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

Questionnaire for the preparation of the CCPE Opinion No. 16 (2021):

« Implications of the decisions of international courts and treaty bodies as regards the practical independence of prosecutors »

Questionnaire en vue de la préparation de l'Avis No. 16 (2021) du CCPE :

« Les conséquences des décisions des tribunaux internationaux et des organes conventionnels concernant l'indépendance pratique des procureurs »

COMPILATION OF REPLIES TO THE QUESTIONNAIRE PREPARED BY THE CCPE SECRETARIAT

COMPILATION DES RÉPONSES AU QUESTIONNAIRE PRÉPARÉE PAR LE SECRÉTARIAT DU CCPE

Contents

Andorra / Andorre

1. Quelles sont les mesures officielles générales prises pour réagir aux décisions des tribunaux internationaux et des organes conventionnels et pour les mettre en œuvre ?

   Notre parlement a adopté la Loi 24/2014 du 24 juillet 2014, ajoutant l'article 19bis à la Loi Qualifié sur la Justice du 3 septembre 1993 et l'article 30bis de la Loi Transitoire sur les Procédures Judiciaires du 21 décembre 1993, prévoyant la possibilité de réviser les jugements fermes dictés par les tribunaux ordinaires si le TEDH a constaté une vulnération d'un droit reconnu par la Convention, si cette vulnération n'a pas pu être réparée moyennant une indemnisation et si la révision est nécessaire pour réparer les effets de la vulnération constatée. Correspond à la personne lésée de promouvoir cette procédure.

   En ce qui concerne les éventuelles constatations par le TEDH de dispositions légales qui contreviendraient la Convention : le suivit des procédures devant el TEDH est constant de la part des tribunaux et du Ministère Public, de telle façon que toute décision du TEDH en ce sens comportera une mise en connaissance immédiate des pouvoirs législatifs et exécutifs à fin de modifier les dispositions légales concernées, ce qui -en pratique- devient assez aisée tenant compte des dimensions de notre pays.

   En relation aux éventuelles recommandations des organes conventionnels, le pouvoir exécutif est informé après chaque réunion des différents comités concernés.

2. Sur la base de votre réponse à la première question, quelles sont les mesures prises notamment pour l'indépendance pratique des ministères publics et des procureurs individuels ? Pouvez-vous donner des exemples ?

   Aucune mesure n'a été adoptée : en ce sens, il convient de souligner que notre Constitution et la Loi du Ministère Public du 12 décembre 1996 disposent un système de légalité des poursuites, ce qui garantit fortement l'indépendance du Ministère Public.

   L'article 14.3 de la Loi prévoit que le procureur attribue le suivi d'une procédure déterminée aux différents procureurs adjoints de manière potestative. Toutefois, il ne pourra l'assigner à un autre procureur que par écrit motivé.

3. Ces mesures se reflètent-elles dans la loi ou dans la politique ou le débat sur les poursuites ?

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4. Si oui, y a-t-il eu des changements dans le système des poursuites à la suite de ces mesures ?

   Non, notre système a toujours été un système de légalité des poursuites.

5. Existe-t-il également des décisions nationales de la Cour suprême ou de la Cour constitutionnelle, ou de tout autre organe judiciaire supérieur au niveau national, traitant de la question de l'indépendance des procureurs ?

Non.

6. Le système de poursuites de votre pays appartient-il au pouvoir judiciaire ?

Non. Le système de poursuites n'est pas réservé au Ministère Public : en effet, le Code de Procédure Pénale dispose d'une part que la personne lésée (physique ou juridique) par l'infraction pénale peut se constituer en accusation en désignant un avocat qui en son nom exercera l'action pénale (accusation particulaire) ; de la même façon, pourront procéder les associations légalement constituées en défense des intérêts collectifs qu'elles représentent; d'autre part, notre législation prévoit aussi que tout citoyen de nationalité andorrane avec plénitude d'exercice de ses droits civils et sans antécédents pénaux, peut exercer aussi l'action pénale pour les délits qui peuvent être poursuivies d'office (action populaire).

7. Les procureurs et le ministère public sont-ils indépendants ou autonomes par rapport aux pouvoirs exécutif et législatif de l'État ?

Le Ministère Public est indépendant des pouvoirs exécutifs et législatifs, tenant compte de ce qui est exposé ci-dessous. Cependant il ne dispose pas d'autonomie budgétaire : le budget du Ministère Public est inclus dans le budget de l'Administration de Justice, qui à son tour est inclus dans le budget du Ministère de la Justice et de l'Intérieur.

8. Existe-t-il un Conseil des Procureurs ou un organe équivalent similaire qui peut être considéré comme un mécanisme permettant de contrôler et de garantir l'indépendance des procureurs, y compris dans la manière dont le ministère public fonctionne ?

Non.

9. Combien de ses membres sont élus par leurs pairs, et la politique en matière de poursuites ou le débat au sein du pouvoir judiciaire ont-ils un impact sur l'élection des membres du Conseil des Procureurs ?

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10. Qui a l'initiative des procédures disciplinaires ?

La procédure disciplinaire appartient au Conseil Supérieur de la Justice. Mais son initiative correspond au même Conseil Supérieur, à instance de la personne lésée, d'un citoyen qui ait connaissance des faits, du Procureur Général, du Président du Tribunal qui corresponde, ou du Gouvernement.

11. Les procureurs sont-ils nommés à vie ou doivent-ils remplir des mandats successifs ? De combien d'années ?

Selon notre Constitution, les procureurs adjoints (comme les juges et magistrats) sont nommés pour des mandats de six ans renouvelables indéfiniment. Toutefois la Loi du Ministère Public prévoit que le renouvellement du mandat est automatique, sauf

démission du procureur concerné, commission d'un délit pénal intentionnel, ou procédure disciplinaire pour une faute très grave ou pour deux fautes graves

Le mandat du Procureur Général est aussi de six ans, mais celui-ci ne peut être renouvelé qu'une seule fois.

12. Les règles concernant la nomination, la mutation, la promotion et la discipline des procureurs sont-elles similaires à celles des juges ?

Les règles relatives à la promotion aux places de magistrats des tribunaux supérieurs, et à la discipline des procureurs sont les mêmes que pour les juges. En ce qui concerne la mutation les règles sont aussi les mêmes que pour les juges, en relation a la possibilité de changement de poste de procureur à juge, et vice-versa ; toutefois la dimension du pays (dans lequel il n'existe qu'une seule maison de justice et un seul bureau du Ministère Public) ne permet pas de mutations, entendue comme changement de lieu de travail.

En ce qui concerne la nomination, les procureurs et le Procureur Général sont -comme les juges et magistrats- nommés par le Conseil Supérieur de la Justice après le concours respectif, mais les procureurs après proposition purement formelle du Gouvernement.

13. Le gouvernement peut-il donner des instructions au ministère public, par exemple, par exemple, de poursuivre ou de ne pas poursuivre ? Les instructions sont-elles de nature générale ou spécifique ? Sont-elles données par écrit ? Le ministère public peut-il les contester ?

Compte tenu de notre système de légalité des poursuites, le gouvernement ne peut donner d'instructions en relation ni aux poursuites, ni particulières à une affaire.

Le gouvernement ne peut donner que des recommandations écrites de caractère général, c'est-à-dire de politique criminelle : toutefois la Loi sur le Ministère Public dispose expressément que quelles que soient les recommandations reçues, les procureurs doivent agir en suivant le principe de légalité et conservent la liberté de faire les observations qu'ils croient opportunes, même en contre des recommandations du Gouvernement.

14. Les instructions des procureurs supérieurs sont-elles données par écrit aux personnes placées sous leur contrôle ? Ces instructions peuvent-elles être contestées ou refusées ?

Le principe hiérarchique du Ministère Public, établi par la Constitution et la Loi, fait que les procureurs adjoints sont soumis à l'autorité du Procureur Général en ce qui concerne les appréciations, qualifications et conclusions juridiques.

Cependant, en cas de différences entre le Procureur Général et un Procureur Adjoint, el Procureur Général doit confirmer ses instructions par écrit.

Toutefois, les procureurs adjoints restent libres de faire leurs observations orales au moment de l'audience, en relation à ces qualifications et ces conclusions.

15. Quelles sont, le cas échéant, les principales initiatives en matière de formation visant à renforcer la sensibilisation à la dimension *de facto* de l'indépendance des procureurs ?

Les différents Procureurs s'efforcent à faire connaitre l'indépendance du Ministère Public notamment lors des différents journées et actes de sensibilisation qui ont lieu surtout au sein des écoles, à plusieurs niveaux scolaires.

16. Dans quelle mesure les médias couvrent-ils les décisions des tribunaux internationaux et des organes conventionnels en ce qui concerne l'indépendance pratique des procureurs ?

Les médias andorrans couvrent toutes les décisions des tribunaux internationaux concernant l'Andorre, tenant compte l'exceptionnalité de ce type de décisions. Les médiats se font souvent aussi écho des recommandations émanant du GRECO, du MONEYVAL, du GRETA, du GREVIO, du CPT…

17. Dans quelle mesure le ministère public interagit-il avec le grand public en ce qui concerne les décisions des tribunaux internationaux et des organes conventionnels relatives à l'indépendance pratique des procureurs ?

Le Ministère Public ne dispose ni de moyens, ni d'attributions en matière de communication ni avec les médiats, ni avec le grand public, ne pouvant donc pas interagir à ce niveau.

Armenia / Arménie

Main question. In the judgment Kolevi v. Bulgaria (app. no. 1108/02, 5 November 2009), the European Court of Human Rights (hereinafter referred to as “the ECHR”) the applicant’s main allegation was that the investigation had lacked independence and objectivity owing to institutional deficiencies and unlawful practices in the prosecution system and had not examined the possible involvement of high-ranking prosecutors and other officials. In ¢¢ 197-215 the ECHR made its assesment regarding the deficiencies in the prosecution system of Bulgaria (in particular, the ECHR noted that as a result of the hierarchical structure of the prosecution system and, apparently, its internal working methods, no prosecutor would issue a decision bringing charges against the Chief Public Prosecutor. This appears to have been due to the fact that the Chief Public Prosecutor and high-ranking prosecutors have the power to set aside any such decision taken by a subordinate prosecutor or investigator. As a result, it is still the case that the Chief Public Prosecutor cannot be temporarily suspended from duty against his will, as that can only be done if charges have been brought against him). Also in the abovemntioned judgment in ¢¢ 138-152 the relevant aspects of several member States' legal systems, with the emphasis on the guarantees that exist to secure the effective and independent investigation of cases involving suspicion against high-ranking prosecutors were described.
The European Court of Justice in its judgment of 27 May 2019 (case number C-509/18) hold that the Prosecutor General of Lithuania may be considered to be an ‘issuing judicial authority’, within the meaning of Article 6(1) of Framework Decision 2002/584, in so far as, in addition to the findings in paragraph 42 of the present judgment, his legal position in that Member State safeguards not only the objectivity of his role, but also affords him a guarantee of independence from the executive in connection with the issuing of a European arrest warrant. The relevant analyses of the European Court of Justice is available in ¢¢ 42-57 of the abovementioned judgment.
Regarding the independence of the judiciary the judgment of the ECHR in case of Ramos Nunes de Carvalhoe e Sa v. Portugal ([GC], app. nos. 55391/13,57728/13, 47041/13) should be noted in ¢¢ 144-150 the ECHR recapitulated all the existing principles.

Question 1-4. At the outset, it should be noted, that the domestic legal system of the Republic of Armenia is closely interrelated with international legal standards. This fact is also reflected in the Constitution of the Republic of Armenia (as amended by the referendum of 6 December 2015, hereinafter referred to as “the Constitution”) the relevant parts of which states as follows:
Thus, Article 5, ¢ 3 of the Constitution provides that in case of conflict between the norms of international treaties ratified by the Republic of Armenia and those of laws, the norms of international treaties shall apply. Article 61, 2 provides that everyone shall, in accordance with the international treaties of the Republic of Armenia, have the right to apply to international bodies for the protection of human rights and freedoms with regard to the protection of his or her rights and freedoms. Article 81 provides that the practice of bodies operating on the basis of international treaties on human rights, ratified by the Republic of Armenia, shall be taken into account when interpreting the provisions concerning basic rights and freedoms enshrined in the Constitution. Restrictions on basic rights and freedoms may not exceed the restrictions prescribed by international treaties of the Republic of Armenia.
The general official measures taken for reacting to and implementing the decisions of international courts and treaty monitoring bodies are based generally on the relevant amendments in the domestic legislation and practical measures taken to address possible shortcomings and practical situations. In this respect, it is worth mentioning especially the adoption of the new “Law on the Prosecutor’s Office” (adopted on 17 November 2017, in force from 9 April 2018, hereinafter referred to as “the Law”) of the Republic of Armenia. While drafting the Law all the recommendations of international collegues, especially those of the

European Commission for Democracy through Law (Venice Commission), the Organisation for Economic Co-operation and Development (OECD), the Group of European States against Corruption (GRECO), Consultative Council of the European Prosecutors (CCPE) were thoroughly taken into account. As a result, mutual relations of superior and inferior prosecutors, regulations regarding appointment, transfer, promotion and discipline of prosecutors, procedure of appointment of the Prosecutor General and Deputy Prosecutor General, material, legal, social and other guarantees were brought in compliance with relevant international standards.

Question 5. There are several decisions of the Constitutional Court relating the Prosecutor's Office. However, these decisions mainly deal with issues concerning the constitutional status of the Prosecutor's Office, the essence of its constitutional authorities, problems stemming while exersising oversight over the lawfullness of pre-trial investigation, relationships between the investigative body and the prosecutor.

Question 6-7. 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 Repulic 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 indepenedent from the executive and legislative branches of state power.

Question 6 bis – The independence of judges is broader than that of the prosecutors given that there is not any hierarchical subordination within the judiciary. On the contrary, the activities of the Prosecutor's Office are based on the principle of ensuring hierarchic subordination and uniformity.

Question 7 bis – The principle of prosecutorial independence is fully operating during the relationships with the mentioned bodies. However, it should be noted that during the court proceedings the prosecutor should obey the rules of the court session and lawfull instructions of the presiding judge.

Question 8. According to Article 22, ¢ 1-2 of the "Law on the Prosecutor's Office" 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 operates within the Prosecutor's Office. The Collegium of the Prosecutor's Office comprises the Prosecutor General, Deputy Prosecutors General, heads of structural subdivisions of the General Prosecutor's Office and the Prosecutor of the city of Yerevan. Other prosecutors invited by the Prosecutor General may attend the sitting of the Collegium without the right to vote.
It stems from the legal status of the Collegium that the issues related to the prosecutorial independence may also be discussed during its sessions.

Question 9. The scope of the members of the Collegium is stipulated by the Law. They are not elected and become members of the Collegium by virtue of the relevant provisions of the Law.

Question 10. According to Article 56, ¢ 1-4 of the Law
1. The Prosecutor General may institute disciplinary proceedings [emphasys added] against a prosecutor on the grounds prescribed by part 1 of Article 53 of this Law, except for the case provided for by part 2 of this Article:
(1) on his or her initiative; or
(2) based on the motions of prosecutors provided for by part 3 of this Article; or
(3) based on communications from natural or legal persons, state and local self-government bodies or officials, mass media publications;
(4) based on a court sanction on submitting an application with the Prosecutor General for imposing disciplinary action.
2. In the case of receiving a communication or motion to institute disciplinary proceedings against a prosecutor deemed to be a high-ranking official on the ground prescribed by point 4 of part 1 of Article 53 of this Law, the Prosecutor General or, in the case provided for by part 4 of this Article, the Ethics Commission shall, within a period of three days, forward the communication or motion to the Commission for the Prevention of Corruption. Where the institution of disciplinary proceedings against a prosecutor deemed to be a high-ranking official is initiated by the Prosecutor General, the latter shall, within a period of three days, submit to the Commission for the Prevention of Corruption information on the fact of failure by the prosecutor to comply with the restrictions or incompatibility requirements prescribed by Article 49 of this Law.
3. The following shall be entitled to file a motion with the Prosecutor General to institute disciplinary proceedings:
(1) Deputy Prosecutor General, for disciplinary violations committed by prosecutors belonging to the sector coordinated by the Deputy Prosecutor General in question;
(2) heads of structural subdivisions of the General Prosecutor's Office, for disciplinary violations committed by prosecutors of the subdivision in question, as well as in the case provided for by part 7 of Article 12 of this Law;
(3) Military Prosecutor, for disciplinary violations committed by prosecutors of the Central Military Prosecutor's Office and of military prosecutor's offices of garrisons;
(4) Prosecutor of the city of Yerevan, for disciplinary violations committed by prosecutors of the Prosecutor's Office of the city of Yerevan, prosecutors of the administrative districts of the city of Yerevan and of prosecutor's offices of the administrative districts of the city of Yerevan;
(5) prosecutors of administrative districts of the city of Yerevan, for disciplinary violations committed by prosecutors of the prosecutor's office of the administrative district in question;
(6) prosecutors of marzes, for disciplinary violations committed by prosecutors of the prosecutor's office of the marz in question;
(7) prosecutors of garrisons, for disciplinary violations committed by prosecutors of the prosecutor's office of the garrison.
4. The Ethics Commission shall also have the right to institute disciplinary proceedings [emphasys added] against a prosecutor by the majority vote of the members present at the sitting based on communications provided for by point 3 of part 1 of this Article addressed to the Ethics Commission, except for the case provided for by part 2 of this Article. The procedure for holding the sitting shall fall within the scope of provisions provided for by parts 2 and 4 of Article 57 of this Law.

