governance established and how is its/their functioning regulated? (e.g. through Constitution, laws, by-laws or other regulations).

The establishment of the State Council of Prosecutors is prescribed by the Constitution of the Republic of Serbia.

5. Are such council of prosecutors and/or any other bodies dealing with prosecutorial self-governance provided with the required resources (human, financial and other) to function properly?

An administrative office is established to perform professional, administrative and other tasks within the State Council of Prosecutors.

6. If in your country there is no council of prosecutors and/or any other bodies dealing with prosecutorial self-governance, is there any discussion to introduce such a body(ies)? If so, what are the arguments in favour and against its/their introduction?

**II. Composition of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance and status of its/their members**

7. Please describe the composition of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance in your country. Please indicate:

- How many of the members are prosecutors?
- How many, if any, are non-prosecutor members and who are they? (e.g. scholars, judges, lawyers, civil society, others)

The State Council of Prosecutors has eleven members.

The members of the State Council of Prosecutors are the Republic's Public Prosecutor, the minister responsible for justice and the president of the competent committee of the National Assembly, as ex-officio members, and eight elective members elected by the National Assembly, in accordance with this law.

Electoral members consist of six permanent public prosecutors or deputy public prosecutors, of whom at least one is from the territory of the autonomous provinces and two distinguished and distinguished lawyers with at least 15 years of experience in the profession, of whom one is a lawyer and the other a professor at the Faculty of Law.

8. Please describe the procedure for the election or appointment of the members of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance (including both prosecutor members and non-prosecutor members), the duration of their mandate and the dismissal procedure, including, if applicable, the grounds for early termination of mandate or dismissal of members.

Election members of the State Council of Prosecutors are elected by the National Assembly on the proposal of authorized proposers. The authorized proposer for election members of the State Prosecutor Council from among the public prosecutors and deputy public prosecutors is the State Prosecutor Council. The State Prosecutor Council is obliged to propose to the National Assembly the candidates directly elected by public prosecutors and deputy public prosecutors in the manner and in the procedure prescribed by this law. The authorized proponent for an election member of the State Council from among the attorneys is the Bar Association of Serbia. Candidates for election to the State Prosecutor Council from the professors of the Faculty of Law are proposed by a joint session of the deans of the law

faculties in the Republic of Serbia. Members of the State Prosecutor Council are elected by the National Assembly on the proposal of authorized proposers.

9. Are there ex officio members in the composition? (i.e. those who are members automatically due to the position they occupy, for example, the Prosecutor General, the Minister of Justice or others)

See the answer to question number seven.

10. Are there rules or procedures to prevent possible conflict of interest situations during the process of election or appointment of the members of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance? Is there an incompatibility between certain functions in the prosecution service and membership in a council of prosecutors?

An elected member of the State Council of Prosecutors from the ranks of lawyers, i.e. professors of the Faculty of Law, after taking office, cannot hold positions in bodies that enact regulations, bodies of executive power, public services and bodies of provincial autonomy and local self-government units.

An elected member of the State Council from the ranks of deputy public prosecutors may be released from the position of deputy public prosecutor during the performance of his duties in the State Council, based on the decision of the State Council.

11. Are there any specific requirements for prosecutor members in order to ensure a proportional and fair representation of all levels of the prosecution system?

Elective members of the State Council from among public prosecutors and deputy public prosecutors are elected from the following public prosecutor's offices:

- one from the Republic Public Prosecutor's Office;
- one of the appellate prosecutor's offices, the Prosecutor's Office for Organized Crime and the Prosecutor's Office for War Crimes;
- one of the higher prosecutor's offices;
- two from basic prosecutor's offices;
- one of the public prosecutor's offices from the territory of the autonomous province.

12. Please describe briefly the election/appointment process of the president and vice-presidents, if applicable, of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance, including dismissal processes and grounds.

The Republic Public Prosecutor is ex officio the President of the State Council. The State Council of Prosecutors has a deputy president, who is elected and dismissed by the State Council from among prosecutors and deputy public prosecutors - elected members of the State Council.

### **III. Competence and functioning of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance**

13. In your country, do the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance have exclusive power to exercise the administration of the prosecution service or whether this power is divided with the executive bodies (those outside of the prosecution service, e.g. the ministry of justice)?

The State Council of Prosecutors, the ministry responsible for justice and the ministry responsible for finance supervise the spending of budget funds allocated for the work of public prosecutor's offices.

Judicial administration tasks are performed by the ministry responsible for justice, with the exception of judicial administration tasks related to ensuring financial conditions for the work of public prosecutions, which are performed by the State Council of Prosecutors, in accordance with the provisions of Article 127 of this law.

The State Council of Prosecutors proposes the scope and structure of budget funds necessary for the work of public prosecution offices for current expenses, except for personnel expenses in public prosecution offices, with the previously obtained opinion of the ministry responsible for justice, and distributes these funds to public prosecution offices.

14. Please describe briefly the functions and powers of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance, in particular as regards the recruitment, promotion, transfer, evaluation, discipline or other aspects regarding prosecutors, and budgetary aspects (including the development of the prosecution service's budget, systematisation of the legislation on the activities of the prosecution service, approval of the prosecution service's task plans and annual reports, adoption of the code of ethics for prosecutors etc.).

State Council of Prosecutors:

- determines the list of candidates for the election of the Republic's Public Prosecutor and public prosecutors, which it submits to the Government;
- proposes candidates to the National Assembly for the first election for deputy public prosecutor;
- elects deputy public prosecutors for permanent performance of the function of deputy public prosecutor;

- elects deputy public prosecutors who are on a permanent position as deputy public prosecutors in the higher public prosecutor's office;
- decides on the termination of the function of deputy public prosecutors;
- determines the reasons for the dismissal of the public prosecutor and deputy public prosecutor;
- determines the public prosecutor's office in which the public prosecutor and deputy public prosecutors will continue to perform the function of deputy public prosecutors in the event of the abolition of the public prosecutor's office;
- decides on the dismissal of the Public Prosecutor of the Republic;
- decides on the objection to the decision on the removal of the public prosecutor and the deputy public prosecutor;
- proposes the scope and structure of budget funds necessary for the work of public prosecutor's offices for current expenditures and supervises their spending, in accordance with the law;
- determines which other functions, jobs or private interests are in conflict with the dignity and independence of the public prosecutor's office;
- Appoints the Acting Public Prosecutor of the Republic;
- decides on the objection to the decision of the Public Prosecutor of the Republic on when it is considered that there was no election of the public prosecutor and the deputy public prosecutor;
- gives an opinion on changes to existing or adoption of new laws that regulate the position and actions of public prosecutors and deputy public prosecutors, the organization of the public prosecution, as well as other laws that public prosecutions apply;
- adopts the Code of Ethics;
- maintains an identity card for each public prosecutor, deputy public prosecutor and employee of the public prosecution;
- appoints and dismisses the Disciplinary Prosecutor and his deputies and members of the Disciplinary Commission and their deputies;
- makes decisions on legal remedies in disciplinary proceedings;

- adopts the Rulebook on criteria for evaluating the work of public prosecutors and deputy public prosecutors;
- makes a decision on the legal remedy against the decision on the evaluation of the work of the public prosecutor and deputy public prosecutor;
- decides on objections in the election procedure for members of the State Council from among public prosecutors and deputy public prosecutors;
- performs tasks related to the implementation of the National Strategy for Judicial Reform;
- determines the content of the training program for deputy public prosecutors who are elected for the first time and assistant prosecutors in accordance with the law;
- proposes a training program for public prosecutors and deputy public prosecutors who perform their duties permanently;
- performs other tasks provided for by law.

15. Please describe briefly the competence, if any, or any role played by the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance in:

- performance assessment of prosecutors, both in terms of substance and procedure, and including relationship/ interactions with other bodies if those are competent on performance assessment;
- disciplinary measures against prosecutors, also both in terms of substance and procedure, and including relationship/ interactions with other bodies if those are competent on disciplinary measures.

A) The National Assembly, on the proposal of the State Council of Prosecutors, elects a person who is elected to this position for the first time as a deputy public prosecutor.

The term of office of the deputy public prosecutor who was elected for the first time is three years.

The State Council of Prosecutors, in accordance with the law, elects deputy public prosecutors for the permanent performance of their duties, in the same or another public prosecutor's office.

The State Council of Prosecutors also decides on the election of deputy public prosecutors who are on a permanent position in another or more public prosecutor's offices.

B) The public prosecutor of the Republic is elected by the National Assembly, on the proposal of the Government, according to the obtained opinion of the competent committee of the National Assembly.



16. Do the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance have the power to consider situations of conflict within the prosecution system, for example in case of instructions to reverse the view of a prosecutor?

The Council has no such authority.

17. Can prosecutors apply to the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance with an allegation of illegal instructions from their superior prosecutors or any other actors, both from within and outside of the prosecution system?

Prosecutors can't appeal to the State Council of Prosecutors.

18. Please describe briefly the decision-making process of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance, including any aspects related to voting rights of members (for example, whether all members have the same right to vote), and applicable procedures and thresholds for a decision to be adopted.

The Council decides by voting. Voting is public, unless the Council decides to vote on the proposal by secret ballot.

The proposal to vote by secret ballot can be made by any member of the Council. If the vote is secret, the Council determines the way the vote will be conducted.

Voting on each proposal is done by a show of hands for or against the proposal.

After the voting, the president closes the voting and announces the result of the voting.

The decision was made if at least six Council members voted for the proposal.

A Council member has the right to express an opinion that he can express orally or submit in writing, no later than ten days from the day of the session where the proposal was voted on. Separate opinion presented in written form is an integral part of the minutes.

When the Council makes decisions against which it is allowed to conduct an administrative dispute, a special record of deliberation and voting is drawn up in accordance with the provisions of the law regulating the general administrative procedure.

19. What is the legal force of the final decisions taken by the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance? Are such decisions of only a consultative nature, not being legally obligatory, or are they of a binding nature, being legally obligatory/mandatory, or is there a mixture depending on the nature of a decision?

The Council's decisions are binding in nature.

20. Are the final decisions taken by the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance subject to judicial review by a court?

The provisions of the law regulating the general administrative procedure shall be applied accordingly in the procedure for adoption of acts of the Council. When the Council makes decisions against which it is allowed to conduct an administrative dispute, a special record of deliberation and voting is drawn up in accordance with the provisions of the law regulating the general administrative procedure. It is also possible to file a constitutional appeal against the Council's decisions.

21. Which mechanisms ensure the independent functioning of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance?
22. Are there any other institutions outside of the prosecution system which have a role with respect to the functioning and decision-making process of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance?

There aren't.

23. How is the transparency of the work of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance guaranteed:
- are they accountable to the public through widely disseminated reports and information?
  - do they have publicly accessible websites providing essential information on their functioning and decision-making?
  - any other measures for transparency? (i.e. public briefings, press releases etc.)

Decisions and general acts of the Council are published in the "Official Gazette of the Republic of Serbia" and on the internet presentation of the Council.

## Slovak Republic / République slovaque

### I. General questions

1. Is there a council of prosecutors and/or any other bodies dealing with prosecutorial self-governance in your country? If yes, what is the exact title/denomination of such body or bodies, if several? (i.e. Council of Prosecutors or Prosecutorial Council, Conference/Congress of Prosecutors, Qualification and Disciplinary Commission of Prosecutors etc.) Is there a professional association of prosecutors dealing with prosecutorial self-governance in any way?

The representative of the self-governance of prosecutors is

a) the assembly of prosecutors of the General Prosecutor's Office and the General Prosecutor's Council

prosecutor's office.

b) the assembly of prosecutors of the Regional Prosecutor's Office and the Regional Prosecutor's Council

c) Council of Prosecutors

2. If so, when was a council of prosecutors and/or any other bodies dealing with prosecutorial self-governance introduced in the prosecutorial system in your country? Please describe briefly, if applicable, any significant reforms undertaken since the establishment, aimed at strengthening effectiveness, independence and accountability of such body(ies).

The self-governance bodies were established by the Act on Prosecutors and Legal Trainees of 01 May 2001.

3. If such a council of prosecutors and/or any other bodies dealing with prosecutorial self-governance exist in your country, are they only for prosecutors or for other professionals of justice? Are such bodies separate or do they operate within a body common to judges and prosecutors?