Question 11. Prosecutors in Armenia are not appointed for life. According to Article 62, ¢ 1 (2), attaining the age of 65 — the maximum age for occupying a position of a prosecutor, is a ground for dismissing a prosecutor from his office.

Question 12. The rules regarding appointment, transfer, promotion and discipline of prosecutors are not similar to those of judges. The applicable legal provisions are also different: regarding the prosecutors relevant issues are regulated by the Law and the orders of the Prosecutor General, regarding the judges the issues are regulated by the judicial Code of the Republic of Armenia and the decisions of the Supreme Judicial Council.

Question 13. No, there are not any provisions in the domestic legislation authorizing the Government to give instructions to the Prosecutor's Office. The Prosecutor's office is an autonomous constitutional body which operates independently from the executive.

Question 14. According to Article 30, ¢ 6 of the Law:
" An assignment or instruction shall be deemed as an oral or written directive [emphasys added], whereas in the course of exercising the powers prescribed by the Criminal Procedure Code of the Republic of Armenia — only a written directive given to the inferior prosecutor by the superior prosecutor [emphasys added] within the competence thereof and as prescribed by law, designed for performing certain actions, making decisions or abstaining from performance of any action".
According to Article 32, ¢ 1-2 of the Law:
"1. The assignments and instructions of a superior prosecutor shall be binding for an inferior prosecutor, except for [emphasys added] the cases where the inferior prosecutor finds that the assignment or instruction is illegal or unjustified. In this case, the inferior prosecutor shall, without performing the assignment or instruction of the superior prosecutor, submit a written objection to the superior of the prosecutor having given the assignment, except for the cases where the assignment or instruction has been given by the Prosecutor General. Where the disputed assignment or instruction is oral, the inferior prosecutor may, before submitting an objection, request a written assignment or instruction from the superior prosecutor.
2. Where the inferior prosecutor has considered the assignment or instruction given by the superior prosecutor as illegal or unjustified and has submitted an objection thereon to the superior of the prosecutor having given the assignment or instruction, whereas the assignment or instruction has been considered as legal and justified thereby, the superior prosecutor may, by his or her reasoned decision, dismiss the inferior prosecutor from the proceedings and transfer the case to his or her or to another prosecutor's proceedings."

Question 14 bis. The issues regarding the allocation of cases between prosecutors are regulated by the relevant order of the Prosecutor General dated 13 March 2017.According to that order the allocation of the cases should be based on the principle of the specialization of the prosecutors with ensuring the equal workload.

Question 15. The courses on rules of prosecutorial conduct, internal investigations, anti-corruption etc. have been included in the 2019 annual mandatory training for prosecutors and effectively delivered (for a total of 49 prosecutors and candidate prosecutors). These courses have been included in the training curriculum of the Justice Academy following a recommendation of the Deputy Prosecutor General. The main topics, included in the training programme, involve, inter alia, issues related to the status of prosecutors in the system of public service of the Republic of Armenia, the guarantees for their independence etc. These courses are to continue in 2020.
Question 15 bis – Rules of conduct of prosecutors are stipulated by Articles 71-74 of the Law, according to which:
"Article 71. Rules of conduct of prosecutors

1. The rules of conduct of prosecutors shall be prescribed by this Law, and the requirements arising from the rules of conduct established by this Law shall be prescribed upon the order of the Prosecutor General.

2. The rules of conduct of prosecutors shall be binding for all prosecutors. The immediate superior prosecutor must also require that the rules of conduct be observed by the subordinate prosecutors.

3. The rules prescribed by points 1-3 and 7-9 of part 1 of Article 72 of this Code shall be binding for the persons included in the list of candidates for prosecutors.

4. A prosecutor shall strive to ensure, through his or her conduct, activities, professional and moral characteristics, the reputation, impartiality and objectivity of the Prosecutor's Office, contribute to building confidence in and respect for the Prosecutor's Office, ensuring the independence of prosecutorial activities, participate in instilling high standards of conduct.

Article 72. General rules of conduct of prosecutors

1. A prosecutor shall be obliged: (1) to refrain, under any conditions and in any situation, from demonstrating — with his or her activities, practical, professional and moral characteristics — any conduct incompatible with or undermining the high reputation of the Prosecutor's Office, decreasing the public confidence in the Prosecutor's Office or casting doubt on the impartiality, objectivity and independence of the Prosecutor's Office, including issuing in favour of any person a personal surety prescribed by the Criminal Procedure Code of the Republic of Armenia;

(2) to avoid, under any conditions and in any situation, practical, professional or moral relations or demonstrating any conduct incompatible with the title of the prosecutor that may disgrace the reputation, good fame, honour or dignity of the prosecutor;

(3) to keep the reputation of the Prosecutor's Office high, inspire respect and confidence in the Prosecutor's Office and in himself or herself with his or her conduct and activities;

(4) to demonstrate political restraint and neutrality, refrain from demonstrating any conduct that may leave an impression of being engaged in political activities, as well as not to demonstrate favouritism towards any political party;

(5) not to become a member of professional or non-governmental organisations the activities whereof are associated with discrimination on the grounds of ethnicity, nationality, faith or physical impairments;

(6) to be autonomous and objective, be independent from extraneous influences, pressure, threats or any other interference coming from legislative and executive authorities or other state bodies or local selfgovernment bodies, non-governmental or political organisations, media, private interests, public opinion and other sources, be free from the fear of being criticised;

(7) to refrain from publicly casting doubt on prosecutorial acts and on actions, professional and personal qualities of his or her colleagues;

(8) to adopt for himself or herself such restrictions that will ensure public perception of him or her as a well-balanced and objective person;

(9) to be law-abiding, righteous, patient, disciplined, reserved, balanced, polite, principled, impartial and strong-willed, listening to and respecting others' opinions and tolerating divergence in views, demonstrate extreme reasonableness and politeness when carrying out actions aimed at restricting the rights of other persons;

(10) to be intolerant towards violations of the rules of conduct committed or immoral conduct demonstrated by colleagues;

(11) to immediately inform the relevant bodies about threats to the lives and health of people or to the safety of the environment, take measures for the timely prevention and elimination of consequences of said threats, protect the human rights and fundamental freedoms and assist in the exercise thereof;

(12) not to carry the service firearm provided to him or her demonstratively in public places.

Article 73. Rules of conduct of prosecutors in official relations

1. In official relations, a prosecutor shall be obliged: (1) to act in compliance with the Constitution, constitutional laws and laws;
(2) to follow the principle of hierarchical subordination without prejudice to the rule that the superior or immediate superior prosecutor shall refrain from demonstrating such conduct towards the subordinate prosecutor or addressing him or her with such words which may disgrace the honour or dignity of the prosecutor, impair his or her reputation;
(3) to be independent and objective;
(4) to demonstrate necessary consistency when complying with the restrictions prescribed by law;
(5) to be independent in his or her convictions and deliver prosecutorial acts independently, which does not exclude receiving advice from his or her prosecutor colleagues on legal issues;
(6) to perform his or her official duties in good faith, giving priority to exercising his or her powers over other types of activities prosecutors are legally allowed to engage in;
(7) to ensure proper level of professional preparedness and proficiency, take measures to enhance his or her professional knowledge of the national and international law, consistently improve his or her skills and personal qualities, provide, upon necessity, professional assistance to colleagues;
(8) guided by the requirements of the legislation of the Republic of Armenia, to take measures to strengthen the rule of law, reveal and eliminate the causes of offences and conditions contributing to the commission thereof;
(9) to participate in court sessions wearing a proper uniform, demonstrate selfrestraint under any conditions and in any situation, be emotionally stable, avoid demonstrating any conduct or expressing himself or herself in words incompatible with the title of the prosecutor, that may disgrace the reputation and good fame of the prosecutor and the Prosecutor's Office;
(10) when performing his or her duties, to show impartiality, refrain from displaying bias through his or her words or conduct, discriminating or creating such impression, act so as not to cast undue doubt on his or her impartiality and objectivity, not to be guided by assumptions, emotions, personal sentiments or other extraneous influence, which does not hinder the prosecutor from freely expressing his or her opinion on solutions regarding official issues;
(11) to act reasonably so that cases causing a need for his or her dismissal (self-recusal) from the proceedings or examination of the case are reduced to a minimum;
(12) not to use, disclose or otherwise make accessible non-public information that he or she has become aware of in the course of exercising his or her official duties, unless otherwise provided for by law;
(13) to treat the participants of the proceedings, colleagues and all persons with whom the prosecutor communicates ex officio, with patience, dignity, respect and politeness;
(14) to demonstrate understanding when violations and shortcomings committed in the course of performance of official duties are revealed, as well as towards objective criticism, and take measures to eliminate them;
(15) to contribute to the establishment of a healthy moral and psychological atmosphere in relations with colleagues, be respectful and balanced towards them, respect their opinion, display willingness to help and assist his or her colleagues, not to intervene unlawfully in the performance of official powers of colleagues, which does not hinder the prosecutor from freely expressing his or her opinion on solutions regarding official issues.
Article 74. Rules of conduct of prosecutors in extra-official relations
1. In extra-official relations, a prosecutor shall be obliged: (1) not to use the reputation of the prosecutor's position for his or her or another person's benefit;
(2) to avoid any conflict of interest, so that his or her family, social and other relationships do not influence the proper exercise of his or her official powers in any way;

(3) to avoid relations undermining the reputation, disgracing the honour and dignity, influencing the objectivity thereof or of the prosecutor's office, making dependent on certain persons materially and otherwise;
(4) to refrain from undue communications with mass media in respect of a case, demonstrate self-restraint under any conditions and in any situation, be emotionally stable, avoid demonstrating any conduct or expressing himself or herself in words incompatible with the title of the prosecutor that may disgrace the reputation and good fame of the prosecutor and the Prosecutor's Office.''

Question 16-17. There is no relevant information. However it should be stated that press releases concerning the meetings between the representatives of international bodies and the Prosecutor's Office are posted on the official website of the Prosecutor's Office. During these meetings issues related to prosecutorial independence, may also be discussed.

Austria / Autriche

What are the general official measures taken for reacting to and implementing the decisions of international courts and treaty monitoring bodies?
If a judgment by the European Court of Human Rights determines that a decision or order by a criminal court violates the Convention for the Protection of Human Rights and Fundamental Freedoms or one of its Additional Protocols, those proceedings have to be renewed upon request, if it cannot be ruled out that this violation may have a negative impact on the content of the decision of a criminal court for the person concerned (Art 363a StPO [Austrian Criminal Procedure Code]).
Beside that, decisions of international courts and treaty monitoring bodies could be the reason for general recommendations of the Federal Ministry of Justice or for the amendment of legal provisions.
2. Based on your answer to the 1st question, what are the measures taken particularly for the practical independence of the prosecution services and individual prosecutors? Can you give examples?
In this regard there are no known cases.
3. Are these measures reflected in the law or in the prosecution policy or debate?
Please, see the answer to question 2.
4. If yes, then were there any changes in the prosecution system as a consequence of such measures?
Please, see the answer to question 2.
5. Are there also national decisions of the Supreme or Constitutional Courts, or any other highest judicial body at national level, dealing with the question of independence of prosecutors?
No.
6. Does the prosecution system in your country belong to the judiciary?
Yes, since 2008 public prosecutors are organs of the judiciary by virtue of art 90a B-VG (Austrian Federal Constitutional Law)
7. Are prosecutors and prosecution services independent or autonomous from the executive and legislative branches of state power?
No, the Austrian system of public prosecution is organised monocratically. Its head is the Federal Minister of Justice, who has the right to give orders or instructions even in specific cases.
2
8. Is there a Council of Prosecutors or a similar equivalent body which can be considered as a mechanism to monitor and ensure prosecutorial independence, including in the way in which the prosecution services operate?
No.
9. How many of its members are elected by their peers, and does the prosecution policy or the debate within the judiciary produce any impact on the election of the members of the Council of Prosecutors?
Please, see the answer to question 8.
10. Who has the initiative of disciplinary proceedings?
Mainly the Federal Minister of Justice
11. Are prosecutors appointed for life or do they have to fulfil successive terms? Of how many years?
Austrian public prosecutors are appointed on a permanent basis until their retirement (basically at the age of 65).
12. Are the rules regarding appointment, transfer, promotion and discipline of prosecutors similar to those of judges?

Yes.

13. May the government instruct the prosecution services, for instance, to prosecute or not to prosecute? Are instructions general or specific in nature? Are they given in writing? Can the prosecution challenge them?

As head of the hierarchical structure of the prosecution system (see the answer of question 7) the Federal Minister of Justice basically can interfere in the action of the prosecution services both in general as well as in specific cases.

As a safeguard all instructions have to be given in writing, should contain a reasoning and have to become a part of the file concerned.

If such an instruction does not comply with the law, its addressee is obliged to refuse it.

On an annual basis all instructions concerning proceedings, which are already closed, have to be reported to both chambers of the National Parliament.

14. Are the instructions of superior prosecutors given in writing to those under their supervision? Can these instructions be challenged or refused?

The aforementioned (see question 13) principles (apart from the reporting to the Parliament) apply to all sorts of instructions given to a public prosecutor.

15. Which are, if any, the main initiatives in terms of training to strengthen the awareness about the *de facto* dimension of the prosecutorial independence?

Please, see the answer to question 7, 13 and 14.

3

16. To what extent the media cover the decisions of international courts and treaty bodies as regards the practical independence of prosecutors?

Such decisions basically could be subject of reports in the media.

17. To what extent the prosecutor offices interact with the broad public as regards the decisions of international courts and treaty bodies related to the practical independence of prosecutors?

The interaction with the public in such cases is mainly the task of the Ministry of Justice.

Azerbaijan / Azerbaïdjan

1. As regards implementing the decisions of international courts, especially decisions of the European Court of Human Rights according to the Articles 456 and 459 of Code of Criminal Procedure of Azerbaijan, the Plenum of Supreme Court of the Republic of Azerbaijan is in charge of examining newly discovered facts concerning the violation of human rights and freedoms. At the same time it reviews the cases only regarding legal issues. It may overturn fully or partially court acts of the respective first, appellate or cassation instances and send the criminal case, files of simplified pre-trial proceedings or proceedings on the complaint with a view to a private prosecution for reexamining the materials; change the decision passed on cassation instance and in the framework of additional cassation if the Supreme Court's decision is not justified or if the concluding part of the Supreme Court's decision is inconsistent with its statement of the facts and reasons, and overturn the decision passed on cassation instance and (or) in the framework of additional cassation and pass a new decision.

2. The Prosecutor's office of the Republic of Azerbaijan is an important public institution with a special status in the system of state authorities. Article 133 of the Constitution provides for provisions ensuring the independence of the Prosecutor's Office. So, Prosecutor's Office of the Republic of Azerbaijan is an integral centralized body based on subordination of territorial and specialized prosecutors to Prosecutor General of the Republic of Azerbaijan. Prosecutor General of the Republic of Azerbaijan is appointed to his post and dismissed from it by the President on consent of Milli Majlis of the Republic of Azerbaijan. Deputies of Prosecutor General, prosecutors supervising specialized republican prosecutor's offices, Prosecutor of Nakhichevan Autonomous Republic are appointed to their posts and dismissed from their posts by the President of the Republic of Azerbaijan on recommendation of Prosecutor General. Territorial and specialized prosecutors are appointed to their posts and dismissed by Prosecutor General on agreement with the President of the Republic of Azerbaijan.

The regulatory framework for the activities of the Prosecutor's Office is defined in the Law of the Republic of Azerbaijan "On the Prosecutor's Office" of 7 December 1999. The Prosecutor's Office of the Republic of Azerbaijan is an integral centralized body. Forming part of the judicial system it is based on the subordination of territorial and specialized prosecutor's offices to the Prosecutor General of the Republic of Azerbaijan. According to article 5 of the law, the basic principles of the prosecutor's office include:
- legality;
- equal rights of all before the law;
- observance and respect of the rights and freedoms of individuals, the rights of legal entities;
- objectivity, impartiality and reference to facts;
- unity and centralization, subordination of territorial and specialized prosecutors to the general prosecutor of the Republic of Azerbaijan;
- political independence.