Only prosecutors are represented in self-governance bodies.

4. At what legislative or normative level is the status of a council of prosecutors and/or any other bodies dealing with prosecutorial self-governance established and how is its/their functioning regulated? (e.g. through Constitution, laws, by-laws or other regulations).

The self-governance is established on the basis of Act No. 154/2001 Coll. on Prosecutors and Legal Trainees.

5. Are such council of prosecutors and/or any other bodies dealing with prosecutorial self-governance provided with the required resources (human, financial and other) to function properly?

The law imposes an obligation on the head of the service office and on the chief prosecutors to create adequate conditions for the self-governance bodies of the prosecutors to carry out their tasks, in particular to provide them with the necessary information in matters in which a statement or opinion is requested from the self-governance bodies.

6. If in your country there is no council of prosecutors and/or any other bodies dealing with prosecutorial self-governance, is there any discussion to introduce such a body(ies)? If so, what are the arguments in favour and against its/their introduction?

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## II. **Composition of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance and status of its/their members**

7. Please describe the composition of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance in your country. Please indicate:
- How many of the members are prosecutors?
  - How many, if any, are non-prosecutor members and who are they? (e.g. scholars, judges, lawyers, civil society, others)

Self-governance bodies consist only of prosecutors.

8. Please describe the procedure for the election or appointment of the members of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance (including both prosecutor members and non-prosecutor members), the duration of their mandate and the dismissal procedure, including, if applicable, the grounds for early termination of mandate or dismissal of members.

**The Prosecutor's Council** is composed of an odd number, at most **11 members**, who are elected by the relevant assembly of prosecutors by secret ballot from the prosecutors who make up the assembly of prosecutors, **the term of office is five years**.

**The Prosecutor's Council of the General Prosecutor's Office** is elected by the assembly of prosecutors of the General Prosecutor's Office, which consists of prosecutors of the General Prosecutor's Office.

**The Prosecutor's Council of the Regional Prosecutor's Office** is elected by the assembly of prosecutors of Regional Prosecutor's Office and prosecutors of District Prosecutor's Offices in their territorial district, which they belong to.

**The Assembly of Prosecutors** can dismiss a member of the Prosecutor's Council or the entire Prosecutor's Council even before the end of the term of office.

A member of the Prosecutor's Council may renounce his membership or his position in the Prosecutor's Council in writing.

A member of the Prosecutor's Council shall cease to be a member of the Prosecutor's Council if

- a) he is transferred to a prosecutor's office whose prosecutors form another assembly of prosecutors, or
- b) his employment as a prosecutor ceases,
- c) he is appointed to the position of chief prosecutor, which is incompatible with membership in the Prosecutor's Council.

**The Council of Prosecutors** consists of the chairmen of the Councils of Prosecutors.

The function of general prosecutor, deputy general prosecutor, special prosecutor, deputy special prosecutor, regional prosecutor, deputy regional prosecutor, district prosecutor and deputy district prosecutor is incompatible with membership in the Prosecutor's Council; this does not affect the right of these leading prosecutors to participate by voting in the election of members of the Prosecutor's Council. The function of Chief European Prosecutor and European Prosecutor is also incompatible with membership of the Prosecutor's Council; this does not affect their right to participate by voting in the election of members of the Prosecutor's Council.

9. Are there ex officio members in the composition? (i.e. those who are members automatically due to the position they occupy, for example, the Prosecutor General, the Minister of Justice or others)
10. Are there rules or procedures to prevent possible conflict of interest situations during the process of election or appointment of the members of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance? Is there an incompatibility between certain functions in the prosecution service and membership in a council of prosecutors?

See point 8.

11. Are there any specific requirements for prosecutor members in order to ensure a proportional and fair representation of all levels of the prosecution system?

No.

12. Please describe briefly the election/appointment process of the president and vice-presidents, if applicable, of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance, including dismissal processes and grounds.

The members of **the Prosecutor's Council** elect the Chairman and Deputy Chairman of the Prosecutor's Council by secret ballot from among themselves.

The Chairman of the **Council of Prosecutors** and the Deputy Chairman of the Council of Prosecutors are elected by the members of the Council of Prosecutors from among themselves by secret ballot. The Council of Prosecutors may remove the Chairman of the Council of Prosecutors or the Vice-Chairman of the Council of Prosecutors from office upon motion of at least five members of the Council of Prosecutors. The vote on the dismissal of the chairman or vice-chairman is undisclosed.

The Chairman of the Council of Prosecutors and the Deputy Chairman of the Council of Prosecutors may resign from the position of Chairman of the Council of Prosecutors or Deputy Chairman of the Council of Prosecutors in writing. The written resignation of the Chairman of the Council of Prosecutors or Deputy Chairman of the Council of Prosecutors shall be delivered to the Council of Prosecutors.

### **III. Competence and functioning of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance**

13. In your country, do the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance have exclusive power to exercise the administration of the prosecution service or whether this power is divided with the executive bodies (those outside of the prosecution service, e.g. the ministry of justice)?

Exclusive authority to administer the Prosecutor's Office.

14. Please describe briefly the functions and powers of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance, in particular as regards the recruitment, promotion, transfer, evaluation, discipline or other aspects regarding prosecutors, and budgetary aspects (including the development of the prosecution service's budget, systematisation of the legislation on the activities of the prosecution service, approval of the prosecution service's task plans and annual reports, adoption of the code of ethics for prosecutors etc.).

**The Prosecutor's Council** comments on

- draft budget of the prosecutor's office,
- draft task plan for the calendar year,
- the extent and method of compensation for damage caused to the prosecutor by an accident at work or an occupational disease,
- the final evaluation of the preparatory practice of the legal trainee of the prosecutor's office,
- evaluation of the assistant prosecutor for the purpose of conducting the professional judicial examination,
- other matters, if this law provides for it, or if the prosecutor's council is requested by the relevant chief prosecutor or the general prosecutor

The Prosecutor's Council further

- decides on the prosecutor's objections to the content of the assessment, which the head of the service office did not comply with
- cooperates with leading prosecutors in deepening and increasing qualifications of prosecutors,
- takes standpoints on complaints against prosecutors, assistant prosecutors or legal trainees of the prosecutor's office,
- comments on the temporary assignment of a prosecutor to another prosecutor's office.

### **Council of Prosecutors**

- coordinates the activities of prosecutor's councils,
  - comments on the draft budget of the prosecutor's office and on the plan of the main tasks of the prosecutor's office in the calendar year.
  - takes standpoints on draft laws related to the scope, organization and performance of the tasks of the prosecutor's office,
  - gives consent to the temporary assignment of a prosecutor to another prosecutor's office,
  - may submit a proposal for the temporary suspension of the prosecutor's term of office or grants consent to the temporary suspension of the prosecutor's term of office.
  - approves the principles of prosecutors' functional progress.
  - creates a database of candidates for selection of committee members,
  - elects assistants to the database of assistants of the disciplinary senate,
  - comments on the appointment of a prosecutor to the position of chief prosecutor and on his dismissal from this position and grants or refuses consent to the appointment of a prosecutor to a position in the Special Prosecutor's Office and to his dismissal from this position,
  - proposes members of examination commissions,
- 
- gives consent to the removal of the legal trainee of the prosecutor's office from his position,
  - comments on other matters established by this law, or if requested by the general prosecutor or the Prosecutor's Council.

15. Please describe briefly the competence, if any, or any role played by the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance in:

- performance assessment of prosecutors, both in terms of substance and procedure, and including relationship/ interactions with other bodies if those are competent on performance assessment;
- disciplinary measures against prosecutors, also both in terms of substance and procedure, and including relationship/ interactions with other bodies if those are competent on disciplinary measures.

See point 14.

16. Do the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance have the power to consider situations of conflict within the prosecution system, for example in case of instructions to reverse the view of a prosecutor?

The task of self-governance bodies is to proactively ensure and protect the rights and legitimate interests of prosecutors. To this extent, they can assess conflicting situations within the prosecutor's office system and comment on prosecutors' initiatives.

17. Can prosecutors apply to the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance with an allegation of illegal instructions from their superior prosecutors or any other actors, both from within and outside of the prosecution system?

The self-governance bodies of the prosecutor's office are not authorized to respond to prosecutors' complaints in pending cases, including any illegal instructions from superiors.

18. Please describe briefly the decision-making process of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance, including any aspects related to voting rights of members (for example, whether all members have the same right to vote), and applicable procedures and thresholds for a decision to be adopted.

Members of the Prosecutor's Council and the Council of Prosecutors have an equal vote. The Prosecutor's Council is able to resolve if a majority of its members is present. The consent of the majority of its members is required for the resolution of the prosecutor's council to be valid.

19. What is the legal force of the final decisions taken by the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance? Are such decisions of only a consultative nature, not being legally obligatory, or are they of a binding nature, being legally obligatory/mandatory, or is there a mixture depending on the nature of a decision?

The law exhaustively determines the binding form of the individual decisions of the municipality authorities, some are of a recommendatory nature, some are binding, e.g. without the consent of the council of prosecutors, it is not possible to remove a prosecutor of the Special Prosecutor's Office from office or a legal trainee of the prosecutor's office or temporarily assign the prosecutor to another prosecutor's office etc.

20. Are the final decisions taken by the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance subject to judicial review by a court?

No.

21. Which mechanisms ensure the independent functioning of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance?



The representative of the union body has the right to participate in the proceedings of the prosecutor's council with an advisory vote.

The Council of Prosecutors can organize public meetings for the purpose of transparency. This happened during the hearing of candidates nominated by the council for the position of general prosecutor or special prosecutor.

22. Are there any other institutions outside of the prosecution system which have a role with respect to the functioning and decision-making process of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance?

No

23. How is the transparency of the work of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance guaranteed:

- are they accountable to the public through widely disseminated reports and information?
- do they have publicly accessible websites providing essential information on their functioning and decision-making?
- any other measures for transparency? (i.e. public briefings, press releases etc.)

Minutes from the meetings of self-governance bodies are publicly accessible on the intranet pages of the prosecutor's office or on the website of the prosecutor's office.

The Council of Prosecutors has established a Facebook page, and uses press spokesmen and other media communication methods for disclosure.

## Slovenia / Slovénie

### I. General questions

1. Is there a council of prosecutors and/or any other bodies dealing with prosecutorial self-governance in your country? If yes, what is the exact title/denomination of such body or bodies, if several? (i.e. Council of Prosecutors or Prosecutorial Council, Conference/Congress of Prosecutors, Qualification and Disciplinary Commission of Prosecutors etc.) Is there a professional association of prosecutors dealing with prosecutorial self-governance in any way?

In the Republic of Slovenia the State Prosecutorial Council is established as an autonomous state body that performs the tasks of state prosecution self-governance and administrative tasks as determined by the State Prosecution Service Act (ZDT-1) and participates in ensuring the uniformity of prosecution and safeguarding the autonomy of state prosecutors.

**Official title:**

State Prosecutorial Council

Square OF 13

1000 Ljubljana

Slovenia

e-mail: [dts@dt-rs.si](mailto:dts@dt-rs.si)

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In the Republic of Slovenia also operates the Association of State Prosecutors of Slovenia the members of which are state prosecutors and other university-graduated lawyers with state law exams employed by the State Prosecutor's Office. Membership in the Association of State Prosecutors of Slovenia is voluntary. The Association of State Prosecutors of Slovenia does not have any legal powers in the area of state prosecution self-governance.

2. If so, when was a council of prosecutors and/or any other bodies dealing with prosecutorial self-governance introduced in the prosecutorial system in your country? Please describe briefly, if applicable, any significant reforms undertaken since the establishment, aimed at strengthening effectiveness, independence and accountability of such body(ies).

The State Prosecution Service Act (ZDT), adopted in 1994, determined the composition of the Personnel Commission, whose activities and powers were the beginnings of the current State Prosecutorial Council. The Personnel Commission was consisted of seven members. The State Prosecutor General of the Republic of Slovenia and his deputy were members of the Personnel Commission by position. One member of the Personnel Commission was appointed by the Minister of Justice from among the heads of higher or district state prosecutor's offices. Four members of the Personnel Commission were elected by state prosecutors from among state prosecutors who did not hold management positions, whereby two members from among district state prosecutors and two members from among higher state prosecutors. The term of office of

the appointed and elected members of the Personnel Commission lasted for five years, and they could not be immediately re-elected or appointed after the expiry of their term of office. The work of the Personnel Commission was led by the State Prosecutor General of the Republic of Slovenia, and in his absence by his deputy.

The Act Amending the State Prosecution Service Act (ZDT-B), which entered into force at the beginning of 2003, transformed the Personnel Commission into the State Prosecutorial Council. The composition of the State Prosecutorial Council remained similar to the composition of the Personnel Commission. It consisted of seven members. The State Prosecutor General of the Republic of Slovenia and his deputy were members by position. One member was appointed by the Minister of Justice from among the heads of district state prosecutor's offices. Four members were elected by state prosecutors from among state prosecutors who did not hold management positions, whereby two members from among district state prosecutors, one member from among higher state prosecutors and one member from among supreme state prosecutors. The work of the State Prosecutorial Council was led by the State Prosecutor General of the Republic of Slovenia, and in his absence by his deputy. To regulate the way of work more precisely, the legislator granted the State Prosecutorial Council the duty of adopting rules of procedure.

The State Prosecution Service Act (ZDT-1), adopted in 2011, redefined the composition, competences and functioning of the State Prosecutorial Council. The main purpose of the reform was to bring the position and competences of the State Prosecutorial Council closer to the position and competences of the Judicial Council of the Republic of Slovenia. Article 18 of ZDT-1 stipulates that the State Prosecutorial Council is an autonomous state body that performs the tasks and duties of state prosecution self-governance and administrative tasks defined by this Act and participates in ensuring the uniformity of prosecution and safeguarding the autonomy of state prosecutors. The State Prosecutorial Council is responsible for the appointment and dismissal of the heads of district state prosecutors' offices, performance assessment and promotion, transfers, secondments and participation in the appointment procedure of state prosecutors, the provision of opinions on prosecution policy, assessment of effectiveness and efficiency of state prosecutors' offices, safeguarding autonomy in the performance of the state prosecution service, and the performance of other matters in accordance with the State Prosecution Service Act.

The composition of the State Prosecutorial Council increased from seven to nine members. Four members are elected by the National Assembly of the Republic of Slovenia on the proposal of the President of the Republic of Slovenia from among legal experts. Four members are elected by state prosecutors from among state prosecutors who do not hold management positions, whereby one of those holding the title of supreme state prosecutor, the title of higher state prosecutor, the title of district state prosecutor and the title of local state prosecutor. One member is appointed by the Minister of Justice from among the heads of district state prosecutor's offices. The term of office of the members has been extended to six years, as is the case for the Judicial Council of the Republic of Slovenia. The President and Vice-President of the State Prosecutorial Council are elected by the members by a two-thirds majority vote by secret ballot for a period of two years.

3. If such a council of prosecutors and/or any other bodies dealing with prosecutorial self-governance exist in your country, are they only for prosecutors or for other professionals of justice? Are such bodies separate or do they operate within a body common to judges and prosecutors?

The State Prosecutorial Council is an autonomous state body that performs the tasks of state prosecution self-governance and administrative tasks as determined by the State Prosecution Service Act (ZDT-1) and participates in ensuring the uniformity of prosecution and safeguarding the autonomy of state prosecutors. The State Prosecutorial Council is not related to the Judicial Council of the Republic of Slovenia, which is also an autonomous state body, responsible for protecting the autonomy and independence of the judicial branch of government and for ensuring the quality of the work of courts and judges and the public reputation of the judiciary.

4. At what legislative or normative level is the status of a council of prosecutors and/or any other bodies dealing with prosecutorial self-governance established and how is its/their functioning regulated? (e.g. through Constitution, laws, by-laws or other regulations).

The position and competences of the State Prosecutorial Council are determined by law (ZDT-1), and the manner of its work is regulated by the Rules of Procedure, adopted by the State Prosecutorial Council.

5. Are such council of prosecutors and/or any other bodies dealing with prosecutorial self-governance provided with the required resources (human, financial and other) to function properly?

The State Prosecutorial Council has been working for several years to complete the staffing of the expert service and to secure sufficient financial resources for the successful implementation of all tasks under its competence. Namely, the State Prosecutorial Council has at its disposal financial resources that mostly enable it to cover regular obligations, but it does not have at its disposal the resources that would enable it to carry out any additional activities.<sup>22</sup> The personnel situation in the expert service has slightly improved in recent years,<sup>23</sup> and the forecasts for the years 2023 and 2024 are also optimistic. Considering the adopted staff plan for the years 2023 and 2024, the State Prosecutorial Council will be able to employ one public employee in 2023, and in 2024 three additional public employees.

However, the State Prosecutorial Council has been unsuccessfully striving for several years to equalize the amount of attendance fees to which its members are entitled, with the amount of attendance fees to which the members of the Judicial Council of the Republic of Slovenia are entitled. Members of the Judicial Council of the Republic of Slovenia, which is a state body comparable to the State Prosecutorial Council, are entitled to significantly higher attendance fees than members of the State Prosecutorial Council.

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<sup>22</sup>For example, for additional paid education, for visits to comparable prosecutorial councils abroad, in order to gain insight into their work, to create analyses, etc.

<sup>23</sup>Currently, the State Prosecutorial Council has systematized four positions of public employees, and one state prosecutor is also assigned to the expert service.

6. If in your country there is no council of prosecutors and/or any other bodies dealing with prosecutorial self-governance, is there any discussion to introduce such a body(ies)? If so, what are the arguments in favour and against its/their introduction?

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**II. Composition of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance and status of its/their members**

7. Please describe the composition of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance in your country. Please indicate:
- How many of the members are prosecutors?
  - How many, if any, are non-prosecutor members and who are they? (e.g. scholars, judges, lawyers, civil society, others)

The State Prosecutorial Council has nine members. Five members are active state prosecutors, one of whom is the head of the district state prosecutor's office, and four members are legal experts who are not active state prosecutors.<sup>24</sup>

8. Please describe the procedure for the election or appointment of the members of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance (including both prosecutor members and non-prosecutor members), the duration of their mandate and the dismissal procedure, including, if applicable, the grounds for early termination of mandate or dismissal of members.

Four members, who are legal experts and are not active state prosecutors, are elected by the National Assembly of the Republic of Slovenia on the proposal of the President of the Republic of Slovenia.

Four members are elected by state prosecutors from among state prosecutors who do not hold management positions, whereby one of those holding the title of supreme state prosecutor, higher state prosecutor, district state prosecutor, and local state prosecutor.

One member is appointed by the Minister of Justice from among the heads of district state prosecutor's offices.

The term of office of the members of the State Prosecutorial Council lasts for six years. Members cannot be immediately re-appointed or re-elected after the expiry of their term of office.

The State Prosecution Service Act (ZDT-1) does not directly regulate the process of dismissal of members of the State Prosecutorial Council but refers to the application *mutatis mutandis* of the

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<sup>24</sup>Law professors, retired state prosecutors, retired judges, etc.

provisions of the Act regulating the election of members of the Judicial Council of the Republic of Slovenia.

In accordance with the Judicial Council Act ( ZSSve ), the term of office of a member of the Judicial Council of the Republic of Slovenia shall terminate:

- (1) by the expiry of the term of office which he has been elected;
- (2) by resignation;
- (3) if the competent organization imposed a disciplinary sanction on him or found that his behavior violated the code of ethics to which he is bound, and as a result he is unfit to serve as a member of the Judicial Council of the Republic of Slovenia;
- (4) if he has been convicted in a final judgement for a criminal offence;
- (5) to a member of the Judicial Council of the Republic of Slovenia, who is a judge, by termination or dismissal from judicial office;
- (6) to a member of the Judicial Council of the Republic of Slovenia, who is not a judge, if he becomes permanently incapable of performing his function or if he loses the status in connection with which he was elected.

The office of a member of the Judicial Council of the Republic of Slovenia shall terminate for the reason referred to in point 2 on the day the Judicial Council of the Republic of Slovenia receives his written statement of resignation.

The office of a member of the Judicial Council of the Republic of Slovenia shall terminate for the reason referred to in point 4 on the date of finality of the court decision.

The office of a member of the Judicial Council of the Republic of Slovenia shall terminate for the reason referred to in point 5 on the date on which the termination took place or on the date of finality of the decision on dismissal from judicial office.

The office of a member of the Judicial Council of the Republic of Slovenia, who is a judge, shall terminate for the reason referred to in point 3 on the day when the Judicial Council of the Republic of Slovenia, by a two-thirds majority vote of all members, determines that the member is unsuitable for further performance as a member of the Judicial Council of the Republic of Slovenia due to an ethical or disciplinary violation.

The office of a member of the Judicial Council of the Republic of Slovenia, who is not a judge, shall terminate for the reasons referred to in points 3 and 6 on the date when, on the proposal of the Judicial Council of the Republic of Slovenia, the National Assembly of the Republic of Slovenia makes a final decision on the termination of office.

9. Are there ex officio members in the composition? (i.e. those who are members automatically due to the position they occupy, for example, the Prosecutor General, the Minister of Justice or others)

Since the adoption of ZDT-1 in 2011, there are no more "ex officio " members in the State Prosecutorial Council.

10. Are there rules or procedures to prevent possible conflict of interest situations during the process of election or appointment of the members of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance? Is there an incompatibility

between certain functions in the prosecution service and membership in a council of prosecutors?

In accordance with The State Prosecution Service Act (ZDT-1), the elections of the members of the State Prosecutorial Council are carried out by meaningful application of the provisions of the Act regulating the election of members of the Judicial Council of the Republic of Slovenia.

In accordance with the Judicial Council Act (ZSSve), elections of members of the Judicial Council of the Republic of Slovenia, namely both members elected by the National Assembly and members from the ranks of judges, are secret.

The right to vote for members from among judges have all judges who on the day of the election perform judicial functions and are entered in the judicial electoral register, which contains the name and surname of the judge and the court in which he performs judicial service. The judge has the right to inspect the voter's register and the right to request a correction in writing if he or someone else is not entered in the register, or someone who does not have the right to vote is entered, or if personal information is entered incorrectly. A correction can be requested at least seven days before the election. If the request for correction of the directory is justified, the Supreme Court of the Republic of Slovenia corrects the directory, but if it is not justified, it must issue a rejection decision within four days of receiving the request for correction of the directory. It is allowed to initiate an administrative dispute against the rejection decision before the competent court within 24 hours after the service of the decision. The court must make a decision within next 48 hours.

Elections of members of the Judicial Council of the Republic of Slovenia from among judges are conducted by an electoral commission appointed by the Judicial Council of the Republic of Slovenia. The electoral commission has a president and four members and their deputies. A judge of the Supreme Court of the Republic of Slovenia is appointed as the chairman and deputy chairman of the electoral commission. The work at the polling stations is carried out by three-member electoral committees appointed by the electoral commission. The chairman of the electoral committee is a judge of the High Court. The president of the electoral committee at the Supreme Court of the Republic of Slovenia is a judge of that court. The provisions of the law governing elections to the National Assembly of the Republic of Slovenia shall apply mutatis mutandis to voting at polling stations.

In accordance with ZDT-1, state prosecutors in a managerial position cannot run for the position of member of the State Prosecutorial Council from the ranks of state prosecutors.

11. Are there any specific requirements for prosecutor members in order to ensure a proportional and fair representation of all levels of the prosecution system?

One supreme state prosecutor, one higher state prosecutor, one district state prosecutor and one local state prosecutor are elected to the State Prosecutorial Council from among state prosecutors.

12. Please describe briefly the election/appointment process of the president and vice-presidents, if applicable, of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance, including dismissal processes and grounds.

The President and Vice-President of the State Prosecutorial Council are elected by the members with a two-thirds majority of votes by secret ballot for two years, and they cannot be re-elected after the end of their mandate. Elections of the president and vice president are held in the last month before the end of the mandate and at the constitutive meeting of the State Prosecutorial Council. The president or vice-president holds office until the end of the mandate or until the election of a new president or vice-president, except in the case of termination of the member's mandate. The procedure for dismissing the president or vice president and the reasons for their dismissal are not specifically regulated.

### **III. Competence and functioning of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance**

13. In your country, do the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance have exclusive power to exercise the administration of the prosecution service or whether this power is divided with the executive bodies (those outside of the prosecution service, e.g. the ministry of justice)?