According to Article 7 of the Law, restriction by this or that person for any of several reasons directly or indirectly of legal activities of prosecutor's office, impact on it, threats, illegal intervention in it, and also disrespect for prosecutor's office is not allowed and involves responsibility stipulated by the legislation of the Azerbaijan Republic.

3. These measures are stipulated in the Constitution, Criminal Code and Code of Criminal Procedure of the Republic of Azerbaijan, Law of the Republic of Azerbaijan "On the Prosecutor's Office" and Law of the Republic of Azerbaijan "On the service in prosecution bodies".

For instance, Article 30 of the Law of the Republic of Azerbaijan “On the Prosecutor's Office" forbidding an investigator or prosecutor engaging in activities incompatible with his position serves as one of the guarantees for the independence of the prosecutor's office. According to this article, a prosecutor or investigator cannot occupy any elected or other position, cannot engage in any entrepreneurial, commercial and other paid activities other than scientific, pedagogical and creative, as well as political activities and be a member of political parties.

4. At the moment according to the Decree of the President of the Republic of Azerbaijan dated 03.04.2019, reforms are underway as a result of which judicial-legal system is undergoing several effective changes.

5. No such decision has been passed up to date.

6-7. The basics of the activities of the Prosecutor's Office are defined in the Constitution of the independent Republic of Azerbaijan adopted on 12 November 1995 at a universal referendum. The Main Law granted constitutional status to the prosecutor's office, in a special article devoted to the Prosecutor's Office of the Republic of Azerbaijan (Article 133) it was determined that this body is part of the judiciary, and the status, foundations of the organization and activities of the prosecutor’s bodies were stipulated as well.

According to Article 2 of the Law of the Republic of Azerbaijan “On Prosecutor’s Office”, the Prosecutor's Office of the Republic of Azerbaijan is an integral centralized body, which, forming part of the judicial system, is based on the subordination of territorial and specialized prosecutor’s offices to the Prosecutor General of the Republic of Azerbaijan.

According to Articles 43 and 44 of the Law of the Republic of Azerbaijan “On Prosecutor’s Office”, Prosecutor General of the Republic of Azerbaijan informs Milli Majlis (the Parliament) and the President about the activities of prosecutor’s office except the criminal cases being investigated.

8, 9. There is no such an institution at the moment.

10. For violation of service discipline, inappropriate performance of duties, as well as for non-compliance with the requirements of the “Code of Ethical Conduct for Employees of the Prosecutor's Office of the Republic of Azerbaijan”, the prosecutor may be given a remark, reprimand, severe reprimand, one of the following disciplinary sanctions may be applied to him:

demotion, reduction in rank, dismissal (in this case, the prosecutor may be available for three months and if during this time there is no reason for his dismissal from the prosecution, he is appointed to work in the prosecution), exclusion from the prosecution, in cases and according to the procedure established by law, exclusion from the prosecutor's office with deprivation of rank.

In connection with violation of service discipline, an official audit is carried out and depending on the result of the audit, the issue of bringing an employee to disciplinary liability is considered. The relevant prosecutor, within the framework of his authority, may file a petition to bring the prosecutor to disciplinary liability.

Imposing disciplinary sanctions is carried out by the Prosecutor General of the Republic of Azerbaijan. In addition, the Prosecutor General may, to a certain extent, entrust the issue of applying disciplinary sanctions against prosecutors to the Military Prosecutor, the Prosecutor of the Nakhchivan Autonomous Republic and the Prosecutor of the city of Baku.

11. In accordance with Article 16 of the Law of the Republic of Azerbaijan “On Prosecutor’s Office”, the term of office of the Prosecutor General of the Republic of Azerbaijan, the Military Prosecutor of the Republic of Azerbaijan, the Prosecutor of the Nakhichevan Autonomous Republic, the Military Prosecutor of the Nakhichevan Autonomous Republic, territorial and

specialized prosecutors - is 5 years. Territorial and specialized prosecutors cannot be appointed to the same territorial units more than two times. The Prosecutor's Office operates on the basis of subordination of subordinate prosecutors to a higher prosecutor.

12. These procedures are quite different.

13. The Prosecutor's Office is independent within its authority granted by laws and regulations. (Article 36 of the Law "On Prosecutor's Office"). Intervention in any form to activity of the prosecutor office, is punishable under the Criminal Code of the Republic of Azerbaijan.

14. When exercising of his authority, the prosecutor, in the manner and within the framework of the law, among other acts shall also issue a written instruction. Subordinate prosecutors or other prosecutors must comply with all legal requirements and instructions of a higher prosecutor. In cases provided for by law, the prosecutor has the right to give written inquiry to the bodies of inquiry or preliminary investigation. Fulfillment of the written instructions of the prosecutor on questions of inquiry or preliminary investigation is mandatory. In addition, the Prosecutor General has the right to cancel, change or seize illegal orders, instructions and other acts of subordinate prosecutors.

15. Trainings are organized at the Science and Education Center of the Prosecutor General's Office of the Republic of Azerbaijan as well as Academy of Justice which comprise several modules on different legal issues, including independence of prosecutors.

16, 17. As part of the reforms carried out in the prosecution authorities of Azerbaijan, the effectiveness of relations with the public is always in the spotlight, special attention is paid to improving activities and the use of modern information technologies in this area.
Having established mutual relations with the media and NGOs, the prosecutor's office ensures the protection and enforcement of the rights and freedoms of human and citizen, the legitimate interests of the state in carrying out this activity.
The prosecution authorities through news agencies, the press, radio and television, regularly inform the population about the law, the rule of law, the state of the fight against crime, as well as the activities of the prosecution.
In addition, the guidance of the Prosecutor General's Office, the Military Prosecutor's Office and the Prosecutor's Office of the Nakhchivan Autonomous Republic hold briefings and press conferences for the media, and if necessary, round tables and seminars are organized with the participation of NGOs and other state bodies.
In this case, the prosecutor's office is guided by the requirements of the norms of the Constitution ensuring the inviolability of life, personal and family secrets, protecting the honor and dignity of all persons, as well as laws prohibiting the disclosure of information about minors without his/her consent or the consent of a legal representative, and other regulatory legal acts as well.
Prosecutors provide timely and accurate answers to requests received from media representatives.
In order to ensure mutual relations at a high level, persons responsible for communication with mass media are established, their names, surnames, positions and contact numbers are posted on the official web page.

Belgium / Belgique

1. Quelles sont les mesures officielles générales prises pour réagir aux décisions des tribunaux internationaux et des organes conventionnels et pour les mettre en œuvre ?

L'administration du ministère de la justice belge prend en compte les exigences des organes et des juridictions internationales pour proposer au ministre de la justice les réformes indispensables et les textes de loi à modifier. Les parlementaires peuvent aussi déposer des propositions de loi sur le sujet

2. Sur la base de votre réponse à la première question, quelles sont les mesures prises notamment pour l'indépendance pratique des ministères publics et des procureurs individuels ? Pouvez-vous donner des exemples ?

L'indépendance du ministère public est garanti par l'article 151 de la constitution qui le prévoit expressément. En pratique, le ministre de la justice respecte ce principe et le collège des procureurs généraux y est très attentif.
Une loi de 2014 prévoit la possibilité pour le siège et le MP d'acquérir l'autonomie de gestion sur la plan budgétaire, les ressources humaines, l'informatique, ce qui constitue un élément très important de l'indépendance des corps judiciaires.

3. Ces mesures se reflètent-elles dans la loi ou dans la politique ou le débat sur les poursuites ?

Oui. La loi correspond aux principes définis par la Constitution. Le ministère public (MP) fait rapport au ministre de la justice de dossiers particuliers mais en aucun cas le ministre ne prend des directives ou des recommandations sur ces dossiers. Le collège des procureurs généraux reçoit des invitation de la commission de la justice de la chambre pour être consulté sur des projets de loi ou évoquer des dossiers particulier mais sur une base purement volontaire.

4. Si oui, y a-t-il eu des changements dans le système des poursuites à la suite de ces mesures ?

Non

5. Existe-t-il également des décisions nationales de la Cour suprême ou de la Cour constitutionnelle, ou de tout autre organe judiciaire supérieur au niveau national, traitant de la question de l'indépendance des procureurs ?

Oui. La cour constitutionnelle et la cour de cassation belge ont eu l'occasion de se prononcer sur cette question et à fonder la jurisprudence et les pratiques en Belgique.

6. Le système de poursuites de votre pays appartient-il au pouvoir judiciaire ?

Oui, le parquet fait partie de « l'ordre judiciaire, au même titre que les juges et sont considérés comme des magistrats à part entière. Ils bénéficient de la même rémunération et des mêmes droits à la retraire.

7. Les procureurs et le ministère public sont-ils indépendants ou autonomes par rapport aux pouvoirs exécutif et législatif de l'État ?

Oui. Voir supra. Ils ont aussi indépendants par rapport aux juges qui n'ont pas à critiquer le ministère public ou lui faire des recommandations

8. Existe-t-il un Conseil des Procureurs ou un organe équivalent similaire qui peut être considéré comme un mécanisme permettant de contrôler et de garantir l'indépendance des procureurs, y compris dans la manière dont le ministère public fonctionne ?

Oui. Il existe un collège des 5 procureurs généraux belges, un collège du ministère public (les 5 PG, 3 procureurs du Roi, un auditeur du travail et le procureur fédéral) compétent pour la gestion du MP, un conseil des 14 procureurs du roi du pays et un conseil des6 auditeurs du travail du pays.

9. Combien de ses membres sont élus par leurs pairs, et la politique en matière de poursuites ou le débat au sein du pouvoir judiciaire ont-ils un impact sur l'élection des membres du Conseil des Procureurs ?

Les procureurs du roi et auditeurs du travail présent dans le collège du MP sont élus par leurs pairs.

10. Qui a l'initiative des procédures disciplinaires ?

Les chefs de juridiction ont l'initiative des procédures disciplinaires. Ils peuvent prendre des sanctions mineures mais un recours existe auprès des tribunaux disciplinaires qui prennent les sanctions majeures.

11. Les procureurs sont-ils nommés à vie ou doivent-ils remplir des mandats successifs ? De combien d'années ?

Les procureurs sont nommés à vie mais les chefs de juridiction remplissent des mandats de 5 ans renouvelables une seule fois par le Conseil Supérieur de la Justice, soit 10 ans maximum.

12. Les règles concernant la nomination, la mutation, la promotion et la discipline des procureurs sont-elles similaires à celles des juges ?

Oui, parfaitement.

13. Le gouvernement peut-il donner des instructions au ministère public, par exemple, par exemple, de poursuivre ou de ne pas poursuivre ? Les instructions sont-elles de nature générale ou spécifique ? Sont-elles données par écrit ? Le ministère public peut-il les contester ?

La constitution prévoit que le ministre de la justice peut donner des orientations à la politique criminelle aux procureurs généraux et il a le droit de donner des injonctions positives, uniquement pour obliger le parquet à entamer des poursuites en ouvrant un dossier.

14. Les instructions des procureurs supérieurs sont-elles données par écrit aux personnes placées sous leur contrôle ? Ces instructions peuvent-elles être contestées ou refusées ?

Oui, le MP belge est un corps hiérarchisé et des consignes ou des orientations peuvent être données à un magistrat par sa hiérarchie. Toutefois, à l'audience devant la cour ou le tribunal,

le magistrat dispose de toute liberté dans ses réquisitions et celles-ci peuvent être contraires aux instructions reçues.

15. Quelles sont, le cas échéant, les principales initiatives en matière de formation visant à renforcer la sensibilisation à la dimension de facto de l'indépendance des procureurs ?

L'institut de formation judiciaire dispense diverses formations qui expliquent le statut, la discipline et enseigne les grands principes de fonctionnement du MP

16. Dans quelle mesure les médias couvrent-ils les décisions des tribunaux internationaux et des organes conventionnels en ce qui concerne l'indépendance pratique des procureurs ?

La presse mentionne régulièrement des décisions importantes qui sont prises par la cour européenne des droits de l'homme ou la cour de justice de Luxembourg, notamment en ce qui concerne l'indépendance des procureurs

17. Dans quelle mesure le ministère public interagit-il avec le grand public en ce qui concerne les décisions des tribunaux internationaux et des organes conventionnels relatives à l'indépendance pratique des procureurs ?

Il existe des organisations de magistrats qui communiquent avec le public sur ces questions via la presse pour informer de décisions importantes.

QUESTION PRINCIPALE

Connaissez-vous des arrêts ou des décisions de la Cour européenne des droits de l'homme ou de la Cour de justice de l'Union européenne, ou de toute autre cour internationale qui font référence ou qui concernent de quelque manière que ce soit l'indépendance (et de préférence mettent en évidence ses éléments) :

a) des procureurs;
b) du pouvoir judiciaire ou du système judiciaire dans son ensemble;
c) des juges.

Si vous connaissez de tels arrêts ou décisions, le Bureau du CCPE et le Groupe de travail vous seront très reconnaissants si vous indiquez leurs titres et aussi, si possible, les numéros de paragraphes ou sections de ces arrêts et décisions où de telles références ou des indications sont faites. Ces arrêts et décisions peuvent concerner n'importe quel pays, et pas seulement le vôtre.

Réponse : Medvedyev contre France juillet 2008 ; Moulin contre France 23/11/2010

Questions

DANS VOTRE PAYS :

1. Quelles sont les mesures officielles générales prises pour réagir aux décisions des tribunaux internationaux et des organes conventionnels et pour les mettre en œuvre ?

2. Sur la base de votre réponse à la première question, quelles sont les mesures prises notamment pour l'indépendance pratique des ministères publics et des procureurs individuels ? Pouvez-vous donner des exemples ?

3. Ces mesures se reflètent-elles dans la loi ou dans la politique ou le débat sur les poursuites ?

4. Si oui, y a-t-il eu des changements dans le système des poursuites à la suite de ces mesures ?

5. Existe-t-il également des décisions nationales de la Cour suprême ou de la Cour constitutionnelle, ou de tout autre organe judiciaire supérieur au niveau national, traitant de la question de l'indépendance des procureurs ?

6. Le système de poursuites de votre pays appartient-il au pouvoir judiciaire ?

6bis Existe-t-il des parallèles entre l'indépendance des juges et l'indépendance des procureurs, ou cette dernière est-elle considérée séparément, si tant est qu'elle le soit?

Réponse : Les juges et les procureurs belges font partie de « l'ordre judiciaire « en Belgique. Ils ont un statut très semblable. Ils sont tous magistrats

7. Les procureurs et le ministère public sont-ils indépendants ou autonomes par rapport aux pouvoirs exécutif et législatif de l'État ?

7bis L'interaction des bureaux des procureurs avec les tribunaux, la police, les autorités d'enquête et les autres acteurs de la procédure pénale est-elle fondée sur le principe de l'indépendance des procureurs et comment ?

Réponse : Oui, absolument. Le procureur est responsable de l'enquête. Il donne ses instructions à la police pour la direction de l'enquête.
Le juge d'instruction, lorsqu'il est désigné, possède le même pouvoir de direction de l'enquête indépendamment du parquet qui n'intervient plus.
Le tribunal ou la cour juge du fond du dossier pénal après réquisition du procureur en toute indépendance.

8. Existe-t-il un Conseil des Procureurs ou un organe équivalent similaire qui peut être considéré comme un mécanisme permettant de contrôler et de garantir l'indépendance des procureurs, y compris dans la manière dont le ministère public fonctionne ?

9. Combien de ses membres sont élus par leurs pairs, et la politique en matière de poursuites ou le débat au sein du pouvoir judiciaire ont-ils un impact sur l'élection des membres du Conseil des Procureurs ?

10. Qui a l'initiative des procédures disciplinaires ?

11. Les procureurs sont-ils nommés à vie ou doivent-ils remplir des mandats successifs ? De combien d'années ?

12. Les règles concernant la nomination, la mutation, la promotion et la discipline des procureurs sont-elles similaires à celles des juges ?

13. Le gouvernement peut-il donner des instructions au ministère public, par exemple, par exemple, de poursuivre ou de ne pas poursuivre ? Les instructions sont-elles de nature générale ou spécifique ? Sont-elles données par écrit ? Le ministère public peut-il les contester ?

14. Les instructions des procureurs supérieurs sont-elles données par écrit aux personnes placées sous leur contrôle ? Ces instructions peuvent-elles être contestées ou refusées ?

14bis Quel est le système d'attribution, de réattribution et de gestion des affaires et est-il fondé sur des critères objectifs et transparents respectant l'indépendance des procureurs ?

Réponse : Généralement, les dossiers sont attribués en fonction de l'organisation du service et pas selon un choix de personne. Il est toutefois tenu compte de la spécialisation des magistrats pour certaines matières techniques. C'est le chef de corps qui peut décider de modifier une attribution de dossier s'il existe un motif objectif de le faire (répartition du travail, incompatibilité…)

15. Quelles sont, le cas échéant, les principales initiatives en matière de formation visant à renforcer la sensibilisation à la dimension de facto de l'indépendance des procureurs ?

15bis Le concept d'indépendance des procureurs est-il reflété dans le code d'éthique et de conduite professionnelle des procureurs ? Si un tel code existe dans votre pays, pourriez-vous indiquer comment il a été préparé et adopté, et fournir sa copie en anglais ou en français si disponible.

Réponse : oui : Le conseil supérieur de la Justice a publié un guide déontologique pour les magistrats reprenant les principes de base . Il vise aussi le ministère public.: http://www.csj.be/sites/default/files/press_publications/o0023f.pdf

16. Dans quelle mesure les médias couvrent-ils les décisions des tribunaux internationaux et des organes conventionnels en ce qui concerne l'indépendance pratique des procureurs ?

17. Dans quelle mesure le ministère public interagit-il avec le grand public en ce qui concerne les décisions des tribunaux internationaux et des organes conventionnels relatives à l'indépendance pratique des procureurs ?

Bosnia and Herzegovina / Bosnie et Herzégovine

1. What are the general official measures taken for reacting to and implementing the decisions of international courts and treaty monitoring bodies? As a member of the Council of Europe BiH for example joined the European convention on Human Rights and therefore is obliged to follow the decisions of the European Court of Human Rights or other bodies in this concern. In all pending cases BiH took the necessary measures to direct the concrete implementation to the competent authority of the state.
2. Based on your answer to the 1st question, what are the measures taken particularly for the practical independence of the prosecution services and individual prosecutors? Can you give examples? The practical independence of prosecutors in BiH is not in any case questioned by above mentioned decisions.
3. Are these measures reflected in the law or in the prosecution policy or debate? See above.
4. If yes, then were there any changes in the prosecution system as a consequence of such measures? Incorrect question.
5. Are there also national decisions of the Supreme or Constitutional Courts, or any other highest judicial body at national level, dealing with the question of independence of prosecutors? No.
6. Does the prosecution system in your country belong to the judiciary? Court and Prosecutor' Offices are separate bodies of the judicial system and therefore both are part of the judiciary.
7. Are prosecutors and prosecution services independent or autonomous from the executive and legislative branches of state power? Yes they are.
8. Is there a Council of Prosecutors or a similar equivalent body which can be considered as a mechanism to monitor and ensure prosecutorial independence, including in the way in which the prosecution services operate? The constitution foresees a unified body named „High Judicial and Prosecutorial Council (HJPC)".
9. How many of its members are elected by their peers, and does the prosecution policy or the debate within the judiciary produce any impact on the election of the members of the Council of Prosecutors? The High Judicial and Prosecutorial Council of BiH consists of judges and prosecutors. In the law of that council is not foreseen any impact on the prosecution policy or debate.

10. Who has the initiative of disciplinary proceedings? Every citizen as well as every institution or legal body has the right to remonstrate about the behaviour of any prosecutor or can report to the police in case that he does violate the law. The remonstration or the report will be handed over to the prosecutor for disciplinary affairs of the HJPC, who is responsible to decide whether there is a substantial basis for an indictment. At that moment the disciplinary commission of the HJPC takes over to vote according to the procedures of civil law.
11. Are prosecutors appointed for life or do they have to fulfill successive terms? Of how many years?The prosecutors are appointed for life. The maximum of their service ends with the entry to their seventies year of birth.
12. Are the rules regarding appointment, transfer, promotion and discipline of prosecutors similar to those of judges? Yes, they are.
13. May the government instruct the prosecution services, for instance, to prosecute or not to prosecute? Are instructions general or specific in nature? Are they given in writing? Can the prosecution challenge them? The governement cannot instruct the prosecution services in any way. Therefore the other two questions are incorrect.

14. Are the instructions of superior prosecutors given in writing to those under their supervision? Can these instructions be challenged or refused? The instructions are given in writing. The prosecutor cannot challenge it.

15. Which are, if any, the main initiatives in terms of training to strengthen the awareness about the de facto dimension of the prosecutorial independence? The main initiatives are undertaken by international institutions like as the Council of Europe, Financially independent NGOs in close contact with the Judicial and Prosecutorial Council of BiH.

16. To what extent the media cover the decisions of international courts and treaty bodies as regards the practical independence of prosecutors? The media in BiH cover those decisions because of its concern to the actual politics in the country quite well.

17. To what extent the prosecutor offices interact with the broad public as regards the decisions of international courts and treaty bodies related to the practical independence of prosecutors? Each prosecutor' office from the level of Kanton up to the State' s prosecutor's office has its spokesperson for the public. In case that it is in the interest of the public the prosecutor in charge decides to engage the spokesman to inform about the topic in question. Naturally it depends of the sensitivity of the spokesman with his comments not hurt the independence of that prosecutor who is involved in that specific case.

Answer to the MAIN QUESTION of CCPE

Question:
Do you know about any judgments or decisions of the European Court of Human Rights or of the Court of Justice of the European Union, or of any other international court which refer to or in any way touch upon the independence (and preferably went on to highlight its elements):
a) of prosecutors; b) of the judiciary or the justice system as a whole; c) of judges.

Answer:
Within the amount of comparable cases, so far as I know, such judgement or decision does not exist.

Question:
If you know about any such judgments or decisions, the CCPE Bureau and the Working Group will be very grateful to you if you indicate their titles and also, if possible, the numbers of paragraphs or sections in these judgments and decisions where such references or indications are made. These judgments and decisions may concern any country, not only your country.

See my answer above!

Question:
6bis Are there any parallels between the independence of judges and independence of prosecutors, or the latter is considered separately, if considered at all?

Answer:
The independence of prosecutors at all cannot be compared with the independence of judges, because the prosecutorial system of Bosnia and Herzegovina is constructed as a hierarchy, but judges are single one's or belong to a council which is completely independent.

Question:
7bis Is the interaction of prosecutor offices with courts, police, investigation authorities and other actors in criminal procedure based on the principle of prosecutorial independence and how?

Answer:
The interaction of prosecutor's offices with the above mentioned authorities is really based on prosecutor's independence in the sense that the role of prosecutors is superior of that one of all other actors in criminal procedures. But the single prosecutor is subordinated in organizational respect to the decisions of the General prosecutor and bound to the procedures of interaction with the other above mentioned authorities.

Question:
14bis What is the system of allocation, re-allocation and management of cases and is it based on objective and transparent criteria respecting the independence of prosecutors?

Answer:
The system of allocation, reallocation and management of cases is in the hands of the General prosecutor and her/his staff. The criteria cannot be challenged by the single prosecutor but she/he has the right to declare her/his self-consciousness in case of personal reasons.

Question:
15bis Is the concept of prosecutorial independence reflected in the code of ethics and professional conduct of prosecutors? If such code exists in your country, could you please inform how it was prepared and adopted, and provide its copy in English or French if available.

Answer:
The code of ethics has been prepared by the High Judicial and Prosecutorial Council and has passed in one of its sessions. I have the pleasure to add that code in English as an attachment to this document.

Estonia / Estonie

1. **What are the general official measures taken for reacting to and implementing the decisions of international courts and treaty monitoring bodies?**

   As a rule, the Ministry of Foreign Affairs notifies the Ministry of Justice about the need to amend a legal regulation. The Ministry of Justice analyses in turn the decisions, by creating working groups in case of need, in order to involve persons concerned. As a result of this work, motions of elaboration of legislative amendments are prepared and further on, already the drafts that will become the acts in the Riigikogu (*Parliament*) of the Republic of Estonia.

2. **Based on your answer to the 1st question, what are the measures taken particularly for the practical independence of the prosecution services and individual prosecutors? Can you give examples?**

   In the Republic of Estonia, prosecutors' salary system was connected to the will of the Ministry of Justice for years. Only the principle that the salaries of the prosecutors should be equal to those of the judges was said in the Prosecutor's Office Act earlier. Actually, it was not like this as the Ministry of Justice had other priorities for years (for example, prisons, courts). After long negotiations, the Prosecutor's Office managed to achieve the amendment to law in 2018, by which the prosecutors' salaries were bound with the salary system of the higher state servants that was not linked to the budget of the Ministry of Justice any more. This has secured independence of prosecutors significantly.

3. **Are these measures reflected in the law or in the prosecution policy or debate?**

   Yes, please see the answer in previous point.

4. **If yes, then were there any changes in the prosecution system as a consequence of such measures?**

   Yes, please see the answer in point 2. In recent years, the Prosecutor' Office has always been involved in the process of amendment of legislation related to the Prosecutor's Office.

5. **Are there also national decisions of the Supreme or Constitutional Courts, or any other highest judicial body at national level, dealing with the question of independence of prosecutors?**

   To a small extent, the Supreme Court has handled the issue of independence of the prosecutors in its judgments. This primarily from perspective of assessment criteria of independence and impartiality of the prosecutors.

6. **Does the prosecution system in your country belong to the judiciary?**

   The Prosecutor's Office of the Republic of Estonia does not belong to the judicial system. The prosecutor's office is a separate two-stage government agency within the area of government of the Ministry of Justice, that consists of the Office of the Prosecutor General as a superior prosecutor's office and four district prosecutor's offices subordinate to it.

7. **Are prosecutors and prosecution services independent or autonomous from the executive and legislative branches of state power?**

The Prosecutor's Office of the Republic of Estonia is a government agency within the area of government of the Ministry of Justice that is independent in the performance of its functions arising from law, and it acts pursuant to this Act, other Acts, and legislation issued on the basis thereof. Although the prosecutor's office is a part of executive power in its nature, it is independent from implementing power by performing its main tasks and shall not be subordinate to any inappropriate instructions that originate from other national authorities, from social interest groups or elsewhere.

8. **Is there a Council of Prosecutors or a similar equivalent body which can be considered as a mechanism to monitor and ensure prosecutorial independence, including in the way in which the prosecution services operate?**

There have been introduced several mechanisms in the Republic of Estonia for ensuring the independence of the prosecutors. For example, there is operating the Prosecutors' Assembly that has adopted *inter alia*, the Code of Ethics of the prosecutors where bases for independence of the prosecutors and mechanisms of ensuring this have been provided. Thus, on the one hand, the quality of decisions of the prosecutors has been subordinated to the Ethics Board, but also to the disciplinary committee. Every prosecutor has also his or her superior prosecutor who is entitled to control legality of the decisions of prosecutors. In addition, also the Surveillance Department of the Office of the Prosecutor General exercises control over the activities of prosecutors.

9. **How many of its members are elected by their peers, and does the prosecution policy or the debate within the judiciary produce any impact on the election of the members of the Council of Prosecutors?**

Members to the top of such bodies are elected by the prosecutors themselves. For example, five experienced prosecutors are elected to the Prosecutors' Ethics Board from among the prosecutors of the district prosecutor's offices and Office of the Prosecutor General by themselves, etc. It is possible to elect such prosecutors, who have worked as a prosecutor for at least ten years, to the board.

10. **Who has the initiative of disciplinary proceedings?**

Disciplinary proceedings can be initiated on the basis of the request of the interested person or on one's own initiative, whether the Minister responsible for the field in relation to the Prosecutor General, the Chief State Prosecutor or Chief Prosecutor; the Prosecutor General in relation to all prosecutors or the Chief Prosecutor in relation to prosecutors of the District Prosecutor's Office subordinate to him or her.

11. **Are prosecutors appointed for life or do they have to fulfil successive terms? Of how many years?**

Prosecutors are not appointed to their posts for lifetime. The Chief State Prosecutor, the State Prosecutor, the Senior Prosecutor, the Special Prosecutor, District Prosecutor and Assistant Prosecutor are appointed for unspecified period of time. The Prosecutor General and the Chief Prosecutor are appointed for five years.

12. **Are the rules regarding appointment, transfer, promotion and discipline of prosecutors similar to those of judges?**

The rules handling promotion and discipline of prosecutors are relatively similar to those of the judges. There are however differences in appointment as well as in transfer of the prosecutors. Namely, the judges in the Republic of Estonia are appointed for life, whereas the prosecutors for indefinite period of time, except for the Prosecutor General and the Chief Prosecutor who are appointed for five years. By transfer of judges, the Supreme Court *en banc* may appoint the judge with his or her consent and to a proposal of the Minister responsible for the field, to the position of

judge in the court of another similar level or lower court, and the judges at first instance may be appointed, at his or her consent, permanently to service in another court house of the same court. But by transfer of prosecutors, the Minister responsible for the field may transfer the Prosecutor General, The Chief Prosecutor or State Prosecutor on the basis of his or her application without an open competition to a post of the prosecutor at a lower level being filled by way of public competition. Also, the Prosecutor General may transfer the Senior Prosecutor, Special Prosecutor or District Prosecutor on the basis of his or her written application without an open competition to a post of prosecutor at a lower level being filled by way of public competition, or the Special Prosecutor, District Prosecutor of Assistant Prosecutor with his or her consent without an open competition to the same post in another Prosecutor's Office.

13. **May the government instruct the prosecution services, for instance, to prosecute or not?to prosecute? Are instructions general or specific in nature? Are they given in writing? Can the prosecution challenge them?**

In the Republic of Estonia, the principle of mandatory character of criminal proceedings is applied that means that in case of occurrence of the circumstances of crime, the investigative authority and the prosecutor's office are obliged to carry out criminal proceedings, if the circumstances excluding criminal proceedings are missing or if the basis to terminate criminal proceedings is missing. On the basis of the Code of Criminal Procedure, the authority of a prosecutor's office in criminal proceedings shall be exercised independently by the prosecutor and the prosecutor is governed only by law. Hence, although the prosecutor's office is a part of executive power by its nature, it is independent from implementing power by performing its main tasks and shall not be subordinate to any inappropriate instructions that originate from other national authorities, social interest groups or elsewhere. Hence, the Government cannot give orders to the Prosecutor's Office for bringing charges.

14. **Are the instructions of superior prosecutors given in writing to those under their supervision? Can these instructions be challenged or refused?**

Highest ranking prosecutors can give instructions to prosecutors under their surveillance. So, the superior prosecutor may require oral and/or written explanations from prosecutors for the circumstances of the procedure and may overrule by his or her regulation any unlawful or unjustified rulings, orders or claims of prosecutors. The standpoints presented in the ruling of the superior prosecutor for interpretation and application of any legal provisions are mandatory for the prosecutor in the criminal proceedings in question. The Prosecutor General may also give general instructions to the Prosecutor's Office and investigative authorities for ensuring legality and performance of the pre-trial procedure.

If a prosecutor hesitates over legality of the given recommendations in-house, he or she must inform the provider of the recommendation or the Prosecutor General about it. Prosecutors are entitled to require provision of the given recommendations internally in-house in written form.

15. **Which are, if any, the main initiatives in terms of training to strengthen the awareness about the *de facto* dimension of the prosecutorial independence?**

With regard to actual measure of the independence of the prosecutor's office and prosecutors to strengthen awareness, the prosecutor's office explains, if necessary, to the Legal Affairs Committee of the Riigikogu (*Parliament*) as well as to wider public, the grounds underlying the independence of the prosecutor's office, incl. how and by means of which measures the independence of the prosecutor's office is ensured.

16. **To what extent the media cover the decisions of international courts and treaty bodies as regards the practical independence of prosecutors?**

Most important judgments of international courts as well as of treaty bodies are reflected in the media. However, primarily regarding issues related and concerning Estonia.

17. **To what extent the prosecutor offices interact with the broad public as regards the decisions of international courts and treaty bodies related to the practical independence of prosecutors?**

If it is dealt with an important issue about independence of the prosecutors that could concern also wider public, then, as a rule, also media is notified about it, whether through speeches made by prosecutors or via press releases prepared by the prosecutor's office.

MAIN QUESTION

Do you know about any judgments or decisions of the European Court of Human Rights or of the Court of Justice of the European Union, or of any other international court which refer to or in any way touch upon the independence (and preferably went on to highlight its elements):

a) of prosecutors;
b) of the judiciary or the justice system as a whole;
c) of judges.

If you know about any such judgments or decisions, the CCPE Bureau and the Working Group will be very grateful to you if you indicate their titles and also, if possible, the numbers of paragraphs or sections in these judgments and decisions where such references or indications are made. These judgments and decisions may concern any country, not only your country.

Followingly we mark some judicial decisions where independence of the prosecutors, but also of judges have been handled:

1. ECHR case of KOLEVI v. BULGARIA (Application no. 1108/02), para 142, 148-149;
2. ECHR case of GUJA v. MOLDOVA (Application no. 14277/04), para 86;
3. ECHR case of Mustafa Tunç and Fecire Tunç v. Turkey, no 24014/05;
4. ECHR, case of AFFAIRE MOULIN c. FRANCE (Requête no 37104/06), para 57;
5. CJEU - A.K. (C-585/18) v Krajowa Rada Sądownictwa and CP (C-624/18), DO (C-625/18) v Sąd Najwyższy (C-624/18 and C-625/18) joined party: Prokurator Generalny zastępowany przez Prokuraturę Krajową.