The State Prosecutorial Council is an autonomous state body and, at the same time, the highest body of the state prosecutor 's self-government. Part of the competence is exclusively within his competence, but in the rest, he cooperates with the State Prosecutor General of the Republic of Slovenia, the Government of the Republic of Slovenia and the Minister of Justice in the manner of checks and balances.

14. Please describe briefly the functions and powers of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance, in particular as regards the recruitment, promotion, transfer, evaluation, discipline or other aspects regarding prosecutors, and budgetary aspects (including the development of the prosecution service's budget, systematisation of the legislation on the activities of the prosecution service, approval of the prosecution service's task plans and annual reports, adoption of the code of ethics for prosecutors etc.).

The State Prosecutorial Council has several competences:

- participates in the process of appointing state prosecutors by providing an opinion on proposals for appointment;
- provides performance assessments of the state prosecution service;
- decides on all promotions of state prosecutors, except for promotion to a higher state prosecutor 's position and to the state prosecutor 's title of supreme state prosecutor;
- decides on the transfers of state prosecutors;
- decides on secondments of state prosecutors to another state prosecutor's office and to another body;
- decides on the incompatibility of the office of a state prosecutor;
- proposes or requests the elimination of a violation or eliminates a violation that affected the autonomy of the state prosecutor;



- appoints and dismisses the heads of district state prosecutors' offices and the Specialized State Prosecutor's Office of the Republic of Slovenia and their deputies;
- participates in the process of appointing and dismissing the State Prosecutor General of the Republic of Slovenia by making the final proposal for the appointment and the proposal for his dismissal;
- participates in the process of appointing and dismissing the Deputy Prosecutor General of the Republic of Slovenia by providing a preliminary opinion;
- provides a proposal for the appointment of a National Member at Eurojust and his deputy;
- appoints an assistant to a National Member at Eurojust;
- drafts a list of three candidates for the appointment of the European Prosecutor;
- drafts a proposal for the appointment of European delegated prosecutors;
- appoints and dismisses disciplinary bodies;
- provides opinion on the prosecution policy of the State Prosecutor's Office;
- provides initiatives for the adoption of or amendments to general instructions;
- provides opinion on the proposed joint financial plan for state prosecutors' offices;
- provides opinion to the National Assembly on acts regulating the status, rights and obligations of state prosecutors;
- adopts work quality criteria for state prosecutors in order to assess the performance of their state prosecution service, and criteria to assess the effectiveness of prosecution on the part of state prosecutors' offices;
- provides opinion on the number of state prosecutor posts at state prosecutors' offices;
- provides opinion on the joint annual report on the work of state prosecutors' offices;
- provides opinion on the implementation of judicial supervision;
- adopts the Code of Ethics for state prosecutors;
- appoints the Ethics and Integrity Commission;
- gives its consent to the policy of detecting and managing the risks of corruption at state prosecutor's offices and monitors its implementation;
- proposes modifications or supplements to the policy of detecting and managing the risks of corruption at state prosecutor's offices;

15. Please describe briefly the competence, if any, or any role played by the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance in:

- performance assessment of prosecutors, both in terms of substance and procedure, and including relationship/ interactions with other bodies if those are competent on performance assessment;
- disciplinary measures against prosecutors, also both in terms of substance and procedure, and including relationship/ interactions with other bodies if those are competent on disciplinary measures.

The State Prosecutorial Council has sole competence for evaluating the work of state prosecutors for purposes of assessing the state prosecutor 's service. The assessment is prepared on the basis of statistical data, a partial expert review of the work of the state

prosecutor (carried out by a higher or supreme state prosecutor within the Department of Education and Professional Supervision at the Supreme State Prosecutor's Office of the Republic of Slovenia) and on the opinion given by the head of the state prosecutor's office, in which the state the prosecutor performs State Prosecutor 's Office. In this case, the State Prosecutorial Council is not bound by the opinion of the examiner or the head of the State Prosecutor's Office but must explain any disagreement.

The State Prosecutorial Council has the following competences in relation to disciplinary procedures:

- appoints and dismisses disciplinary bodies according to ZDT-1
- submits a proposal for the initiation of a disciplinary procedure
- files a request to initiate a disciplinary procedure
- carries out the following imposed disciplinary sanctions: reduction of salary, suspension of promotion and transfer of the state prosecutor.

16. Do the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance have the power to consider situations of conflict within the prosecution system, for example in case of instructions to reverse the view of a prosecutor?

When performing the function of criminal prosecution, the state prosecutor is autonomous and bound by the Constitution of the Republic of Slovenia and the law, as well as general instructions adopted by the State Prosecutor General of the Republic of Slovenia or the head of the District State Prosecutor's Office. It is not allowed to interfere with the decisions of the state prosecutor in specific cases, or the state prosecutor cannot be forced to make a certain decision. If the legal conditions are met, the General Prosecutor of the Republic of Slovenia or the head of the District Prosecutor's Office may take over the case (Article 170 ZDT-1).

A state prosecutor who believes that his autonomy has been violated may request the State Prosecutorial Council to address the violation. If State Prosecutorial Council determines that the request is justified, it may eliminate the violation, depending on its nature, or may request or propose its elimination and, if necessary, publish his findings (third paragraph of Article 3 of ZDT-1).

17. Can prosecutors apply to the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance with an allegation of illegal instructions from their superior prosecutors or any other actors, both from within and outside of the prosecution system?

A state prosecutor who believes that his autonomy has been violated may request the State Prosecutorial Council to address the violation. If State Prosecutorial Council determines that the request is justified, it may eliminate the violation, depending on its nature, or may request or propose its elimination and, if necessary, publish his findings (third paragraph of Article 3 of ZDT-1).

18. Please describe briefly the decision-making process of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance, including any aspects related to voting rights of members (for example, whether all members have the same right to vote), and applicable procedures and thresholds for a decision to be adopted.

The State Prosecutorial Council is a collegial body that adopts decisions at its sessions. The votes of all members are equal. Exclusions are regulated by the Rules of Procedure of the State Prosecutorial Council.

The State Prosecutorial Council adopts decisions by majority vote of all members. ZDT-1 determines in which cases a 2/3 majority is required for the adoption of a decision:

- elections of the president and vice president of the State Prosecutorial Council;
- creation of a proposal for the appointment of the State Prosecutor General of the Republic of Slovenia;
- drafting a list of three candidates for the appointment of the European Prosecutor;
- adoption of work quality criteria;
- forming an opinion on the joint annual report on the work of state prosecutors' offices;
- adoption of the rules of procedure.

The State Prosecutorial Council has a quorum if at least six members are present at the session. To adopt a decision on matter, for which a 2/3 majority of all members is required, at least seven members must be present at the session.

The State Prosecutorial Council adopts decisions by public voting. Secret voting is prescribed for the elections of the President and Vice-President of the State Prosecutorial Council. In accordance with the Rules of Procedure of the State Prosecutorial Council, members can also agree to vote on a specific matter in secret.

Each vote is preceded by a debate. Before voting, each member can explain his vote.

19. What is the legal force of the final decisions taken by the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance? Are such decisions of only a consultative nature, not being legally obligatory, or are they of a binding nature, being legally obligatory/mandatory, or is there a mixture depending on the nature of a decision?

The decisions of the State Prosecutorial Council are both binding and consultative nature. Binding are, e.g. decisions regarding the evaluation and promotion of state prosecutors, the appointment of heads and deputy heads of district state prosecutors' offices, assignments and transfers of state prosecutors, etc. The decisions, which are of a consultative nature, refer to the given opinions on the laws governing the position, rights and duties of state prosecutors, to the opinion on the prosecution policy of the state prosecutor's office, to the opinion on the order on the number of positions of state prosecutors and the titles in which of individual state prosecutors' offices is performed by the state prosecutor 's office, on the opinion of the joint annual report on the work of state prosecutors' offices, etc.

20. Are the final decisions taken by the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance subject to judicial review by a court?

Against the decisions of the State Prosecutorial Council, for which the law provides (e.g. against the decision of the State Prosecutorial Council, by which it appoints a candidate for the position of head of the District State Prosecutor's Office and at the same time decides on the rejection of other candidates and on the dismissal of the head) and against decisions that have the nature of an administrative act, an administrative dispute before the competent court is admissible.

21. Which mechanisms ensure the independent functioning of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance?

The State Prosecutorial Council is an autonomous state body. In accordance with the Rules of Procedure of the State Prosecutorial Council, a member cannot be held accountable for the opinion he gave when making a decision.

22. Are there any other institutions outside of the prosecution system which have a role with respect to the functioning and decision-making process of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance?

The State Prosecutorial Council is an autonomous state body and, in this sense, is tied to allocated financial resources and provided premises and other material conditions for work in the same way as all other state bodies. When deciding on concrete matters, he is independent and cannot be influenced.

23. How is the transparency of the work of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance guaranteed:

- are they accountable to the public through widely disseminated reports and information?
- do they have publicly accessible websites providing essential information on their functioning and decision-making?
- any other measures for transparency? (i.e. public briefings, press releases etc.)

The State Prosecutorial Council has a website that presents its basic information, core competences, composition, adopted acts and meeting agendas. In accordance with ZDT-1, all decisions of the State Prosecutorial Council relating to the position, rights and duties of state prosecutors are also published on the website in an anonymized form. In addition to the above, the website also publishes the recommendations and principled opinions of the Commission for Ethics and Integrity at the State Prosecutorial Council, and regarding more important topics, the State Prosecutorial Council also publishes press releases on the website. The State Prosecutorial Council also informs the public about its work through answers to journalists' questions.

## Sweden / Suède

### I. General questions

1. Is there a council of prosecutors and/or any other bodies dealing with prosecutorial self-governance in your country? If yes, what is the exact title/denomination of such body or bodies, if several? (i.e. Council of Prosecutors or Prosecutorial Council, Conference/Congress of Prosecutors, Qualification and Disciplinary Commission of Prosecutors etc.) Is there a professional association of prosecutors dealing with prosecutorial self-governance in any way?

Sweden does not have a Council of Prosecutors or any other bodies dealing with prosecutorial self-governance.

#### A short summary of the Swedish system

Swedish democracy is founded on a universal and equal right to vote and the free formation of opinion. The Instrument of Government (1974:152) is not based on the idea of a separation of powers into legislative, executive and judiciary branches. Instead, it is monistic, with a single power centre: the citizens of the country. The citizens elect the Parliament, the Parliament – indirectly – elects the Government, the Government governs the country with the help of the administrative authorities, and the courts' administer the justice in accordance with the directives laid down by the Parliament in fundamental and other laws.

#### *Rule of Law*

The Instrument of Government lays down that public power is exercised under the law. This applies not just to the courts and the administrative authorities but also to the Government and the Parliament. It applies equally to local and central government. The same purpose underlies the stipulation that courts of law, administrative authorities and others performing public administration functions shall bear in mind in their work the equality of all persons before the law and observe objectivity and impartiality.

#### *The independence of courts and authorities*

The Instrument of Government's regulation of the administration of justice and general administration is aimed primarily at protecting the independence of judicial and administrative bodies. Thus, judges are in principle irremovable. Also of importance are the provisions that limit the powers of the Parliament and the Government to intervene in judicial rulings. According to these provisions, no public authority, including the Parliament, may determine how a court of law is to adjudicate an individual case or otherwise apply a law in a particular case. Nor may any public authority decide how judicial responsibilities are to be distributed amongst the judges of a court of law.

#### *Judicial review*

According to the Instrument of Government, not only a court of law, but also any public authority or other public body applying a law or other statute in a particular case is to act as a guardian of the Swedish basic laws when adjudicating the case. Thus, any court or public body that finds that a provision conflicts with a fundamental law or any other superior statute, or finds that a

procedure laid down in law has been disregarded in any important respect when the provision was adopted, shall not apply that provision.

*A Public Prosecutor is objective and independent*

A Swedish Public Prosecutor's duty of objectivity implies that a Public Prosecutor has an obligation to remain objective and to investigate and examine evidence even when it is favourable to the suspect. A Public Prosecutor must remain objective even once the prosecution has been filed.