Questions

IN YOUR COUNTRY:

1. What are the general official measures taken for reacting to and implementing the decisions of international courts and treaty monitoring bodies?

As a rule, the Ministry of Foreign Affairs notifies the Ministry of Justice about the need to amend a legal regulation. The Ministry of Justice analyses in turn the decisions, by creating working

groups in case of need, in order to involve persons concerned. As a result of this work, motions of elaboration of legislative amendments are prepared and further on, already the drafts that will become the acts in the Riigikogu (Parliament) of the Republic of Estonia.

2. Based on your answer to the 1st question, what are the measures taken particularly for the practical independence of the prosecution services and individual prosecutors? Can you give examples?

In the Republic of Estonia, prosecutors' salary system was connected to the will of the Ministry of Justice for years. Only the principle that the salaries of the prosecutors should be equal to those of the judges was said in the Prosecutor's Office Act earlier. Actually, it was not like this as the Ministry of Justice had other priorities for years (for example, prisons, courts). After long negotiations, the Prosecutor's Office managed to achieve the amendment to law in 2018, by which the prosecutors' salaries were bound with the salary system of the higher state servants that was not linked to the budget of the Ministry of Justice any more. This has secured independence of prosecutors significantly.

3. Are these measures reflected in the law or in the prosecution policy or debate?

Yes, please see the answer in previous point.

4. If yes, then were there any changes in the prosecution system as a consequence of such measures?

Yes, please see the answer in point 2. In recent years, the Prosecutor' Office has always been involved in the process of amendment of legislation related to the Prosecutor's Office.

5. Are there also national decisions of the Supreme or Constitutional Courts, or any other highest judicial body at national level, dealing with the question of independence of prosecutors?

To a small extent, the Supreme Court has handled the issue of independence of the prosecutors in its judgments. This primarily from perspective of assessment criteria of independence and impartiality of the prosecutors.

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The Prosecutor's Office of the Republic of Estonia does not belong to the judicial system. The prosecutor's office is a separate two-stage government agency within the area of government of the Ministry of Justice, that consists of the Office of the Prosecutor General as a superior prosecutor's office and four district prosecutor's offices subordinate to it.

6bis Are there any parallels between the independence of judges and independence of prosecutors, or the latter is considered separately, if considered at all?

In the Republic of Estonia, there are quite a lot of parallels between the independence of the prosecutors as well as of judges. Namely, both judges as well as a prosecutor are independent by performing their tasks and they act only on the basis of law and one's own conviction. Similarly to prosecutors. Also the judges have their own Code of Ethics where a separate section is specified regarding independence of prosecutors. However, there is present

difference related to fundamental guarantee of independence of judges, insofar as the judges are appointed for life, whereby the prosecutors are appointed for indefinite term.

7. Are prosecutors and prosecution services independent or autonomous from the executive and legislative branches of state power?

The Prosecutor's Office of the Republic of Estonia is a government agency within the area of government of the Ministry of Justice that is independent in the performance of its functions arising from law, and it acts pursuant to this Act, other Acts, and legislation issued on the basis thereof. Although the prosecutor's office is a part of executive power in its nature, it is independent from implementing power by performing its main tasks and shall not be subordinate to any inappropriate instructions that originate from other national authorities, from social interest groups or elsewhere.

7bis Is the interaction of prosecutor offices with courts, police, investigation authorities and other actors in criminal procedure based on the principle of prosecutorial independence and how?

Interaction of prosecutors with courts, police, investigation authorities and other actors in criminal procedure relies naturally on the principle of prosecutorial independence. Prosecutors are independent and unbiased by performing their tasks, incl. by interacting with courts, police, investigative authorities and other parties to the procedure, by acting solely on the basis of law and according to one's own conviction.

8. Is there a Council of Prosecutors or a similar equivalent body which can be considered as a mechanism to monitor and ensure prosecutorial independence, including in the way in which the prosecution services operate?

There have been introduced several mechanisms in the Republic of Estonia for ensuring the independence of the prosecutors. For example, there is operating the Prosecutors' Assembly that has adopted inter alia, the Code of Ethics of the prosecutors where bases for independence of the prosecutors and mechanisms of ensuring this have been provided. Thus, on the one hand, the quality of decisions of the prosecutors has been subordinated to the Ethics Board, but also to the disciplinary committee. Every prosecutor has also his or her superior prosecutor who is entitled to control legality of the decisions of prosecutors. In addition, also the Surveillance Department of the Office of the Prosecutor General exercises control over the activities of prosecutors.

9. How many of its members are elected by their peers, and does the prosecution policy or the debate within the judiciary produce any impact on the election of the members of the Council of Prosecutors?

Members to the top of such bodies are elected by the prosecutors themselves. For example, five experienced prosecutors are elected to the Prosecutors' Ethics Board from among the prosecutors of the district prosecutor's offices and Office of the Prosecutor General by themselves, etc. It is possible to elect such prosecutors, who have worked as a prosecutor for at least ten years, to the board.

10. Who has the initiative of disciplinary proceedings?

Disciplinary proceedings can be initiated on the basis of the request of the interested person or on one's own initiative, whether the Minister responsible for the field in relation to the Prosecutor General, the Chief State Prosecutor or Chief Prosecutor; the Prosecutor General in relation to all prosecutors or the Chief Prosecutor in relation to prosecutors of the District Prosecutor's Office subordinate to him or her.

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If a prosecutor hesitates over legality of the given recommendations in-house, he or she must inform the provider of the recommendation or the Prosecutor General about it. Prosecutors are entitled to require provision of the given recommendations internally in-house in written form.

14bis What is the system of allocation, re-allocation and management of cases and is it based on objective and transparent criteria respecting the independence of prosecutors?

The system of allocation, re-allocation and management of cases proceeds from the plan of division of duties. Namely, the Prosecutor General of the state determines the plan of division of duties of the prosecutors following hearing of opinions of prosecutors. Division of duties of district prosecutors is determined by Leading Prosecutor, following hearing of prosecutors of the District Prosecutor's Office. Work is divided between the prosecutors, proceeding from types of crimes, subjects or other general criteria. Also, replacement procedure is determined in the plan of division of duties that means, inter alia, the order of re-division of work. Independence of prosecutors is honoured by preparing of the paln of division of duties and by re-division of tasks.

15. Which are, if any, the main initiatives in terms of training to strengthen the awareness about the de facto dimension of the prosecutorial independence?

With regard to actual measure of the independence of the prosecutor's office and prosecutors to strengthen awareness, the prosecutor's office explains, if necessary, to the Legal Affairs Committee of the Riigikogu (Parliament) as well as to wider public, the grounds underlying the independence of the prosecutor's office, incl. how and by means of which measures the independence of the prosecutor's office is ensured.

15bis Is the concept of prosecutorial independence reflected in the code of ethics and professional conduct of prosecutors? If such code exists in your country, could you please inform how it was prepared and adopted, and provide its copy in English or French if available.

Conception of independence of prosecutors is reflected in the Republic of Estonia, also in the Code of Ethics of the Prosecutors, the latest and updated version has been adopted by the Prosecutors' General Assembly on 12 April 2013. But the first code of ethics that furnished the ethical standards with professional ethics and behaviour, entered into force already in on 23 December 2003, having been adopted also by the Prosecutors' General Assembly. The Prosecutors' General Assembly is a meeting of all prosecutors that is convened at least once a year. Necessity of preparing of the Code of Ethics was conditioned by the circumstance that the rules of ethical behaviour of prosecutors would been determined also in written, proceeding from general development of the prosecutor's office.

There is no version available in English and/or French of the Code of Ethics of the prosecutors of the Republic of Estonia.

16. To what extent the media cover the decisions of international courts and treaty bodies as regards the practical independence of prosecutors?

Most important judgments of international courts as well as of treaty bodies are reflected in the media. However, primarily regarding issues related and concerning Estonia.

17. To what extent the prosecutor offices interact with the broad public as regards the decisions of international courts and treaty bodies related to the practical independence of prosecutors?

If it is dealt with an important issue about independence of the prosecutors that could concern also wider public, then, as a rule, also media is notified about it, whether through speeches made by prosecutors or via press releases prepared by the prosecutor's office.

Czech Republic / République tchèque

I. Main question

The ECHR judgement of 3 June 2003 in case Pantea v. Romania, no. 33343/96

„238. The Court points out that it has already noted in Vasilescu v. Romania (judgment of 22 May 1998, §§ 40 41), in the context of Article 6 § 1 of the Convention, that since prosecutors in Romania act as members of the Prosecutor-General's Department, subordinate firstly to the Prosecutor-General and then to the Minister of Justice, they do not satisfy the requirement of independence from the executive. The Court finds no reason to depart from this conclusion, albeit under Article 5 § 3 of the Convention in the instant case, given that independence from the executive is also one of the guarantees inherent in the concept of "officer" for the purposes of this provision (see Schiesser, cited above, pp. 13-14, § 31)."

The ECHR judgement of 4 December 1979 in case Schiesser v. Switzerland, no. 7710/76

ECHR admitted that public prosecutor may be considered as „other officer authorised by law to exercise judicial power". ECHR particularly noted:

„31. […] the "officer" is not identical with the "judge" but must nevertheless have some of the latter's attributes, that is to say he must satisfy certain conditions each of which constitutes a guarantee for the person arrested.
The first of such conditions is independence of the executive and of the parties […]. This does not mean that the "officer" may not be to some extent subordinate to other judges or officers provided that they themselves enjoy similar independence.
In addition, under Article 5 para. 3 (art. 5-3), there is both a procedural and a substantive requirement. The procedural requirement places the "officer" under the obligation of hearing himself the individual brought before him [...]; the substantive requirement imposes on him the obligations of reviewing the circumstances militating for or against detention, of deciding, by reference to legal criteria, whether there are reasons to justify detention and of ordering release if there are no such reasons [...].
[...]

32. The Court now has to satisfy itself that the Winterthur District Attorney did offer Mr. Schiesser the guarantees inherent in the notion whose meaning it has indicated above.

34. […], the Court emphasises that in the present case the District Attorney intervened exclusively in his capacity as an investigating authority, that is in considering whether Mr. Schiesser should be charged and detained on remand and, subsequently, in conducting enquiries with an obligation to be equally thorough in gathering evidence in his favour and evidence against him (Article 31 StPO). He did not assume the mantle of prosecutor [...].

35. [...] Indeed, the Winterthur District Attorney proves to have received no advice or instructions from the Department of Justice or the Government of the Canton of Zürich or, for that matter, from the Public Prosecutor before ordering the applicant's detention on remand. [...] What is more, when hearing Mr. Schiesser the District Attorney acted alone, that is without the Public Prosecutor's assistance or supervision. Since he had neither to submit to outside interference nor to consult another authority, the District Attorney exercised the personal discretion conferred on him by law. In these conditions, the Court considers that in the present case he offered

guarantees of independence that are sufficient for the purposes of Article 5 para. 3 (art. 5-3) […].

36. With regard to the procedural guarantees, the Court notes firstly that when the applicant gave himself up, he was interrogated by the District Attorney himself and within twenty-four hours, as is required by Article 64 StPO and Directive no. 58 [...]. The District Attorney told Mr. Schiesser why he was suspected of having committed or attempted to commit offences and informed him of his right of appeal against the warrant issued for his arrest [...].
[...]

37. Immediately after the interrogation, the District Attorney issued a detention order based on two of the grounds listed in Article 49 StPO, one being that there were reasons to suspect Mr. Schiesser of an offence [...]. This is one of the grounds which, under Article 5 para. 1 (c) (art. 5-1-c) of the Convention, justify detention on remand. In addition, the order was made in accordance with a procedure prescribed by law.

38. The Court is therefore of the opinion that the Winterthur District Attorney offered in the present case the guarantees of independence and the procedural and substantive guarantees inherent in the notion of "officer authorised by law to exercise judicial power". There has accordingly been no breach of Article 5 para. 3 (art. 5-3).

The ECHR judgement of 23 October 1990 in case Huber v. Switzerland, no. 12794/87

Above mentioned conclusions related to the question, whether public prosecutor may be considered as „other officer authorised by law to exercise judicial power” (case Schiesser v. Switzerland see judgement of 23 October 1990 in case Huber v. Switzerland, no. 12794/87, no. 7710/76) ECHR changed later (, §§ 42-43; see also judgement of 23 November 2010 in case Moulin v. France, no. 37104/06, §§ 55-59).

ECHR in case Huber v. Switzerland, no. 125794/87 stated:

42. In several judgments which post-date the Schiesser judgment of 4 December 1979 and which concern Netherlands legislation on the arrest and detention of military personnel (the de Jong, Baljet and van den Brink judgment of 22 May 1984, [...], para. 49; the van der Sluijs, Zuiderveld and Klappe judgment of the same date, [...], para. 44; and the Duinhof and Duijf judgment of the same date, [...] para. 38), the Court found that the auditeur-militair, who had ordered the detention of the applicants, could also be called upon to assume, in the same case, the role of prosecuting authority after referral of the case to the Military Court. It concluded from this that he could not be "independent of the parties" at that preliminary stage precisely because he was "liable" to become one of the parties at the next stage in the procedure.

43. The Court sees no grounds for reaching a different conclusion in this case as regards criminal justice under the ordinary law. Clearly the Convention does not rule out the possibility of the judicial officer who orders the detention carrying out other duties, but his impartiality is capable of appearing open to doubt [...], if he is entitled to intervene in the subsequent criminal proceedings as a representative of the prosecuting authority.
Since that was the situation in the present case [...], there has been a breach of Article 5 para. 3 (art. 5-3).

II. Questions

1. What are the general official measures taken for reacting to and implementing the decisions of international courts and treaty monitoring bodies?

2. Based on your answer to the 1st question, what are the measures taken particularly for the practical independence of the prosecution services and individual prosecutors? Can you give examples?

Generally, the following may be stated. The Public Prosecutor´s Office pays attention to the decisions of international courts and treaty monitoring bodies. The Public Prosecutor´s Office reacts on these decisions by particular procedures, by analytical materials and in a report of the public prosecutor's office's activity.

Important decisions of the European Court of Human Rights and the Court of Justice of the European Union are published on the prosecution´s Extranet and redistributed to the entire prosecution system.

In this context can be pointed out the website of the Ministry of Justice, where the database of case law of the European Court of Human Rights is included. The database contains official czech translations of judgments issued in cases against the Czech Republic and also translations of selected judgments of the Court issued in proceedings against another Party of the Convention. There can be also found an annotation of decisions on the admissibility of complaints against the Czech Republic and an annotation of issued judgments concerning other member states of the European Convention on Human Rights.

The Supreme Public Prosecutor´s Office takes into account the recommendations of international bodies and organizations as part of the consultation procedure on draft legislation.

The Supreme Public Prosecutor´s Office takes into account and comments international organizations and institutions´s assessment of the Czech Republic concerning the competence of the Public Prosecutor´s Office (eg GRECO, MONEYVAL, OECD, CPT, UNCAC).

3. Are these measures reflected in the law or in the prosecution policy or debate?

There were taken number of partial measures to fulfill this task.

On 16th April 2019 in Brno, the Chief Public Prosecutors with personnel authority adopted the Code of Ethics of the Public Prosecutor, which is in effect from 1 May 2019. One of the incentives for the adoption of this Code of Ethics was the recommendation from the evaluation report of the Czech Republic adopted by GRECO as part of the fourth round of evaluation at the 72nd plenary session of 1st July 2016, file no. GrecoEval4Rep (2016) 4.
The code of ethics for prosecutors and employees of the Supreme Public Prosecutor's Office is adopted as part of the internal anti-corruption program, see http://www.nsz.cz/index.php/cs/interni-protikorupni-program-nsz.
Similarly, codes of ethics for prosecutors at individual prosecution offices are adopted as part of internal anti-corruption measures.
Furthermore, the Code of Professional Ethics of the Public Prosecutor, which is non-binding, has been adopted, see
http://www.nsz.cz/images/stories/PDF/predpisy/EK%20NSZ.pdf.

The Union of Public Prosecutors of the Czech Republic adopted the Moral Code of the Public Prosecutor, see http://www.uniesz.cz/vnitrni-predpisy/mravni-kodex/. This is an internal regulation binding only for members of the Union of Public Prosecutors of the Czech Republic.

Public prosecutors also regularly cooperate in the preparation of background materials, eventually participates in negotiations within the evaluation of the Czech Republic; or they are members of evaluation missions of other countries.

Recommendations and requirements of international organizations and institutions are also applied during consultations on draft legislation (Supreme Public Prosecutors´s office is one of the so-called mandatory commentary points within the meaning of Article 5 (1) (e) of the Government Legislative Rules).

For example MONEYVAL's recommendations on the criminalization of financing terrorismus were met on the basis of amending Act No. 455/2016 Coll. There were newly introduced Art. 129a terrorist group, Art. 312a participation in terrorist group, Art. 312d terrorism financing, Art. 312e support and promotion of terrorism and Art. 312f threat by terrorist criminal act.

The OECD recommendation on increasing the number of financial penalties for the offense of (foreign) bribery has been met by elaborating the methodology of the Supreme Public Prosecutors´s Office - "Prosecutor's approach in criminal proceedings in relation to financial penalties".
Together, the Supreme Public Prosecutor's Office and the Supreme Court strive to change the practice so that the Czech courts will impose pecuniary penalties to a much greater extent as an alternative or additional penalty to imprisonment. Among other things, both institutions organized specialized seminars for judges, prosecutors and police on this topic during 2017.

Another example is first evaluation round in the Czech Republic in fulfilling the obligations in Convention on Action against Trafficking in Human Beings by monitoring body GRETA. Public prosecutors attended a meeting with GRETA representatives. In the next stage they commented the final report. The Public Prosecutor´s Office will pay attention to the recommendations in the report.

4. If yes, then were there any changes in the prosecution system as a consequence of such measures?

For example – the requirements of GRECO from the 4th evaluation round were evaluated as reasons to amend the Act on the Public Prosecutor´s Office (possibility to seek for legal remedy against decision in disciplinary proceedings, reformation of procedures of appointment and removing from position of Prosecutor General and other chief public prosecutors).

These requirements were included in the comments of the Supreme Public Prosecutor's Office on the draft Act on Public Prosecutor's Office (including the term of office of prosecutors, selection of chief prosecutors). Supreme Public Prosecutor's Office´s comments were sent to Ministry of Justice. Proposed dismissal of the Supreme Public Prosecutor only through disciplinary proceedings can be de lege ferenda only recommended.

5. Are there also national decisions of the Supreme or Constitutional Courts, or any other highest judicial body at national level, dealing with the question of independence of prosecutors?

Although the Public Prosecutor´s Office is according to the Constitution the part of the executive power, it is not a performer of public administration [...], because within performance of its activity acts like an independent and impartial authority. It is a special type of state authority, which differs from administrative offices by the type of its actions, i. e. representing the public prosecution in criminal proceedings, difference may be further derived from its independence.
Judgement of the Supreme Administrative Court from 27th October 2005, file number 6 As 58/2004-45

The practise when a public prosecutor is authorized to perform a position of chief public prosecutor by superior public prosecutors, threaten independence of authorized chief public prosecutors. If public prosecutors are properly appointed, they may be removed only in case they seriously breach duties resulting from execution of the public prosecutor's competence. On the other side authorized public prosecutors are not protected and they may much more tend to satisfy wishes of a person who decides about their further authorization.
Judgement of the Supreme Administrative Court from 18th December 2019, file number 12 Ksz 6/2019

According to the Constitutional Court, the Public Prosecutor´s Office is „a special independent authority sui generis, which performs a task set by the law and immanent to this authority only" (file number Pl. ÚS 17/10). We can talk about an independent authority, which performs justice, but not for private interest of specific people, but for public interest. The Public Prosecutor´s Office, as an authority exercises public power, differs thanks its nature and focus of its activity and its independence from dependent activity of authorities of public power (even it is its part) and it is closer to the judicial power which, because it represents a pre-stage of judicial power in the criminal area.

However, the potentiality of possible breach to the position of public prosecutor does not allow looking at performance of public prosecutor position (from the aspect of independence) as if it were performance of judicial power. This is the reason why there is not a threat of breach of the independence, through pay cuts of public prosecutors, like it was stated before in case of judges.
Judgement of the Constitutional Curt from 28th June 2011, file number Pl. ÚS 17/10 (to the pay cuts of public prosecutors)

Public prosecutors decide if there the terms to initiate the criminal prosecution, they are responsible for its legal process and for (co)protection of human rights, they decide on legal remedies against police authority decisions or decisions of public prosecutors of lower public prosecutor´s office, they regard if there are reasons to file an indictment or not, and they are the only body of prosecution in criminal proceedings, they are a party to the proceedings at trial, they have a right to seek for legal remedies against court decisions, and these are reasons, why they have similar guarantees of independence as judges.
Judgement of the Constitutional Court from 2nd February 2016, file number Pl. ÚS 14/15 (salary restrictions of Supreme Audit Office members)

6. Does the prosecution system in your country belong to the judiciary?

The Public Prosecutor's Office belongs according to the Constitution (the Constitutional Act No. 1/1993 Coll., as amended) to the executive power (see Art. 80 of the Constitution), not to the judicial power. Despite of that Supreme Administrative Court stated that the Public Prosecutor´s Office is not a performer of public administration, because within performing of its jurisdiction it acts as an independent and impartial authority. The Constitutional Court further stated that the

Public Prosecutor's Office is the special authority sui generis, which performs a task set by the law and immanent to this authority only. It is a judicial authority who does not exercise judicial power.

6bis. Are there any parallels between the independence of judges and independence of prosecutors, or the latter is considered separately, if considered at all?

Independence of prosecutors is similar to judicial independence but it also differs from it. First of all, the judicial independence is set in the Constitution, the independence of public prosecutors is not.

The Constitutional Court in judgement file number Pl. ÚS 17/10 (cited above) stated that the potentiality of possible breach to the position of public prosecutor does not allow looking at performance of public prosecutor position (from the aspect of independence) as if it were performance of judicial power. This is the reason why there is not a threat of breach of the independence, through pay cuts of public prosecutors, like it was stated before in case of judges.

In the judgement file number Pl. ÚS 14/15 the Constitutional Court stated the reasons, why public prosecutors have similar guarantees of independence as judges (see above cited passage of the judgement).

7. Are prosecutors and prosecution services independent or autonomous from the executive and legislative branches of state power?

In the organizational level, the system of the Public Prosecutor's Office is separated from the executive power and from the legislation. However, it belongs to the resort of the Ministry of Justice, which is the central authority of administration of the Public Prosecutor's Office. Currently is the biggest problem, that the Prosecutor General is appointed and removed with no reason by the Government at the proposal of the Minister of Justice.

Other chief public prosecutors and ordinal public prosecutors are independent in their position, which means that they may be removed only under the legal terms. It is important to highlight that they are functionally subordinated regarded to their position in the hierarchy of the Public Prosecutor´s Office.

Within six months of a calendar year at the latest the Prosecutor General submits through the Ministry of Justice a report of the public prosecutor's office's activity for the previous calendar year to the Government (see the Act no. 283/1993 Coll., on Public Prosecutor's Office, as amended). A report of the public prosecutor's office's activity remains a report of public prosecutor´s office; Minister of Justice has a position of submitter (he/she has no right to demand any changes in a report or to give it back to rework (law does not give him/her such a power). In last years the government places a report of the public prosecutor's office's activity on the agenda only for information (as a non-legislative material).

The Minister of Justice may anytime ask any Public Prosecutor´s Office to provide information on the proceeding state of each case the Public Prosecutor´s Office is engaged in, if such information is needed to fulfil objectives of the Ministry or if the Minister of Justice needs such information as a member of the Government (see the Act no. 283/1993 Coll., on Public Prosecutor's Office, as amended).

7bis. Is the interaction of prosecutor offices with courts, police, investigation authorities and other actors in criminal procedure based on the principle of prosecutorial independence and how?

The basic rule is that the public prosecutor is in performance of his/her position obliged to duly perform his/her duties, while respecting principles stipulated by the law for the Public Prosecutor´s Office activity; he/she is especially obliged to proceed professionally, thoroughly, duly, impartially and righteously without undue delay. He/she must refuse any external intervention or another influence, the result of which might be violating some of these duties.

In pre-trial criminal proceedings public prosecutor conducts supervision over police authority activity in pre-trial proceedings. Inter alia, he is entitled to give binding instructions to the police authority for the investigation of the criminal offence.

Even after filing an indictment, the public prosecutor may request the police authority to obtain evidence needed for representing the prosecution in trial proceedings (see the Act no. 141/1961 Coll., Criminal Procedure Code, as amended).

In pre-trial criminal proceedings a judge may influence an activity of public prosecutor, because he/she gives consent or issues order to some procedural actions. Despite of that public prosecutor is an independent leading authority in pre-trial proceedings; he/she is so called dominus litis (lord of proceedings).

In trial proceedings public prosecutor is an independent party of proceedings. He must observe above mentioned “basic rule”. The presiding judge may request to obtain other evidence that has not yet been gathered or produced.

8. Is there a Council of Prosecutors or a similar equivalent body which can be considered as a mechanism to monitor and ensure prosecutorial independence, including in the way in which the prosecution services operate?

There is not such an authority in the Czech Republic.

There is only the Union of Public Prosecutors (hereinafter as “the Union”), which is the voluntary, professional and non-political association of public prosecutors, interns and assistants of public prosecutors.

The purpose of the Union activities is to strengthen all principles and measures aimed at the maximum legality in the decision-making of prosecutors regardless any undue internal or external influences.

The Union informs the public about the public prosecutors and the Public Prosecutor´s Office activities to clarify the operation and importance of the activities of the public prosecutor within elimination of criminality and other tasks set by law.

9. How many of its members are elected by their peers, and does the prosecution policy or the debate within the judiciary produce any impact on the election of the members of the Council of Prosecutors?

The Union consists of sections which have at least 3 members.

Member of the Union may be public prosecutors, intern or assistant of public prosecutor of the Public Prosecutor´s Office of the Czech Republic.

The Executive Committee (výkonný výbor) decides on admission of new members (on the basis of the application). If the Executive Committee decides not to accept the application, Assembly of Section Representatives (Shromáždění zástupců sekcí) decides after then and this decision is final.

The supreme authority of the Union is the Assembly of Section Representatives. Each section may send a representative (1 for 12 members of one section).

The executive authority of the Union is Executive Committee which is elected by Assembly of Section Representatives.

The statutory authority of the Union is president, who is voted by Assembly of Section Representatives. The first and the second vice president are elected by Assembly of Section Representatives.

The Assembly of Section Representatives also elects the Control Commission and the Etic Commission [see the Code of Rules of the Union of the Public Prosecutors of the Czech Republic, available from (only in Czech): https://www.uniesz.cz/vnitrni-predpisy/stanovy/].

10. Who has the initiative of disciplinary proceedings?

The proposal on initiation of disciplinary proceedings of public prosecutor is entitled to file:
- the Minister of Justice and the Prosecutor General against every public prosecutor;
- high public prosecutor against public prosecutor of his high public prosecutor´s office, against public prosecutor of regional public prosecutor´s office and against public prosecutor of district public prosecutor´s office in his district;
- regional public prosecutor against public prosecutor of his regional public prosecutor´s office and against public prosecutor of district public prosecutor´s office in his district;
- district public prosecutor against public prosecutor of his district public prosecutor´s office;
- chief public prosecutor who is the head of public prosecutor's office, which was set as the place of performance of the public prosecutor's position of public prosecutor who was appointed to the position of European Delegated Prosecutor, against this public prosecutor.

11. Are prosecutors appointed for life or do they have to fulfil successive terms? Of how many years?

The Minister of Justice appoints public prosecutors for an indefinite period upon a proposal of the Prosecutor General. An indefinite period does not mean for life, but means that the period is not limited. If the position is not terminated by other legal reasons, it is terminated by the date of December 31 of the calendar year in which the public prosecutor achieved 70 years of age.

12. Are the rules regarding appointment, transfer, promotion and discipline of prosecutors similar to those of judges?

Yes, they are very similar. There is a difference in age – a citizen may be appointed the public prosecutor if he/she is over 25 years old on the day of appointment (the judge if he/she is over 30 years old on the day of appointment). In spite of the fact that a citizen may be appointed the

public prosecutor if he/she is over 25 years old on the day of appointment, factually it is not possible to appoint the public prosecutor a citizen under 27 years old on the day of appointment, because the graduation at law school is usually at the age of 24 and a citizen must then execute 36 months period of the training of interns.

13. May the government instruct the prosecution services, for instance, to prosecute or not to prosecute? Are instructions general or specific in nature? Are they given in writing? Can the prosecution challenge them?

The government has not such an option.

14. Are the instructions of superior prosecutors given in writing to those under their supervision? Can these instructions be challenged or refused?

The next closest superior Public Prosecutor´s Office is competent to perform supervision of procedures of next closest inferior Public Prosecutor's Offices in its jurisdiction in disposing of cases in their jurisdiction and issue written instructions for their procedures. It may also unify the next closest inferior Public Prosecutor's Offices´ procedures by instructions relating to more cases of a specific kind. The next closest inferior Public Prosecutor´s Office is obliged to follow these written instructions, excluding instructions in violation of law in a specific case. For such reason the next closest inferior Public Prosecutor´s Office may refuse to perform the instruction. In this case it shall notify the next closest superior Public Prosecutor´s Office of reasons for such refusal in writing without undue delay.

The chief public prosecutor is competent to supervise the procedure of public prosecutors and officers acting within the public prosecutor's office, the head of which the chief public prosecutor is, and instruct them on procedure in handling of cases in this Public Prosecutor´s Office jurisdiction. It may also unify the public prosecutors´ procedures by instructions relating to more cases of a specific kind. The chief public prosecutor may authorize another public prosecutor with performance of such powers or any of them. Public prosecutors are obliged to follow instructions of the chief public prosecutor or a public prosecutor authorized by him/her, excluding instructions in violation of law in a specific case. Providing the instruction was issued orally, the public prosecutor having issued such instruction shall confirm it in writing upon a request of the public prosecutor to whom is the instruction addressed. If the public prosecutor refuses to fulfil the instruction he/she shall immediately notify the public prosecutor that has issued such instruction of reasons for the refusal in writing (see the Act no. 283/1993 Coll., on Public Prosecutor's Office, as amended).

14bis What is the system of allocation, re-allocation and management of cases and is it based on objective and transparent criteria respecting the independence of prosecutors?

Cases are allocated to public prosecutors by chief public prosecutor of the public prosecutor´s office, whose head he/she is. Chief public prosecutor allocates cases in accordance with rules set in internal regulation ("measure"), which is issued by him/her. Under specific conditions set in this internal regulation, he may re-allocate the case from one public prosecutor to another.

15. Which are, if any, the main initiatives in terms of training to strengthen the awareness about the de facto dimension of the prosecutorial independence?

Professional training of public prosecutors, also in dimension of the prosecutorial independence, is secured especially by the Judicial Academy.

The Judicial Academy is an organizational unit of the state, which prepares and secure training events for, inter alia, judges and public prosecutors.

The Judicial Academy is an active member of the European Judicial Training Network (EJTN), it actively co-works with Academy of European Law and other judicial training institutions of the V4 countries. The Council of Europe is an important partner for the Judicial Academy through training program HELP (Human Rights Education for Legal Professionals). Since 1st June 2009 the Judicial Academy has made functional the automated system of login to its training events (ASJA system).

The Union of Public Prosecutors and the Constitutionally-legal Committee of the Senate held a conference in 2018 on the constitutional grounding of the Public Prosecutor's Office. It is an essential and still not solved topic, which affects the position and performance of tasks of the Public Prosecutor's Office in the Czech Republic.

15bis Is the concept of prosecutorial independence reflected in the code of ethics and professional conduct of prosecutors? If such code exists in your country, could you please inform how it was prepared and adopted, and provide its copy in English or French if available.

Yes, it is. The Code of Conduct of Public Prosecutor in its section 1 states: “Public prosecutor exercises public prosecutor’s office’s jurisdiction strictly according to law and his/her conscious, independently on other authorities and local, political, private or another influences and interests.”

The code of conduct is in the Czech available at: http://www.nsz.cz/index.php/cs/eticky-kodex-statniho-zastupce.

The Prosecutor General, high public prosecutors, regional chief public prosecutors and Municipal Chief Public Prosecutor issued the code of conduct on 16 April 2019 (in force from 1 May 2019) as a common measure (i. e. common internal regulation).

16. To what extent the media cover the decisions of international courts and treaty bodies as regards the practical independence of prosecutors?

Media, especially media focused on legal area, inform about the most important decisions of international courts and treaty bodies.

In 2019 media was generally informing about GRECO requirements in connection with an amendment to the Act on Public Prosecutor´s Office. The Ministry of Justice stated that the requirements of GRECO are one reasons to amend the Act. Afterward media was interested about the opinion of the Prosecutor General´s Office and its dissenting opinion to the amendment, which pointed out, that some changes may weak the Public Prosecutor’s Office, but not strengthen it. Media gave to the Prosecutor General some space to present his objections. The opposition in the Parliament and the public have perceived the question of independence of public prosecution very sensitively. This question has become one of the topics of some anti-government demonstrations. Non-profit non-governmental organization called “Reconstruction of the state” had drawn up some safeguards of the independence of the Public Prosecution´s Office and sent them to the Ministry of Justice.

17. To what extent the prosecutor offices interact with the broad public as regards the decisions of international courts and treaty bodies related to the practical independence of prosecutors?