Sweden's Public Prosecutors are independent when they make decisions such as whether to file a prosecution or place someone under arrest. This means that the individual Public Prosecutors have sole responsibility for their own decisions and that these cannot be changed by, for example, the Chief Public Prosecutor to whom they report. Anyone directly affected by a Public Prosecutor's decision does however have the right to request a review of the decision by a Prosecutor at a higher judicial level. (See below)

*Public authorities are independent of ministries*

The Swedish Government has no powers to intervene in a public authority's decisions in specific matters relating to the application of the law or the exercise of its authority. In many other countries, it is common for an individual minister to have the power to intervene directly through a decision in a public authority's day-to-day operations. In Sweden this is prohibited by the Instrument of Government, one of the four fundamental laws of the Swedish Constitution.

Chapter 12 Article 2 of the Instrument of Government (the Constitution of Sweden) states that no public authority (government) nor the Swedish parliament may influence or determine how an authority shall decide an individual case, nor how the rule of law is to be applied.

*Three levels of prosecutors with different assignment*

There are three judicial levels at the Swedish Prosecution Authority. This means that a decision made by a Public Prosecutor at one judicial level can be re-viewed by a prosecutor at a higher judicial level.

This right is deduced from the Swedish Code of Judicial Procedure (1942:740) Chapter 7 Article 5.

*The Prosecutor General, a Director of Public Prosecution and a Deputy Director of Public Prosecution may themselves take on an assignment that would otherwise be the responsibility of a subordinate prosecutor.*

Hierarchy of legal decision

First level - Public Prosecutors at local Prosecution Offices /National Public Prosecution Offices (incl. Chief Public Prosecutors)

Own decisions

Appeals from police level

Second level - Prosecutors at the Prosecution Development Centre (Director and Deputy Director of Public Prosecution)

Appeals from first level

Third level - Prosecutor General / Supervision Department

Appeals from second level

Public Prosecutors and Chief Public Prosecutors work at the first judicial level. As a Public Prosecutor and the Chief Public Prosecutor to whom they report are at the same judicial level,

the Chief Public Prosecutor cannot intervene in a decision made by the Public Prosecutor. Public Prosecutors are competent to deal with all types of crime across the country.

2. If so, when was a council of prosecutors and/or any other bodies dealing with prosecutorial self-governance introduced in the prosecutorial system in your country? Please describe briefly, if applicable, any significant reforms undertaken since the establishment, aimed at strengthening effectiveness, independence and accountability of such body(ies).

N/A

3. If such a council of prosecutors and/or any other bodies dealing with prosecutorial self-governance exist in your country, are they only for prosecutors or for other professionals of justice? Are such bodies separate or do they operate within a body common to judges and prosecutors?

N/A

4. At what legislative or normative level is the status of a council of prosecutors and/or any other bodies dealing with prosecutorial self-governance established and how is its/their functioning regulated? (e.g. through Constitution, laws, by-laws or other regulations).

N/A

5. Are such council of prosecutors and/or any other bodies dealing with prosecutorial self-governance provided with the required resources (human, financial and other) to function properly?

N/A

6. If in your country there is no council of prosecutors and/or any other bodies dealing with prosecutorial self-governance, is there any discussion to introduce such a body(ies)? If so, what are the arguments in favour and against its/their introduction?

There is, as far as we know, no ongoing discussions to introduce a council of prosecutors (and/or any other bodies dealing with prosecutorial self-governance) in Sweden.

## **II. Composition of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance and status of its/their members**

7. Please describe the composition of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance in your country. Please indicate:
- How many of the members are prosecutors?
  - How many, if any, are non-prosecutor members and who are they? (e.g. scholars, judges, lawyers, civil society, others)

N/A

8. Please describe the procedure for the election or appointment of the members of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance (including both prosecutor members and non-prosecutor members), the duration of their mandate and the dismissal procedure, including, if applicable, the grounds for early termination of mandate or dismissal of members.

N/A

9. Are there ex officio members in the composition? (i.e. those who are members automatically due to the position they occupy, for example, the Prosecutor General, the Minister of Justice or others)

N/A

10. Are there rules or procedures to prevent possible conflict of interest situations during the process of election or appointment of the members of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance? Is there an incompatibility between certain functions in the prosecution service and membership in a council of prosecutors?

N/A

11. Are there any specific requirements for prosecutor members in order to ensure a proportional and fair representation of all levels of the prosecution system?

N/A

12. Please describe briefly the election/appointment process of the president and vice-presidents, if applicable, of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance, including dismissal processes and grounds.

N/A

**III. Competence and functioning of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance**

13. In your country, do the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance have exclusive power to exercise the administration of the prosecution service or whether this power is divided with the executive bodies (those outside of the prosecution service, e.g. the ministry of justice)?

N/A



14. Please describe briefly the functions and powers of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance, in particular as regards the recruitment, promotion, transfer, evaluation, discipline or other aspects regarding prosecutors, and budgetary aspects (including the development of the prosecution service's budget, systematisation of the legislation on the activities of the prosecution service, approval of the prosecution service's task plans and annual reports, adoption of the code of ethics for prosecutors etc.).

Please see below.

15. Please describe briefly the competence, if any, or any role played by the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance in:
- performance assessment of prosecutors, both in terms of substance and procedure, and including relationship/ interactions with other bodies if those are competent on performance assessment;
  - disciplinary measures against prosecutors, also both in terms of substance and procedure, and including relationship/ interactions with other bodies if those are competent on disciplinary measures.

Please see below.

16. Do the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance have the power to consider situations of conflict within the prosecution system, for example in case of instructions to reverse the view of a prosecutor?

Regarding conflict of interest: This is handled through the system with three levels of prosecutors with different assignment. The Directors of Public Prosecution are responsible for examining issues regarding conflict of interest against Public Prosecutors. The Prosecutor General is responsible for examining issues regarding conflict of interest against the Directors of Public Prosecution.

Regarding unlawful/incorrect/unauthorized influence of the prosecutorial independence (see question 17): This could be handled by the Government Disciplinary Board for Higher Officials, as an official misconduct or via the whistleblowing function which provides an opportunity for anyone to report suspicions of severe misconduct.

17. Can prosecutors apply to the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance with an allegation of illegal instructions from their superior prosecutors or any other actors, both from within and outside of the prosecution system?

This could be handled by the Government Disciplinary Board for Higher Officials, as an official misconduct, or via the whistleblowing function at the Swedish Prosecution Authority which provides an opportunity for anyone to report suspicions of severe misconduct.

18. Please describe briefly the decision-making process of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance, including any aspects related to voting rights of members (for example, whether all members have the same right to vote), and applicable procedures and thresholds for a decision to be adopted.

N/A

19. What is the legal force of the final decisions taken by the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance? Are such decisions of only a consultative nature, not being legally obligatory, or are they of a binding nature, being legally obligatory/mandatory, or is there a mixture depending on the nature of a decision?

N/A – Please see below.

20. Are the final decisions taken by the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance subject to judicial review by a court?

N/A – Please see below.

21. Which mechanisms ensure the independent functioning of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance?

N/A

22. Are there any other institutions outside of the prosecution system which have a role with respect to the functioning and decision-making process of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance?

Please see below.

23. How is the transparency of the work of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance guaranteed:

- are they accountable to the public through widely disseminated reports and information?
- do they have publicly accessible websites providing essential information on their functioning and decision-making?
- any other measures for transparency? (i.e. public briefings, press releases etc.)

Please see below.

As mentioned before. Sweden does not have a council of prosecutors or any other bodies dealing with prosecutorial self-governance. However, Sweden has the following instruments to secure prosecutorial self-governance in different ways.

#### 1. Legislation

2. Employment matters
  - a. Appointment of prosecutors and selection of prosecutors
  - b. Dismissal of prosecutors
  - c. Disciplinary boards
3. Supervision
  - a. The Supervision Department at the Swedish Prosecution Authority
  - b. External bodies which could be considered as a mechanism to monitor and ensure prosecutorial independence
  - c. Official misconduct
  - d. Whistleblowing
  - e. Ethical guidelines
4. Revision/review by a superior prosecutor
5. Budget allocation

## Legislation

The independence of the prosecution services and individual prosecutors are reflected in law.

*The Instrument of Government Chapter 1 Article 9*

*Courts of law, administrative authorities and others performing public administration functions shall pay regard in their work to the equality of all before the law and shall observe objectivity and impartiality*

The Swedish Code of Judicial Procedure *Chapter 7 Article 4*

*Public Prosecutors are the public prosecutors at the lower courts and the courts of appeal. The Prosecutor General, however, is the public prosecutor at the courts of appeal in cases referred to in Chapter 2, Section 2, paragraph 1.*

*The Prosecutor General is the public prosecutor at the Supreme Court.*

*The Prosecutor General may assign another Public Prosecutor to appear at the Supreme Court.*

The Swedish Code of Judicial Procedure *Chapter 23 Article 4*

*A preliminary investigation shall be conducted objectively. At the preliminary investigation the prosecutor or the one who assists him or her should search for, seize and consider circumstances and evidence that speak both in the suspect's favor and against him or her.*

*The investigation should be conducted so that no person is unnecessarily exposed to suspicion, or put to unnecessary cost or inconvenience. The preliminary investigation shall be conducted as expeditiously as possible. When there is no longer reason for pursuing the investigation, it shall be discontinued.*

*Even law enforcement activities before a preliminary investigation must be conducted objectively.*

Chapter 12 Article 2 of the Instrument of Government states that no public authority (government) nor the Swedish parliament may influence or determine how an authority shall decide an individual case, nor how the rule of law is to be applied.

Thus, the prosecutors are completely independent and free to make their own decisions.

In Sweden, the role of the prosecutor has been devised so that the prosecutor has a central and independent role throughout the investigation process and legal proceedings in court. The prosecutor's independence is especially important with regard to leading criminal investigations and taking judicial decisions.

The prosecutor - as opposed to the authority where they are employed - takes decisions regarding whether legal proceedings are to be taken. The prosecutor participates in court proceedings. The role of the prosecutor is thereby exerted by an identifiable person with a personal responsibility.

## **Employment matters**

### **Appointment of prosecutors and selection of prosecutors**

#### **The appointment of the Prosecutor General and the Deputy Prosecutor General**

The Prosecutor General is Chief Prosecutor under the Government and, in this capacity, is responsible for, and the head of, the public prosecutor service. The Prosecutor General is assisted by the Deputy Prosecutor General.

The Prosecutor General and the Deputy Prosecutor General are appointed by the Government (the Swedish Code of Judicial Procedure Chapter 7, Articles 2-3).

#### **Appointment of other Prosecutors**

The appointment of other Prosecutors is prescribed in the Regulation with Instructions for the Swedish Prosecution Authority (2015:743). According to Article 22, the Swedish Prosecution Authority appoints Public Prosecutors (excluding the Prosecutor General and the Deputy Prosecutor General).

#### **Advertisements for new positions**

All advertisements for new positions are announced publicly and all applications are registered and are also official documents. The eligibility requirements for Prosecutors are regulated in the Public Employment Act (1994:260) and in the Prosecutor Regulation (2004:1265).

#### **The Advisory Board regarding employment issues/matters**

There is an advisory board within the Swedish Prosecution Authority and the Swedish Economic Crime Authority with the task to give advice on the appointment of positions as Senior Public Prosecutor, Deputy Chief Prosecutor and Chief Public Prosecutor. (The Regulation with Instructions for the Swedish Prosecution Authority Articles 19-20 (2015:743))

The board consists of a chairman and a maximum of nine other members. The chairman and at least four other members must be present for advice to be given. When matters of a principled nature or otherwise of greater importance are dealt with, all members should be present.

The chairman and other members of the board and their replacements are appointed by the government for a maximum period of three years.

The board shall consist of staff representatives from the Swedish Prosecution Authority and other representatives of the authority and representatives from the Swedish Economic Crime Authority, the Swedish Police Authority and the Swedish National Courts Administration.

### **Appointment Higher Prosecutors**

Positions as Director of Public Prosecution, Deputy Director of Public Prosecution, Chief Public Prosecutor and Deputy Chief Public Prosecutor are advertised publicly. The eligibility requirements for positions as Chief Public Prosecutors and Deputy Chief Public Prosecutors are regulated in the Regulation with Instructions for the Swedish Prosecution Authority. Only a person who is or has been employed as a Public Prosecutor can be employed as a Chief Public Prosecutor or Deputy Chief Public Prosecutor (Article 16).