The authorities involved in criminal proceedings (i. e. also public prosecutors) inform the public about their activities by providing information to news media. Under some circumstances (set by law) they have to refuse to provide information. Public prosecutors have no duty to inform the public about decisions of international courts and treaty bodies.

However in some cases public prosecutors interact with media and say them their opinions related to the decisions of international courts and treaty bodies (see the example above under the question no. 16).

Croatia / Croatie

1. What are the general official measures taken for reacting to and implementing the decisions of international courts and treaty monitoring bodies?

Courts make decisions based on the Constitution of the Republic of Croatia, international treaties, which are part of the legal order of the Republic of Croatia and laws and regulations adopted in accordance with the Constitution of the Republic of Croatia, international treaties and international law.

E.g.: "All judgments and decisions in ECHR v. Croatia cases are binding for the State."

2. Based on your answer to the 1st question, what are the measures taken particularly for the practical independence of the prosecution services and individual prosecutors? Can you give examples?

The independence of the prosecutor is guaranteed by constitution and law. Appointments, dismissals and disciplinary proceedings are fall under the competence of DOV (Državno-odvjetničko vijeće – State Attorneys Council), that makes decisions based on the vote of majority. The Council consists mostly of prosecutors.

3. Are these measures reflected in the law or in the prosecution policy or debate?

This is determined by the constitution and the law.

4. If yes, then were there any changes in the prosecution system as a consequence of such measures?

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5. Are there also national decisions of the Supreme or Constitutional Courts, or any other highest judicial body at national level, dealing with the question of independence of prosecutors?

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6. Does the prosecution system in your country belong to the judiciary?

Yes. This is defined by the Constitution and the State Attorney's Act.

7. Are prosecutors and prosecution services independent or autonomous from the executive and legislative branches of state power?

Yes. This is defined by the Constitution, the State Attorney's Act and Act on Courts.

8. Is there a Council of Prosecutors or a similar equivalent body which can be considered as a mechanism to monitor and ensure prosecutorial independence, including in the way in which the prosecution services operate?

Yes. State Attorney's Council.

9. How many of its members are elected by their peers, and does the prosecution policy or the debate within the judiciary produce any impact on the election of the members of the Council of Prosecutors?

The Council has eleven members: seven deputy state attorneys, two members of the Croatian Parliament, one of whom is from the opposition and two university law professors.

All State Attorneys and Deputy State Attorneys have the right to vote in the election for the members of the Council (DOV).

The DOV makes decisions by majority vote.

10. Who has the initiative of disciplinary proceedings?

The request for instituting proceedings for committing a disciplinary offense may be submitted by the immediately higher State Attorney, Attorney General of the Republic of Croatia or minister responsible for justice.

11. Are prosecutors appointed for life or do they have to fulfil successive terms? Of how many years?

Yes, the appointment is for life.

12. Are the rules regarding appointment, transfer, promotion and discipline of prosecutors similar to those of judges?

Yes, they are quite similar.

13. May the government instruct the prosecution services, for instance, to prosecute or not to prosecute? Are instructions general or specific in nature? Are they given in writing? Can the prosecution challenge them?

The government cannot or should not do so.

14. Are the instructions of superior prosecutors given in writing to those under their supervision? Can these instructions be challenged or refused?

14.1. They may be given in writing.

14.2. Yes.

15. Which are, if any, the main initiatives in terms of training to strengthen the awareness about the *de facto* dimension of the prosecutorial independence?

The question is unclear. If it concerns the State Attorney's system, then the answer is: regular education of all public prosecutors is conducted, and very often on the topic of public prosecutors independence. In addition, the public prosecutors independence is addressed at numerous international conferences attended by the public prosecutors, and then subsequently analysed at the State Attorney's Office.

16. To what extent the media cover the decisions of international courts and treaty bodies as regards the practical independence of prosecutors?
17. To what extent the prosecutor offices interact with the broad public as regards the decisions of international courts and treaty bodies related to the practical independence of prosecutors?

The question is unclear: The State Attorney's Office of the Republic of Croatia has its own spokespersons that communicates with the public whenever there is interest. Therefore, if there is such a decision, and the interest of the public or the interest of the State Attorney's Office, it will be subject to "such cooperation".

Finland / Finlande

1. What are the general official measures taken for reacting to and implementing the decisions of international courts and treaty monitoring bodies?
The decisions in general are disseminated to prosecutors using the Prosecution intranet. Should the decision be particularly important for a particular group of prosecutors, they are also informed by email. The independence is such a basic knowledge and deeply rooted to prosecutors that decisions concerning this topic have so far without a few exceptions not been disseminated.

2. Based on your answer to the 1st question, what are the measures taken particularly for the practical independence of the prosecution services and individual prosecutors? Can you give examples?
In the basic training of prosecutors (5 separate trainings of 3-5 days each) prosecutors' role and independence are a part of the training. (We are not quite sure we understood the question.)

3. Are these measures reflected in the law or in the prosecution policy or debate?
The constitution states the independence of the Prosecutor General. In the Act on National Prosecution Authority the independence is clearly stated (section 2) as follows: "The National Prosecution Authority is, independently and autonomously, responsible for organising the prosecutorial activities in Finland". Prosecutor General may not interfere with the prosecutor's handling of a criminal case, but he may take over a case from a subordinate prosecutor or designate a subordinate prosecutor to prosecute a case in which the Prosecutor General has decided that a charge is to be brought. In addition, the Prosecutor General may designate a subordinate prosecutor to consider charges (the Act section 11). This Act is in force since 1 October 2019. In the previous act prosecutors' independence was state in almost the same words.

4. If yes, then were there any changes in the prosecution system as a consequence of such measures?
No

5. Are there also national decisions of the Supreme or Constitutional Courts, or any other highest judicial body at national level, dealing with the question of independence of prosecutors?
No

6. Does the prosecution system in your country belong to the judiciary?
No, Prosecution Authority is separate.

7. Are prosecutors and prosecution services independent or autonomous from the executive and legislative branches of state power?
Yes

8. Is there a Council of Prosecutors or a similar equivalent body which can be considered as a mechanism to monitor and ensure prosecutorial independence, including in the way in which the prosecution services operate?
No

9. How many of its members are elected by their peers, and does the prosecution policy or the debate within the judiciary produce any impact on the election of the members of the Council of Prosecutors?

10. Who has the initiative of disciplinary proceedings?

In respect of other public officials of the National Prosecution Authority than the Prosecutor General and the Deputy Prosecutor General, the Office of the Prosecutor General decides on their dismissal, changing their public-service position into a part-time one, summary termination of their public-service employment relationship, their layoff, their suspension from office, and on issuing a warning to them. The information for which the disciplinary proceedings start may come to te Office of the Prosecutor General in various ways.

The decision to prosecute a prosecutor for a crime in office is made by the Chancellor of Justice.

11. Are prosecutors appointed for life or do they have to fulfil successive terms? Of how many years?
Prosecutors are mostly appointed for life. Only Chief District Prosecutors are appointed for a fixed term of five years (unless there are special reasons for appointing them for a shorter term). Also the task of deputies for the Chief District Prosecutors is for five years, but their appointment as prosecutor is for life.

12. Are the rules regarding appointment, transfer, promotion and discipline of prosecutors similar to those of judges?
No.

13. May the government instruct the prosecution services, for instance, to prosecute or not to prosecute? Are instructions general or specific in nature? Are they given in writing? Can the prosecution challenge them?
They may not with the exception of the prosecution of members of Government, Chancellor of Justice, his deputy, Ombudsman and his deputy for offences committed in office. In these cases the order to prosecute is given by the . Also prosecution of the President of the Republic for high treason or crime against humanity is ordered by the Parliament with majority of ¾ of the MPs. In these exceptional cases the Prosecutor General would herself/himself prosecute.

14. Are the instructions of superior prosecutors given in writing to those under their supervision? Can these instructions be challenged or refused?
Instructions how to prosecute in a particular case may not be given. General guidelines are given and they are always in writing. As they are only guidelines, they are not binding but rather issued to help the prosecutors in their work.

15. Which are, if any, the main initiatives in terms of training to strengthen the awareness about the de facto dimension of the prosecutorial independence?
Prosecutors seem to be very well aware of their independence. We have not felt the need to stress this in other ways except in the basic training.

16. To what extent the media cover the decisions of international courts and treaty bodies as regards the practical independence of prosecutors?
Only if Finnish people are involved in the cases and not always even then.

17. To what extent the prosecutor offices interact with the broad public as regards the decisions of international courts and treaty bodies related to the practical independence of prosecutors?
They don't.

MAIN QUESTION

Do you know about any judgments or decisions of the European Court of Human Rights or of the Court of Justice of the European Union, or of any other international court which refer to or in any way touch upon the independence (and preferably went on to highlight its elements):

a) of prosecutors;
b) of the judiciary or the justice system as a whole;
c) of judges.

If you know about any such judgments or decisions, the CCPE Bureau and the Working Group will be very grateful to you if you indicate their titles and also, if possible, the numbers of paragraphs or sections in these judgments and decisions where such references or indications are made. These judgments and decisions may concern any country, not only your country.

C-508/18, C-82/19, C-509/18 (all these given 27 May 2019) and C-627/19 (12.12.2019)

Questions

IN YOUR COUNTRY:

1. What are the general official measures taken for reacting to and implementing the decisions of international courts and treaty monitoring bodies?

2. Based on your answer to the 1st question, what are the measures taken particularly for the practical independence of the prosecution services and individual prosecutors? Can you give examples?

3. Are these measures reflected in the law or in the prosecution policy or debate?

4. If yes, then were there any changes in the prosecution system as a consequence of such measures?

5. Are there also national decisions of the Supreme or Constitutional Courts, or any other highest judicial body at national level, dealing with the question of independence of prosecutors?

6. Does the prosecution system in your country belong to the judiciary?

6bis Are there any parallels between the independence of judges and independence of prosecutors, or the latter is considered separately, if considered at all?
They are considered separately. The constitution states the independence of the Prosecutor General. In the Act on National Prosecution Authority the independence is clearly stated

(section 2) as follows: “The National Prosecution Authority is, independently and autonomously, responsible for organising the prosecutorial activities in Finland”.

7. Are prosecutors and prosecution services independent or autonomous from the executive and legislative branches of state power?

7bis Is the interaction of prosecutor offices with courts, police, investigation authorities and other actors in criminal procedure based on the principle of prosecutorial independence and how?
Yes. Prosecutors’ decisions may not be affected by other actors. This does not hinder a good cooperation with other actors.

8. Is there a Council of Prosecutors or a similar equivalent body which can be considered as a mechanism to monitor and ensure prosecutorial independence, including in the way in which the prosecution services operate?

9. How many of its members are elected by their peers, and does the prosecution policy or the debate within the judiciary produce any impact on the election of the members of the Council of Prosecutors?

10. Who has the initiative of disciplinary proceedings?

11. Are prosecutors appointed for life or do they have to fulfil successive terms? Of how many years?

12. Are the rules regarding appointment, transfer, promotion and discipline of prosecutors similar to those of judges?

13. May the government instruct the prosecution services, for instance, to prosecute or not to prosecute? Are instructions general or specific in nature? Are they given in writing? Can the prosecution challenge them?

14. Are the instructions of superior prosecutors given in writing to those under their supervision? Can these instructions be challenged or refused?

14bis What is the system of allocation, re-allocation and management of cases and is it based on objective and transparent criteria respecting the independence of prosecutors?
While allocating, the cases are allocated in a manner where prosecutors will have the same amount of work. Some cases, depending on the specialization skills needed and how demanding the case is, are allocated to special prosecutors. Special prosecutors prosecute the most demanding cases irrespective of their geographical location. Other prosecutors are given mostly cases in their own district. Re-allocation or a case migh happen because of a longer vacation or illness. Also, is PG has repealed the decision (to not prosecute, in most cases) of a district prosecutor the head of the district is asked to allocate the case to another prosecutors. Sometimes the suspects wish to get rid of a certain prosecutor and make a complaint to PG. These hardly ever lead to re-allocation of a case. The independence of prosecutors are respected.

15. Which are, if any, the main initiatives in terms of training to strengthen the awareness about the de facto dimension of the prosecutorial independence?

15bis Is the concept of prosecutorial independence reflected in the code of ethics and professional conduct of prosecutors? If such code exists in your country, could you please inform how it was prepared and adopted, and provide its copy in English or French if available.
Please, find attached the ethical code of the National Prosecution Authority of Finland. The code was drafted by a working group led by a State Prosecutor (the current PG) and four other prosecutors from different local and national prosecution offices. The code was then confirmed by the PG of the time and distributed to the personnel.

16. To what extent the media cover the decisions of international courts and treaty bodies as regards the practical independence of prosecutors?

17. To what extent the prosecutor offices interact with the broad public as regards the decisions of international courts and treaty bodies related to the practical independence of prosecutors?

Hungary / Hongrie

1. What are the general official measures taken for reacting to and implementing the decisions of international courts and treaty monitoring bodies?

In accordance with the Hungarian Criminal Procedure Code, if the European Court of Human Rights (ECHR) establishes the violation of the Convention for the Protection of Human Rights and Fundamental Freedoms, done at Rome, 4 November 1950 or one of its Amendments, in connection with a final decision of a criminal case, an application for review may be submitted, which the Prosecutor General lodges ex officio.

The performance of this task makes it necessary to continuously keep track the ECHR decisions.

Until now, decisions of the Court of Justice of the European Union have not demanded any application for extraordinary remedies, however, due to violation of EU law established by the Court, the case law was restructured and the Prosecution Service issued guidelines.

During its visit in 1994, the Council of Europe's European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) called on the Hungarian authorities to encourage regular visits and surveillance of places of detention within its territorial jurisdiction (CPT/ inf (96) 5).

Upon the call of the CPT, a circular was issued on the implementation of their recommendations for the Prosecution Service.

2. Based on your answer to the 1st question, what are the measures taken particularly for the practical independence of the prosecution services and individual prosecutors? Can you give examples?

3. Are these measures reflected in the law or in the prosecution policy or debate?

4. If yes, then were there any changes in the prosecution system as a consequence of such measures?

Answers to Questions 2-4. include the following:

The Group of States against Corruption (GRECO) have adopted its Compliance Report of Fourth Evaluation Round on Hungary, which made five recommendations concerning the Hungarian Prosecution Service. GRECO's evaluation report expressed its concern that the removal of cases from a prosecutor to another may pose a risk of corruption. Therefore, it addressed recommendation XV to the Prosecution Service suggesting "*that the removal of cases from subordinate prosecutors be guided by strict criteria and that such decisions are to be justified in writing*".

In accordance with GRECO's recommendation if a case in the field of criminal or non-criminal law is removed or reassigned from one prosecutor to another, a brief justification of the removal or reassignment shall be recorded among the documents of the case.

In its Opinion CDL-AD(2012)008 adopted at its 91st Plenary Session in 2012 the Venice Commission made remarks about disciplinary proceedings. The Venice Commission concluded that disciplinary measures should not be decided only by the superior who is in a position of both accuser and judge. A prosecutorial council would be more appropriate for deciding disciplinary cases. The Venice Commission primarily deemed it necessary to refine disciplinary proceedings in that the fact-finding and decision-making roles during the proceedings should be separated.

Recommendation XVII of GRECO's fourth evaluation round report suggested that disciplinary proceedings in respect of prosecutors be handled outside the immediate hierarchical structure of the Prosecution Service and in a way that provides for enhanced accountability and transparency.

Accordingly, in order to safeguard adequate investigation of disciplinary breaches, it is compulsory for the person exercising disciplinary power to appoint a disciplinary commissioner in each disciplinary case.

5. Are there also national decisions of the Supreme or Constitutional Courts, or any other highest judicial body at national level, dealing with the question of independence of prosecutors?

The Constitution of Hungary (see: Fundamental Law of Hungary) guarantees the independence of the Hungarian Prosecution Service.

The Constitutional Court set forth criteria regarding the independence of the Hungarian Prosecution Service. Several decisions of the Constitutional Court dealt with the constitutional status of the Hungarian Prosecution Service. Case law of the European Court of Human Rights, opinions of the European Commission of Human Rights and the set of principles promoted by the "Rome Charter" of CCPE are also present in the case law of the Constitutional Court.

The case law of the Constitutional Court consistently declares that the Hungarian Prosecution Service is independent and is only subordinated to laws of Hungary. In a constitutional law sense the Prosecutor General of Hungary is not politically accountable to Parliament. The Prosecutor General is not subordinated to any other bodies, and in this way he/she is not subordinated to Parliament, either. It follows from all this that the Prosecution Service and the Prosecutor General shall abide by the Fundamental Law and other laws of Hungary.

The Constitutional Court ruled that the Prosecutor General heads the Prosecution Service, which is an organization subordinated to him/her, in a professional and not in a political sense.