The application process includes interviews and tests. The applicants are ranked by the Advisory Board.

The Advisory Board bases its ranking on the following criteria's:

- written references from the candidate's manager,
- the chief recruiter's report from the interview,
- the psychologist's assessment based on tests and
- recruiting manager's statement.

The Prosecutor General appoints Director of Public Prosecution, Deputy Director of Public Prosecution, Chief Public Prosecutor and Deputy Chief Public Prosecutor (Regulation with Instructions for the Swedish Prosecution Authority Article 23).

### **The recruitment process for Trainee Public Prosecutors**

The recruitment process for Trainee Public Prosecutors consists, among other things, of interviews and tests. The education of Trainee Public Prosecutor consists of a 9-12 months long probationary period (the Prosecutor Regulation Article 19).

During the aspirant period, cases are assigned to the aspirants in an increased difficulty. Parallel to the work, the aspirants also go through a mandatory basic training program. During this period, the trainees are assessed on at least two occasions based on established criteria.

At the end of the probationary period the Chief Public Prosecutor decides if the Trainee Public Prosecutor will be permanently employed as a Public Prosecutor. The education programme then continues for another two years (Assistant Public Prosecutor). At the end of the two-year period the Chief Public Prosecutor assesses whether the Assistant Public Prosecutor meet the requirements to become a Public Prosecutor. If the requirements are met, the Assistant Public Prosecutor will be employed as a Public Prosecutor (the Prosecutor Regulation Article 20).

### **Promotion**

*Senior Prosecutors / Special Advisors*

A Public Prosecutor can be promoted to Senior Public Prosecutor. A position as a Senior Public Prosecutor is not a management position. A Senior Public Prosecutor is expected to handle the

most difficult cases and must have a lot of experience. The requirements to become a Senior Public Prosecutor are not legally regulated.

The requirements are set by the Swedish Prosecution Authority and positions are advertised publicly. The Swedish Prosecution Authority's advisory board on employment matters advises on who should be employed as a Senior Public Prosecutor. The Prosecutor General appoints Senior Public Prosecutors.

A Senior Public Prosecutor can be promoted to a Special Advisor. Special Advisors are expected to contribute to the legal development within the Swedish Prosecution Authority. It is not a management position. These positions are advertised internally. The Swedish Prosecution Authority appoints the Special Advisor.

## Dismissal

### Dismissal of the Prosecutor General and the Deputy Prosecutor General

The Prosecutor General and the Deputy Prosecutor General can be dismissed by the Government.

### **Dismissal of Chief Public Prosecutors and other Public Prosecutors**

The Government Disciplinary Board for Higher Officials (SAN) is an independent body and tries cases of disciplinary responsibility, prosecution, dismissal, suspension and medical examination with coercion regarding state officials in senior positions, including Public Prosecutors.

Decisions of the Government Disciplinary Board for Higher Officials can be appealed to court or to the Swedish Labour Court (if unionized).

## Disciplinary boards

### The Staff Disciplinary Board

The Swedish Prosecution Authority's and the Swedish Economic Crimes Authority's staff disciplinary boards decide, in certain cases, whether Public Prosecutors should be removed from office due to personal reasons. (Regulation with Instructions for the Swedish Prosecution Authority Article 29 and the Prosecutor Regulation Article 25)

Decisions of the Staff Disciplinary Boards can be appealed to court.

### **The Government Disciplinary Board for Higher Officials**

The Government Disciplinary Board for Higher Officials (SAN) is an independent body and tries cases of disciplinary responsibility, prosecution, dismissal, suspension and medical examination with coercion regarding state officials in senior positions, including Public Prosecutors.

The purpose of an examination outside the authority where the employee works and has a higher position is that it cannot be suspected that colleagues are taking unauthorized considerations into account during the examination.

The authority where the employee is employed has a mandate but also an obligation to report cases to the Government Disciplinary Board for Higher Officials.

## Supervision

### The Supervision Department

The Prosecutor General has a Supervision Department which can review any decision made by a Public Prosecutor within the Swedish Prosecution Authority. The Supervision Department, operating directly under the Prosecutor General (directly subordinated) and supervises individual cases from a legal perspective.

The duties of the Supervision Department are the following:

- Legal supervision of individual cases
- Try appeals and conflict of interest complaints (third level of prosecutors)
- Give opinions to external bodies (see below)
- Administer ethical standards
- Conduct criminal investigations against judges
- Administer whistle blowing cases

Legal supervision cases can be initiated internally (Chief Public Prosecutor/ Director of Public Prosecution) or by external parties (Suspects, Victims, Lawyers) but can also be initiated ex officio (News media).

The supervision is an oversight of Public Prosecutor's management and decisions in criminal matters. (If a prosecutor is suspected of a crime, the crime is investigated by another part of the Prosecution Authority (Separate Public Prosecution Office))

The objective of legal supervision of individual cases is to ensure high level of legal quality, uphold legality requirements, prevent wrong decisions (guidance) and to maintain public confidence.

The investigation is concluded by a written decision with guidance/remark on the issue or with no further action necessary. The decisions are published on internal web if needed.

The Swedish Economic Crime Authority has its own supervision unit, the Director of Public Prosecution's office. The unit is responsible for the review of decisions made by Public Prosecutors within the Swedish Economic Crime Authority. The unit supervises individual cases initiated after complaint by a party or ex officio. It also supervises cases in the scope of thematic reviews.

### External bodies which could be considered as a mechanism to monitor and ensure prosecutorial independence

Similar equivalent bodies which could be considered as a mechanism to monitor and ensure prosecutorial independence, including in the way in which the prosecution services operate are:

*The Parliamentary Ombudsmen (JO)* who are appointed by the Swedish Parliament to ensure that public authorities and their staff comply with the laws and other statutes governing their actions.

A complaint to the Parliamentary Ombudsmen can be made by anybody who feels that they have been treated wrongly or unjustly by a public authority or an official employed by the civil service or local government.

The Parliamentary Ombudsmen examine the compliance of the public authorities and individual officials with laws and ordinances, that is, that the administration of various matters is correct and that individual citizens receive fair treatment.

The Parliamentary Ombudsmen can issue critical statements and propose that public authorities improve their routines. Their statements are not legally binding but are as a general rule followed by the Prosecution Authority.

*The Chancellor of Justice (JK)* who is appointed by the Swedish Government to act as the Government's ombudsman in the supervision of authorities and civil servants to make sure that they follow the laws and other regulations and fulfil their duties among others. The Office of the Chancellor of Justice is an independent authority and the Chancellor performs his or her duties from a strictly legal point of view.

The main tasks of the Chancellor of Justice are to:

- act as the Government's ombudsman in the supervision of authorities and civil servants.
- represent the State in legal disputes, primarily actions for damages against the State.
- ensure that the limits of the freedom of the press and other media are not transgressed and to act as sole prosecutor in cases concerning offences against the freedom of the press and the freedom of expression.

The Chancellor of Justice is free to raise issues on the supervision of authorities of his or her own motion. The majority of cases are however initiated by private parties by means of submitting a written complaint, thus drawing the Chancellor's attention to malpractice or abuse of powers within the public administration. It falls within the competence of The Chancellor of Justice to reach out of court settlements on behalf of the State in actions for damages ("voluntary settlement of claim"). Individuals may therefore turn directly to the Chancellor of Justice with a written application for compensation. If the application is rejected by the Chancellor the right to initiate court proceedings remains.

The Parliamentary Ombudsmen and the Chancellor of Justice have the mandate to report cases to the *Government Disciplinary Board for Higher Officials*.

*The Committee of the Constitution* ensure that the government and ministers follow the rules / observes existing regulations for governmental work. The members of the Parliament have the right to report the ministers in the government to the Committee of the Constitution. The Committee of the Constitution then investigates whether or not the government or the ministers have acted unlawfully, ministerial rule.

*The Swedish Commission on Security and Integrity Protection*

The Commission on Security and Integrity Protection supervises the use by law enforcement agencies of secret surveillance and qualified assumed identities and associated activities. The Commission also supervises the processing of personal data by the Swedish Police, some parts of the Swedish Economic Crime Authority and the Swedish Security Service. In addition, the Commission supervises whether the Swedish Police and the Swedish Security Service comply with the prohibition against using intelligence from the National Defence Radio Establishment to investigate crime. The supervision aims in particular at ensuring that the activities are conducted in accordance with laws and other regulations.



The Commission exercises its supervision through inspections and other investigations. The Commission may make statements on established circumstances and express its opinion on the need for changes in the activities and shall strive to ensure that any deficiencies in laws and other regulations are remedied.

At the request of an individual, the Commission is obliged to check whether he or she has been the subject of secret surveillance or subject to processing of personal data and whether the use of secret surveillance and associated activities or the processing of personal data was in accordance with laws and other regulations. The Commission shall notify the individual that the check has been carried out.

The Commission shall have a maximum of ten members. The chair and vice chair shall be, or have been, a permanent judge or have other equivalent legal experience. The other members shall be appointed from among the persons proposed by the party groups in the Parliament.

### Official misconduct

A Public Prosecutor can be prosecuted for official misconduct (Chapter 20, Article 1 of the Swedish Criminal Code), if they have committed an offence when exercising public authority. Such charges are dealt with in the ordinary criminal justice system.

#### *Chapter 20 – On abuse of office etc. Article 1*

*A person who, intentionally or through negligence when exercising public authority disregards their duties by action or omission is guilty of official misconduct and is sentenced to a fine or imprisonment for at most two years. Responsibility is not assigned if, in view of the perpetrator's powers, or some other connection between the duties and the exercise of public authority, or other circumstances, the act is considered minor.*

*If an offence referred to in the first paragraph was committed intentionally and is considered gross, the person is guilty of gross official misconduct and is sentenced to imprisonment for at least six months and at most six years. When assessing whether the offence is gross, particular consideration is given to whether the perpetrator seriously abused their position, or whether the act resulted in serious detriment or considerable undue advantage for an individual or the public.*

*A person who is a member of a central or local government decision-making assembly is not subject to responsibility under the first or second paragraph for any measure that they take in this capacity.*

*Nor are the provisions of the first and second paragraphs applied if the act is punishable under another provision. Act 1989:608.*

### Whistleblowing

Sweden has a new Act regarding Whistleblowing since 2021. The Swedish Prosecution Authority updated the Guidelines regarding whistleblowing in November 2022.

### Ethical guidelines

In June 2014 a set of ethical guidelines were imposed by the Prosecutor General regarding all Public Prosecutors and other employees of the Swedish Prosecution Authority and the Swedish

Economic Crime Authority. The ethical guidelines are constantly updated (last up-dated June 2019).

The ethical guidelines are printed and distributed to all employees. A presentation and discussions concerning the ethical guidelines are also included in the education and training program for Public Prosecutors. Also, each year a set of ethical dilemmas are distributed to all workplaces in/at the Swedish Prosecution Authority to facilitate local and regional ethical seminars.

Among other things, the overall objectives of the ethical guidelines are to ensure that prosecutors have an approach to promote everyone's resemblance to the law as well as impartiality and objectivity.

Violations of the guidelines can lead to disciplinary actions or criticism (reprimand) from the Prosecutor General through the Prosecutor General's supervisory function (The Supervision Department).

### **Revision/review by a superior prosecutor**

The Prosecution Development Centre handles all cases where decisions made by a Public Prosecutor are subject to revision/review by a superior prosecutor. This request for revision/review has been developed in practice and the procedure is not a constitutional rule but is right is deduced from the Swedish Code of Judicial Procedure Chapter 7 Article 5.

*The Prosecutor General, the Director of Public Prosecution and the Deputy Director of Public Prosecution may themselves take on an assignment that would otherwise be the responsibility of a subordinate prosecutor.*

There are three judicial levels at the Swedish Prosecution Authority. This means that a decision made by a Prosecutor at one judicial level can be re-viewed by a Prosecutor at a higher judicial level.

#### Hierarchy of legal decision

First level - Public Prosecutors at local Prosecution Offices /National Public Prosecution Offices (incl. Chief Public Prosecutors)

- Own decisions
- Appeals from police level

Second level - Prosecutors at the Prosecution Development Centre (Director of Public Prosecution)

- Appeals from first level

Third level - Prosecutor General / Supervision Department

- Appeals from second level

Public Prosecutors and Chief Public Prosecutors work at the first judicial level. As a Public Prosecutor and the Chief Public Prosecutor to whom they report are at the same judicial level, the Chief Public Prosecutor cannot intervene in a decision made by the Public Prosecutor.

#### *Example*

A public Prosecutor decides to discontinue an investigation. The injured party requests a review of this decision. A Director of Public Prosecution may then review and, if necessary, change the

Public Prosecutor's decision. Sweden's highest-ranked prosecutor is the Prosecutor General, who works at the third judicial level. In rare cases, the Prosecutor General may decide to review and change a decision reached at another judicial level.

### **Budget allocation**

The Swedish Prosecution Authority yearly provides the Ministry of Justice with background budget material, specifying the budget needs for the next year. The work with analyses and estimates of the complete budget proposal is led by the Ministry of Finance, that receives background material from all ministries. The budget proposal is finally submitted by the Government to the Parliament for decision. The Prosecutor General decides on how to divide the budget between different units within the Prosecution Authority.

## Turkey / Turquie

### I. General questions

1. Is there a council of prosecutors and/or any other bodies dealing with prosecutorial self-governance in your country? If yes, what is the exact title/denomination of such body or bodies, if several? (i.e. Council of Prosecutors or Prosecutorial Council, Conference/Congress of Prosecutors, Qualification and Disciplinary Commission of Prosecutors etc.) Is there a professional association of prosecutors dealing with prosecutorial self-governance in any way?

In our country the Council of Judges and Prosecutors and the Ministry of Justice deal with prosecutorial self-governance and the self-governance of prosecutors.

2. If so, when was a council of prosecutors and/or any other bodies dealing with prosecutorial self-governance introduced in the prosecutorial system in your country? Please describe briefly, if applicable, any significant reforms undertaken since the establishment, aimed at strengthening effectiveness, independence and accountability of such body(ies).

High Council of Judges, which was responsible for personnel affairs of judges, was established by the 1961 Constitution as an institution to ensure judicial independence. During the same period, High Council of Prosecutors was established in order to organise personnel affairs of prosecutors. With 1971 Constitutional Amendments, High Council of Prosecutors was included within the framework of Constitution.

With 1982 Constitution, High Council of Judges and High Council of Prosecutors were merged under the name of High Council of Judges and Prosecutors (HCJP).

With constitutional amendment adopted through the referendum of 12<sup>th</sup> September 2010, the HCJP was re-organised. As a result of re-organisation an independent secretariat and a board of inspection was established within the HCJP and judicial remedies against certain decision were rendered possible. The authorities of the Minister of Justice as the President of the CJP were restricted. It was envisaged that the Minister of Justice would participate in plenary meetings except for the meetings with disciplinary agenda. Also, it was envisaged that the Minister of Justice would not take part in chamber meetings. Additionally, the Minister of Justice delegated a great part of his/her authorities on the CJP to the Acting President of the CJP.

With constitutional amendment adopted through the referendum of 16<sup>th</sup> April 2017, the structure of HCJP was amended. Through this regulation, the duties and authorities of CJP were preserved, however the composition of its members was amended in number and structure.

3. If such a council of prosecutors and/or any other bodies dealing with prosecutorial self-governance exist in your country, are they only for prosecutors or for other professionals of justice? Are such bodies separate or do they operate within a body common to judges and prosecutors?

The Ministry of Justice is related with the prosecution bodies only for the administrative governance and budget issues of courthouses. However, the only institution that is responsible for the personnel affairs related with the status of prosecutors such as appointment, promotion, and discipline issues is the Council of Judges and Prosecutors.

4. At what legislative or normative level is the status of a council of prosecutors and/or any other bodies dealing with prosecutorial self-governance established and how is its/their functioning regulated? (e.g. through Constitution, laws, by-laws or other regulations).

The Council of Judges and Prosecutors is regulated by Law No. 6087 on the Council of Judges and Prosecutors, limited to the Constitution of the Turkish Republic and the matters stipulated by the Constitution.

5. Are such council of prosecutors and/or any other bodies dealing with prosecutorial self-governance provided with the required resources (human, financial and other) to function properly?

The CJP has its own budget and personnel resources and these are allocated by the Parliament within the framework of its own Law and the Budgetary Law.

6. If in your country there is no council of prosecutors and/or any other bodies dealing with prosecutorial self-governance, is there any discussion to introduce such a body(ies)? If so, what are the arguments in favour and against its/their introduction?

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## **II. Composition of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance and status of its/their members**

7. Please describe the composition of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance in your country. Please indicate:
  - How many of the members are prosecutors?
  - How many, if any, are non-prosecutor members and who are they? (e.g. scholars, judges, lawyers, civil society, others)

5 of the members serving in the Council through election and appointment served as prosecutor in the past. 2 of them were still working as prosecutors when they were elected as members of the Council. In addition to this, there are judges, a lawyer, an academician and members of supreme courts within the composition of the Council. The numbers and election procedures are explained in the following answer.

8. Please describe the procedure for the election or appointment of the members of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance (including both prosecutor members and non-prosecutor members), the duration of their

mandate and the dismissal procedure, including, if applicable, the grounds for early termination of mandate or dismissal of members.

In our country, the election of the members of the CJP is regulated by the Constitution. According to this regulation, the CJP consists of 13 members and the President of the Council is the Ministry of Justice. The related Deputy Justice Minister is the ordinary member of the Council. Three members of the Council are selected by the President of the Republic from among first-class civil judges and prosecutors who have not lost the qualifications for the first-class allocation; one member of the Council is selected by the President of the Republic from among first-class administrative judges and prosecutors who have not lost the qualifications for the first-class allocation. Three members from among the members of the Court of Cassation; one member from among the members of the Council of State; three members from among lectures working on law in universities whose qualifications is defined in law and lawyers are elected by Turkish Grand National Assembly.

According to the Law on Judges and Prosecutors, the council membership shall end automatically in the cases of being convicted for an offense requiring dismissal from profession of judgeship or prosecution, withdrawal or attaining age the age of 65.

Additionally the council membership is ended by the decision of the Plenary if it is established that the members have been subsequently proved not to meet or have lost any one of the membership qualifications during their membership term and if they become unable to continue to function or if they fail to attend to their office without any excuse or permission.

9. Are there *ex officio* members in the composition? (i.e. those who are members automatically due to the position they occupy, for example, the Prosecutor General, the Minister of Justice or others)

The Council of Judges and Prosecutors is composed of thirteen members and the President of the Council is the Ministry of Justice. The related Deputy Justice Minister is the ordinary member (natural member, automatically as result of holding this office) of the Council.

10. Are there rules or procedures to prevent possible conflict of interest situations during the process of election or appointment of the members of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance? Is there an incompatibility between certain functions in the prosecution service and membership in a council of prosecutors?

The members of the CJP may not undertake any other duty or engage in other activities for the duration of membership.

Besides, the Council members may withdraw from a proceeding or be rejected by the concerned person in the case of recusation or any conflict or a serious situation between them and the concerned person that would cast doubt on their impartiality.

11. Are there any specific requirements for prosecutor members in order to ensure a proportional and fair representation of all levels of the prosecution system?

The CJP observes a balanced composition through a self-governance respecting an equal and balanced participation. The explanation regarding the status of the members can be found in the answer of the 7<sup>th</sup> question. Currently, two of the four members selected by the President of the Republic served originally as prosecutors and the other two as judges.

12. Please describe briefly the election/appointment process of the president and vice-presidents, if applicable, of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance, including dismissal processes and grounds.

There is not any other council/body.

### **III. Competence and functioning of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance**

13. In your country, do the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance have exclusive power to exercise the administration of the prosecution service or whether this power is divided with the executive bodies (those outside of the prosecution service, e.g. the ministry of justice)?

In our system, the prosecutors are not related with the ministry of justice about their judicial authorities. The appointment and promotion procedures are carried out by the Council of Judges and Prosecutors. However, in some places prosecutors and chief prosecutors carry out administrative works. Some of these works are as follows: salary and assignment procedures of the courthouse personnel, procedures related to courthouse service buildings, purchases of consumables used in the courthouses, inspection of notary offices, and administration of penitentiaries. These prosecutors/chief prosecutors are related to the Ministry of Justice financially and administratively only in terms for fulfilment of these duties. These prosecutors/chief prosecutors are inspected by the inspectors of the Ministry of Justice (justice inspectors) in relation to these duties.

14. Please describe briefly the functions and powers of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance, in particular as regards the recruitment, promotion, transfer, evaluation, discipline or other aspects regarding prosecutors, and budgetary aspects (including the development of the prosecution service's budget, systematisation of the legislation on the activities of the prosecution service, approval of the prosecution service's task plans and annual reports, adoption of the code of ethics for prosecutors etc.).

As we explained in the answer 17, the Ministry of Justice is in charge of the budget of the prosecution services and administrative fulfilment of these duties. Additionally, the internship and employment procedures of prosecutors is carried out by the Ministry of Justice. However, after the admission of profession of prosecutors by the CJP, the following procedures and works are regulated by law according to the principles of independence of courts and tenure of judges and carried out by the CJP within the framework of the same tenure: appointment procedures, rights and duties, salaries and allowances, promotion, permanent or temporary change of duty and the place of duty, starting disciplinary prosecutions in relation to their judicial activities and

infliction of disciplinary punishment, carrying out investigation for the crimes they commit during or in relation to their duties and taking the decision to adjudicate, inabilities an crimes requiring dismissal, in-service training and all other personnel affairs.

15. Please describe briefly the competence, if any, or any role played by the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance in:

- performance assessment of prosecutors, both in terms of substance and procedure, and including relationship/ interactions with other bodies if those are competent on performance assessment;

Prosecutors and Chief Prosecutors carry out administrative duties which can be listed as follows: salaries of courthouse personnel, assignment procedures, and procedures related to courthouse service buildings, purchases of consumables used in the courthouses, inspection of notary offices, and administration of penitentiaries. These prosecutors/chief prosecutors are related to the Ministry of Justice financially and administratively only in terms for fulfilment of these duties. Within this framework, these prosecutors/chief prosecutors are inspected by justice inspectors and internal auditors (who are judges and prosecutors) and in this way their performance is evaluated. However, their judicial performance is evaluated by the CJP.

- disciplinary measures against prosecutors, also both in terms of substance and procedure, and including relationship/ interactions with other bodies if those are competent on disciplinary measures.

The Inspection Board of CJP is responsible for inspecting whether civil and administrative judiciary judges and prosecutors perform their duties in compliance with laws, regulations, by-laws and circulars; to examine whether they commit offenses in connection with or during the exercise of their duties, or whether their behaviours and acts are in compliance with the requirements of their capacities and duties, and if necessary, to launch examinations or investigations about them.

16. Do the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance have the power to consider situations of conflict within the prosecution system, for example in case of instructions to reverse the view of a prosecutor?

Within the framework of the Constitution of Turkish Republic, the prosecutors carry out their duties with tenure of judge and they have the judge status. For this reason, as a result of the duty of investigation, they cannot be instructed. Their decision is evaluated only by the Office of the Chief Prosecutor working as a whole within the framework of judicial mechanism (e.g. remanding of decisions).

17. Can prosecutors apply to the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance with an allegation of illegal instructions from their superior prosecutors or any other actors, both from within and outside of the prosecution system?



Yes, they are authorised to file a complaint about their colleagues and they can apply to the CJP about these complaints. Additionally, according to the Turkish Penal Code, giving illegal instructions to the prosecutors is a crime requiring ex officio adjudication.

18. Please describe briefly the decision-making process of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance, including any aspects related to voting rights of members (for example, whether all members have the same right to vote), and applicable procedures and thresholds for a decision to be adopted.

There is not any difference between the votes of the members of CJP (wherever they come from, they all have the same voting rights). Each member has right to a one equal vote. The decision-taking procedures are regulated in Law No. 6087 on Judges and Prosecutors. Except for emergencies, the chambers work according to a calendar that is determined every January and gathers with the majority of the entire membership and take the decisions with absolute majority.

19. What is the legal force of the final decisions taken by the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance? Are such decisions of only a consultative nature, not being legally obligatory, or are they of a binding nature, being legally obligatory/mandatory, or is there a mixture depending on the nature of a decision?

All the decisions taken by the CJP is binding. The credential fiches drawn up by the Justice Inspectors of the Ministry of Justice or by the Chief Prosecutors for their own prosecutors or the disciplinary punishments they recommend are evaluated by the Council. That is to say, final decisions are taken by the Council of Judges and Prosecutors.

20. Are the final decisions taken by the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance subject to judicial review by a court?

The CJP can only be sued for the decisions of dismissal. However, prosecutors have right to bring a lawsuit against credential fiches and certificates of standing drawn up by the Chief Prosecutors and Inspectors.

21. Which mechanisms ensure the independent functioning of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance?

The independence and functioning through judicial guarantee are ensured within the framework of the Constitution.

22. Are there any other institutions outside of the prosecution system which have a role with respect to the functioning and decision-making process of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance?

No, there isn't any.

23. How is the transparency of the work of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance guaranteed:

- are they accountable to the public through widely disseminated reports and information?

On the website of the CJP and if necessary in the Official Gazette, the public is informed about promotions, appointments, authorizations, disciplinary decisions, ethic codes and recommendations, recommendations of inspection board. Every year, The Ministry of Justice explains its activities before the Parliament with the Budgetary Law and accordingly the law for the new period is adopted and its current budget is ratified.

- do they have publicly accessible websites providing essential information on their functioning and decision-making?

No, there isn't any.

- any other measures for transparency? (i.e. public briefings, press releases etc.)

Announcements, measures (pandemic, emergency situations or natural disasters etc) and recommendations can be found on the website of the CJP.

## Ukraine

### I. General questions

1. Is there a council of prosecutors and/or any other bodies dealing with prosecutorial self-governance in your country? If yes, what is the exact title/denomination of such body or bodies, if several? (i.e. Council of Prosecutors or Prosecutorial Council, Conference/Congress of Prosecutors, Qualification and Disciplinary Commission of Prosecutors etc.) Is there a professional association of prosecutors dealing with prosecutorial self-governance in any way?

There are bodies of prosecutorial self-governance in Ukraine: the All-Ukrainian Conference of Prosecutors (the highest body of prosecutorial self-governance) and the Council of Prosecutors of Ukraine (high body of prosecutorial self-governance).

2. If so, when was a council of prosecutors and/or any other bodies dealing with prosecutorial self-governance introduced in the prosecutorial system in your country? Please describe briefly, if applicable, any significant reforms undertaken since the establishment, aimed at strengthening effectiveness, independence and accountability of such body(ies).

Prosecutorial self-governance bodies in Ukraine began to function on April 26, 2017.

3. If such a council of prosecutors and/or any other bodies dealing with prosecutorial self-governance exist in your country, are they only for prosecutors or for other professionals of justice? Are such bodies separate or do they operate within a body common to judges and prosecutors?

The Council of Prosecutors of Ukraine and the All-Ukrainian Conference of Prosecutors collectively resolve issues of the internal activities of the Public Prosecution Service, i.e. their functions apply exclusively to prosecutors.

4. At what legislative or normative level is the status of a council of prosecutors and/or any other bodies dealing with prosecutorial self-governance established and how is its/their functioning regulated? (e.g. through Constitution, laws, by-laws or other regulations).

The status of bodies of prosecutorial self-governance is enshrined exclusively in the Law of Ukraine "On the Public Prosecution Service", and the procedure for functioning is determined by the provisions and regulations adopted by these bodies.

5. Are such council of prosecutors and/or any other bodies dealing with prosecutorial self-governance provided with the required resources (human, financial and other) to function properly?

The work of the All-Ukrainian Conference of Prosecutors and the Council of Prosecutors of Ukraine is ensured by the Prosecutor General's Office at the expense of the State Budget of Ukraine.

6. If in your country there is no council of prosecutors and/or any other bodies dealing with prosecutorial self-governance, is there any discussion to introduce such a body(ies)? If so, what are the arguments in favour and against its/their introduction?

Self-governance in the Public Prosecution Service of Ukraine is functioning.

## **II. Composition of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance and status of its/their members**

7. Please describe the composition of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance in your country. Please indicate:
- How many of the members are prosecutors?
  - How many, if any, are non-prosecutor members and who are they? (e.g. scholars, judges, lawyers, civil society, others)

The Council of Prosecutors of Ukraine consists of 13 persons, of whom 11 are prosecutors, and 2 – scholars (scientists).

8. Please describe the procedure for the election or appointment of the members of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance (including both prosecutor members and non-prosecutor members), the duration of their mandate and the dismissal procedure, including, if applicable, the grounds for early termination of mandate or dismissal of members.

Members of the Council of Prosecutors from among prosecutors are elected by the highest body of prosecutorial self-governance – the All-Ukrainian Conference of Prosecutors, and scholars are appointed by the congress of representatives of legal higher education institutions and scientific institutions. The term of office of members of the Council of Prosecutors of Ukraine is five years without the right to re-election. Early termination of powers or dismissal of members of the Council of Prosecutors is not defined by legislation.

9. Are there ex officio members in the composition? (i.e. those who are members automatically due to the position they occupy, for example, the Prosecutor General, the Minister of Justice or others)

There are no ex officio members of the Council of Prosecutors.

10. Are there rules or procedures to prevent possible conflict of interest situations during the process of election or appointment of the members of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance? Is there an incompatibility between certain functions in the prosecution service and membership in a council of prosecutors?

Prosecutor who holds an administrative position or is a member of a relevant body conducting disciplinary proceedings cannot simultaneously be a member of the Council of Prosecutors of Ukraine.

11. Are there any specific requirements for prosecutor members in order to ensure a proportional and fair representation of all levels of the prosecution system?

Proportionality and fair representation of all levels of the public prosecution service system is achieved by the fact that the Council of Prosecutors includes two representatives from the Prosecutor General's Office, four representatives from regional prosecutor's offices, and five representatives from district prosecutor's offices. In addition, at the all-Ukrainian Conference of Prosecutors, decisions are made by delegates elected by meetings of prosecutors of all levels – six prosecutors from the Prosecutor General's Office, three prosecutors from each regional prosecutor's office, and two prosecutors from each district prosecutor's office.

12. Please describe briefly the election/appointment process of the president and vice-presidents, if applicable, of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance, including dismissal processes and grounds.

President and Vice-President of the Council of Prosecutors of Ukraine are elected from among the members of the Council of Prosecutors at its organizational meeting through open voting, which may be held in closed session by the decision of the majority of the elected members of the Council of Prosecutors. The elected President of the Council of Prosecutors is considered to be the candidate for whom the majority of the appointed members of the Council of Prosecutors has voted.

### **III. Competence and functioning of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance**

13. In your country, do the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance have exclusive power to exercise the administration of the prosecution service or whether this power is divided with the executive bodies (those outside of the prosecution service, e.g. the ministry of justice)?

The Council of Prosecutors of Ukraine does not have exclusive powers to exercise the administration of the public prosecution service.

14. Please describe briefly the functions and powers of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance, in particular as regards the recruitment, promotion, transfer, evaluation, discipline or other aspects regarding prosecutors, and budgetary aspects (including the development of the prosecution service's budget, systematisation of the legislation on the activities of the prosecution service, approval of the prosecution service's task plans and annual reports, adoption of the code of ethics for prosecutors etc.).

The All-Ukrainian Conference of Prosecutors elects two of the twenty-one members of the High Council of Justice and makes a decision to terminate their powers, appoints members of the Council of Prosecutors of Ukraine and the relevant body that conducts disciplinary proceedings, approves the Code of Professional Ethics and Conduct of Prosecutors and regulations on the Council of Prosecutors of Ukraine, adopts regulations on the procedure of work of the relevant body conducting disciplinary proceedings, considers issues of prosecutorial self-governance.

In its turn, the Council of Prosecutors of Ukraine makes recommendations on the appointment of prosecutors to administrative positions, considers the issue of threats to the independence of prosecutors. The issue of appointment to the positions of prosecutors, transfer and dismissal from prosecutor's offices is considered by the relevant body that conducts disciplinary proceedings. This body also considers the issue of bringing prosecutors to disciplinary responsibility.

15. Please describe briefly the competence, if any, or any role played by the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance in:
- performance assessment of prosecutors, both in terms of substance and procedure, and including relationship/ interactions with other bodies if those are competent on performance assessment;
  - disciplinary measures against prosecutors, also both in terms of substance and procedure, and including relationship/ interactions with other bodies if those are competent on disciplinary measures.

The Council of Prosecutors of Ukraine does not resolve the issue of performance assessment of prosecutors and disciplinary measures against them. Such issues are part of the functions of the relevant body conducting disciplinary proceedings. Five of the eleven members of the said body are appointed by the All-Ukrainian Conference of Prosecutors.

16. Do the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance have the power to consider situations of conflict within the prosecution system, for example in case of instructions to reverse the view of a prosecutor?

The Council of Prosecutors considers appeals from prosecutors and other reports about threats to the independence of prosecutors, takes appropriate measures following the consideration (notifies relevant authorities about the grounds for criminal, disciplinary or other liability; initiates consideration of the issue of taking measures to ensure the safety of prosecutors; publishes statements on behalf of the prosecutorial corps about facts of violation of the prosecutor's independence; forwards to international organizations relevant notifications, etc.). The Council of Prosecutors also provides clarification on compliance with the requirements of the legislation regarding the settlement of conflicts of interest in the activities of prosecutors, the President or members of the relevant body conducting disciplinary proceedings.

17. Can prosecutors apply to the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance with an allegation of illegal instructions from their superior prosecutors or any other actors, both from within and outside of the prosecution system?

Prosecutors may forward to the Council of Prosecutors complaints about violations of their independence by the leadership of the prosecution bodies or other persons. Such complaints are considered by the Council of Prosecutors, and necessary measures are taken to eliminate the threat of violation of the prosecutor's independence.

18. Please describe briefly the decision-making process of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance, including any aspects related to voting rights of members (for example, whether all members have the same right to vote), and applicable procedures and thresholds for a decision to be adopted.

Meetings of the Council of Prosecutors are held in public, except for cases when the issues submitted for its consideration require a regime of confidentiality, on which a corresponding decision is made. According to the decision of the Council of Prosecutors, the course of the meeting is recorded using technical means. Members of the Council of Prosecutors or an official of the prosecution bodies report at the meetings of the Council of Prosecutors. Based on the results of consideration of the issues submitted for discussion, the Council of Prosecutors, through open voting, by a simple majority of its members present at the meeting, adopts a decision prepared by the rapporteur or secretary of the Council of Prosecutors. In case of an equal number of votes "for" and "against", the vote of the chairperson at the meeting is decisive. At the same time, at least 9 out of 13 members shall be present at the meeting to make a decision.

19. What is the legal force of the final decisions taken by the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance? Are such decisions of only a consultative nature, not being legally obligatory, or are they of a binding nature, being legally obligatory/mandatory, or is there a mixture depending on the nature of a decision?

In order to appoint a prosecutor to an administrative position in cases specified by law, the Council of Prosecutors shall provide its recommendation. Without such a recommendation, appointment to an administrative position is not possible. Decisions of the Council of Prosecutors, made on the issues of ensuring the independence of prosecutors, protection against illegal influence, pressure or interference in the exercise of powers of the prosecutor, may be forwarded to the prosecution bodies and are mandatory for consideration within the scope of competence. Other decisions of the Council of Prosecutors are advisory in nature.

20. Are the final decisions taken by the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance subject to judicial review by a court?

Decisions of the Council may be reviewed in court.

21. Which mechanisms ensure the independent functioning of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance?

The independent functioning of bodies of prosecutorial self-governance is ensured by collegial decision-making by the All-Ukrainian Conference of Prosecutors and the Council of Prosecutors.

22. Are there any other institutions outside of the prosecution system which have a role with respect to the functioning and decision-making process of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance?

External influence on the functioning and decision-making of the Council of Prosecutors is not allowed, decisions are made exclusively by members of the Council of Prosecutors of Ukraine.

23. How is the transparency of the work of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance guaranteed:

- are they accountable to the public through widely disseminated reports and information?
- do they have publicly accessible websites providing essential information on their functioning and decision-making?
- any other measures for transparency? (i.e. public briefings, press releases etc.)

Decisions of the Council of Prosecutors, which do not contain restricted access information, are published on the official websites of the Prosecutor General's Office and the Council of Prosecutors within seven days from the moment of their adoption.