As far as the case law of the Hungarian Supreme Court (i.e. The Curia) is concerned, this issue has been raised in connection with individual cases, with reference to the case law of the Constitutional Court.

6. Does the prosecution system in your country belong to the judiciary?

The Prosecutor General and the Prosecution Service are independent, shall contribute to the administration of justice by exclusively enforcing the State's demand for punishment as public accuser.

7. Are prosecutors and prosecution services independent or autonomous from the executive and legislative branches of state power?

The Prosecutor General and the Prosecution Service are independent. The Prosecutor General, however, shall report to Parliament annually on his or her activity.

8. Is there a Council of Prosecutors or a similar equivalent body which can be considered as a mechanism to monitor and ensure prosecutorial independence, including in the way in which the prosecution services operate?

Every level of the Prosecution Service has a prosecutors' council. The prosecutors' council shall state its opinion with respect to the appointment (promotion) and exemption of prosecutors, 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 required under Act CLXVI of 2011 "on the Status of the Prosecutor General, Prosecutors and Other Prosecution Employees and the Prosecution Career" or by the Prosecutor General.

9. How many of its members are elected by their peers, and does the prosecution policy or the debate within the judiciary produce any impact on the election of the members of the Council of Prosecutors?

Members of the prosecutors' council are elected by an individual decision of the prosecutors' convention attended by all prosecutors of the respective prosecution office.

10. Who has the initiative of disciplinary proceedings?

A disciplinary proceeding is ordered by a person exercising disciplinary power. In practice, however, the direct superior or the superior of the person exercising disciplinary power may also initiate disciplinary proceedings to the person exercising disciplinary power if a disciplinary breach comes to the formers' knowledge. Nevertheless, it is compulsory to conduct a disciplinary proceeding only if a criminal proceeding for a deliberate crime has been instituted against a prosecutor, excluding proceedings instituted by a private prosecutor or a supplementary private prosecutor.

11. Are prosecutors appointed for life or do they have to fulfil successive terms? Of how many years?

Prosecutors are appointed for three years for the first time, and afterwards, for an indefinite term. If a prosecutor appointed for a fixed term requests his/her appointment for an indefinite term and his/her actual time or working as a prosecutor exceeds 18 months, the person exercising the employer's rights shall evaluate the prosecutor. Considering the result of the evaluation and if finding the prosecutor suitable, the Prosecutor General shall appoint the prosecutor for an indefinite term effective as of the day following the expiry of the term of the first prosecution appointment. The work of prosecutors appointed for an indefinite term is also evaluated every 8 years, and if prosecutors are assessed as unsuitable, their employment shall be terminated.

In some exceptional cases a prosecutor's first appointment shall be for an indefinite term if, for example, prior to his/her appointment, the prosecutor worked earlier as a prosecutor, a judge of the Constitutional Court, a judge etc. or acquired outstanding theoretical legal expertise in the area of academic studies or education for at least three years.

12. Are the rules regarding appointment, transfer, promotion and discipline of prosecutors similar to those of judges?

Yes, several aspects show similarities, including the following, for example:
- rules and provisions concerning the secondment of prosecutors and judges;
- rules concerning the impartiality, independence and conflict of interest of prosecutors and judges;
- the definition of disciplinary breaches and the nature of disciplinary sanctions.

13. May the government instruct the prosecution services, for instance, to prosecute or not to prosecute? Are instructions general or specific in nature? Are they given in writing? Can the prosecution challenge them?

The Prosecutor General and the Prosecution Service are independent constitutional organs only subordinated to legislation. The Prosecutor General shall not be instructed either directly or indirectly to make or change an individual decision of a specific content. The rights and obligations of a prosecutor relating to prosecutorial activities shall be defined only in an Act of Parliament.

14. Are the instructions of superior prosecutors given in writing to those under their supervision? Can these instructions be challenged or refused?

Superior prosecutors may issue instructions for subordinate prosecutors, reserve the right to take over any case from them, or may appoint another subordinate prosecutor to act in a given case. The Hungarian Prosecution Service is headed and directed by the Prosecutor General, and activities of the Hungarian Prosecution Service are regulated by orders which contain rules applicable only to the Hungarian Prosecution Service. The Prosecutor General and superior prosecutors may issue a set of internal rules for governing purposes in writing. When applying law it is important for prosecutors to present the same view or position and to promote the development of uniform practice of application of law. For this reason, superior prosecution offices issue numerous, generally applicable guidelines, which are always issued in writing. Prosecutors carry out their tasks and activities in subordination of the Prosecutor General; only the Prosecutor General and their superior prosecutors may issue instructions for them, and prosecutors shall comply with those instructions. Upon the prosecutor's request the instruction shall be committed to writing. Until this is done, the prosecutor is not obliged to comply with the instruction, unless it requires taking urgent measures.

The prosecutor shall refuse to comply with the instruction if, by complying therewith, he/she would commit a crime or a minor offence. The prosecutor may refuse to comply with an instruction if compliance therewith would directly and grossly endanger his/her life, health or physical state. If the prosecutor finds the instruction incompatible with law or his/her legal conviction, he/she may request his/her exemption in writing from handling the matter by explaining his legal reasoning. Such a request may not be refused; should that aforementioned occur, another prosecutor shall be entrusted with handling the matter, or the superior prosecutor may take the matter over into his/her own competence. If compliance with the 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.

15. Which are, if any, the main initiatives in terms of training to strengthen the awareness about the *de facto* dimension of the prosecutorial independence?

Knowledge on the independence and impartiality of prosecutors is included in the basic training courses and in the trainees' training in the training system of the Prosecution Service, which is compulsory for all trainees of the Prosecution Service. The topic of the course titled *Basic knowledge of the prosecutor II* includes the materials of the lectures: "The prosecution service relationship; The fundamental rights and obligations of the prosecutor".

16. To what extent the media cover the decisions of international courts and treaty bodies as regards the practical independence of prosecutors?

The judgement of the European Court of Justice in 2012 on lowering the retirement age and compulsory retirement of Hungarian judges, prosecutors and notaries was a leading news item in the domestic press. Similarly, the media closely follow up the decisions (judgements) of the Court of Justice of the European Union in connection with Polish justice. Ruling of the Court of Justice of the European Union that German prosecutors could not issue European arrest warrants has also appeared in the media. Decisions of the European Court of Human Rights on the imprisonment of Turkish judges, prosecutors and lawyers have received strong press coverage in Hungary as well.

17. To what extent the prosecutor offices interact with the broad public as regards the decisions of international courts and treaty bodies related to the practical independence of prosecutors?

In the Hungarian Prosecution Service, giving information on non-specific cases concerning the Prosecution Service as a whole falls within the competence of the Prosecutor General, the Deputy Prosecutors General, or based on a mandate, the spokesperson for the Office of the Prosecutor General. The Office of the Prosecutor General published the "Budapest Guidelines", the European Guidelines on Ethics and Conduct for Public Prosecutors, on the official website of the Prosecution Service. The Prosecutor General's Recommendation of 2014 on the Code of Ethics and Standards of Prosecutors' Professional Conduct was formed in accordance with the "Budapest Guidelines", Rec(2000)19 of the Council of Europe Committee of Ministers on the role of public prosecution in the criminal justice system and with Draft Opinion No 9 (2014) of the Workgroup of the Consultative Council of the European Prosecutors reviewing the Recommendation. The Prosecutor General's Recommendation is also available on the official website of the Prosecution Service.

MAIN QUESTION

Do you know about any judgments or decisions of the European Court of Human Rights or of the Court of Justice of the European Union, or of any other international court which refer to or in any way touch upon the independence (and preferably went on to highlight its elements):

a) of prosecutors;
b) of the judiciary or the justice system as a whole;
c) of judges.

If you know about any such judgments or decisions, the CCPE Bureau and the Working Group will be very grateful to you if you indicate their titles and also, if possible, the numbers of paragraphs or sections in these judgments and decisions where such references or indications are made. These judgments and decisions may concern any country, not only your country.

European Case-law on the Independence of Courts and Tribunals, Judges and Prosecutors

I. ECtHR and CJEU case-law on courts, tribunals and judges

a) European Court of Human Rights (ECtHR)

Findlay v. the United Kingdom, 25 February 1997, §§ 73 and 77, Reports of Judgments and Decisions 1997-I (independence and impartiality are closely linked concepts; a binding decision which cannot be altered by a non-judicial authority)

Moiseyev v. Russia, no. 62936/00, §§ 175-185 9 October 2008 (no clear distinction between independence and objective impartiality; the procedure of appointing judges to sit on the bench in a particular case, composition of a court modified)

Parlov-Tkalčić v. Croatia, no. 24810/06, § 86, 22 December 2009 (independence generally relates to the structure of a tribunal; independence of a court president)

Clarke v. the United Kingdom (dec.), 23695/02, 25 August, 2005 (procedural safeguards to separate the judiciary from other powers, especially the executive)

Campbell and Fell v. the United Kingdom, 28 June 1984, §§ 78-79 and 81, Series A no. 80 (factors to consider are the manner of appointment of the members of the tribunal and the duration of their term of office, the existence of guarantees against outside pressures; appointment by the executive is no problem; appearance is not decisive)

Le Compte, Van Leuven and De Meyere v. Belgium, 23 June 1981, § 57, Series A no. 43 (legally qualified members of tribunal)

Maktouf and Damjanović v. Bosnia and Herzegovina [GC], nos. 2312/08 and 34179/08, §§ 4853, ECHR 2013 (international judges involved in national court proceedings)

Ringeisen v. Austria, 16 July 1971, § 95, Series A no. 13 (independence from the executive and the parties, land tribunal involving civil servants under statutory obligation to act independently)

Beaumartin v. France, 24 November 1994, § 38, Series A no. 296-B Beaumartin v. France, 24 November 1994, § 38, Series A no. 296-B (no instructions from the executive)

Sramek v. Austria, 22 October 1984, Series A no. 84; Zand v. Austria (dec.), no. 7360/76, 16 May 1977 (government's influence)

DRAFT - OVA a.s. v. Slovakia, no. 72493/10, §§ 80-86, 9 June 2015 (no interference with the final, binding judgment)

Henryk Urban and Ryszard Urban v. Poland, no. 23614/08, §§ 47-56, 30 November 2010 (guarantees against removal during term; correction role of the appeal court)

Fruni v. Slovakia, no. 8014/07, § 141, 21 June 2011 (doubts must be objectively justified) Belilos v. Switzerland, 29 April 1988, §§ 66-67, Series A no. 132 (independence of a "Police Board", appearances must be objectively justified)

Miroshnik v. Ukraine, no. 75804/01, 27 November 2008 (Military tribunal where judges were appointed by the defendant Ministry of Defence, and were dependent financially on it)

Procola v. Luxembourg, 28 September 1995, Series A no. 326; Kleyn and Others v. the Netherlands [GC], nos. 39343/98 and 3 others, ECHR 2003-VI (mixed advisory and judicial roles) 190-194.

McGonnell v. the United Kingdom, no. 28488/95, ECHR 2000-II (mixed parliamentary and judicial functions)

Langborger v. Sweden, 22 June 1989, § 35, Series A no. 155 (interest of lay assessors)

Pullar v. the United Kingdom, 10 June 1996, § 32
Ninn-Hansen v. Denmark, 18 May 1999
Kyprianou v. Cyprus, no. 73797/01, § 118-121
Sacilor-Lormines v. France, no. 65411/01, § 59-63
Micallef v. Malta, no. 17056/06, § 93-99
Morice v. France, no. 29369/10, § 73-78
Thiam v. France 18 October 2018, § 77-82
Ramos Nunes de Carvalho e Sá v. Portugal, 6 November 2018, § 144-152 Guðmundur Andri Ástráðsson v. Iceland, nr. 26374/18, 122-123.
Miracle Europe Kft. v. Hungary, 57774/13. nr. § 53. – 59.

ComËme and others v. Belgium (32492/96, 32547/96, 32548/96, 33209/96 és 33210/96) – C. 120., 122.

Harabin v. Slovakia, § 133.
Oleksandr Volkov v. Ukraine, § 109.
Denisov v. Ukraine [GC], § 68–70.
b) Court of Justice of the European Union (CJEU)
1. ECJ judgments on the independency of judges, courts and tribunals
C-54/96. Dorsch Consult 35-36
C-407/98. Abrahamsson and Anderson 36-37
C-175/11. D. and A. 95-97
C-58/13. and C-59/13. Torresi 21-25
C-222/13. TDC 29-37
C-203/14. Consorci Sanitari del Maresme 19-21
C-503/15. Margarit Panicello 37-38

C-585/18., C-624/18. and C-625/18. A.K. and others 114-153 C-619/18. Commission v. Poland 42-59., 71-77., 108-112.
C-64/16, Associação Sindical dos Juízes Portugueses v. Tribunal de Contas, 27 February 2018, § 41-45 (independence of judges is essential to guarantee the right to effective judicial protection in the fields covered by EU law)

C-49/18. the High Court of Justice, Catalonia reffered the question to the European Court of Justice is the salary reductions of judges infringe the general principle of judicial independence. Parts of the judgement concerning judicial independence: [61]-[74].

C-216/18 PPU, Minister for Justice and Equality (LM), 25 July 2018, § 51-78 (deficiencies in the system of justice) ECJ judgment on the independency of the judicial system

C-619/18, Commission v. Poland (newly-set retirement age for Polish Supreme Court judges)

C-24/92, Pierre Corbiau v. Administration des contributions, 30 March 1993, § 15 (third party decision-making)

C-506/04, Graham J. Wilson v. Ordre des avocats du barreau de Luxembourg, 19 September 2006, §§ 47-53 (aspects of independence)

C-103/97, Josef Köllensperger GmbH & Co. KG and Atzwanger AG v. Gemeindeverband Bezirkskrankenhaus Schwaz, 4 February 1999, § 21-25 (external pressure)

C-286/12, Comission v. Hungary (06 Nov 2012) national sheme requiring compulsory retirement of judges

C-192/18 Comission v. Poland (05 Nov 2019) – principles of the irremorability of judges and judicial independence (lowering of the retirement age of judges of the ordinary Polish courts)

2. ECJ judgments on the independency of prosecutors
C-508/18 and C-82/19 OG and PI 71-74

C-509/18. PF 46-57 In case C-509/18 the Court, however, considered the Lithuanian prosecutors independent, because their constitution grants total independence from executive powers.
Joint cases C-508/18. and C-82/19 of the European Court dealt with the independence of the German prosecutor's office. The Court found the said prosecutor's office not completely independent as even though it extremely rarely happens in practice, the prosecutor general may be given a direct order from the state government in any individual case. Therefore, so the court concluded, political influence on a particular case may not be completely excluded.

C-453/16 PPU (Özcelik), the Court also found the Hungarian prosecutor's office independent from the government.

C-551/15 Pula Parking paragraphs 45-50 and - In this case and in the cited case-law the Curia defines the difference between courts and public notaries and the judicial and notarial functions.

II. ECtHR Case-law on prosecutors

Priebke v. Italy (dec.), no. 48799/99, § 1b, 5 April 2001 (the prosecutor is a party to the criminal court proceedings and not a tribunal)

Daktaras v. Lithuania, no. 42095/98, §§ 44-45, ECHR 2000-X (no obligation for a prosecutor to be independent; statements by a prosecutor)

Craxi v. Italy, no. 34896/97, § 105, 5 December 2002 (statements by a prosecutor)

Khuzhin and Others v. Russia, no. 13470/02, §§ 95-96, 23 October 2008 (statements by highranking prosecution officials)

6bis Are there any parallels between the independence of judges and independence of prosecutors, or the latter is considered separately, if considered at all?

According to the Hungarian Fundamental Law, judges are independent and subject only to Acts, and cannot be instructed in relation to their judicial activities. With regard to the Prosecution Service, the Fundamental Law provides that the Prosecutor General and the Prosecution Service are independent.

Judges and lay judges are independent, and based on the relevant legal provisions they decide according to their own conviction, and the President of the National Office for the Judiciary is obliged to carry out the central functions of the administration of courts, while safeguarding the constitutional principle of independence of judges.

Judges are independent in the performance of their judicial duties and shall at the same time be granted immunity equal to the Members of the Parliament. The law also lays down rules on the conflict of interest of judges, excluding the possibility of being a member of a political party or being engaged in political activities at national or local level, and it also provides for broad bans on holding positions in business organisations.
In order to ensure the impartial enforcement of fundamental rights and obligations and the integrity of public life, and in order to prevent corruption, judges are required to file a financial disclosure statement, their remuneration is commensurate with the dignity of their profession and with the gravity of their responsibilities, thereby guaranteeing their independence.

The Prosecutor General may not, directly or indirectly, be instructed to make or alter any individual decision with a particular content. Similarly to the rules applying to judges the Hungarian Fundamental Law guarantees the Prosecutor General and prosecutors the same immunity as enjoyed by the Members of Parliament.

Prosecutors have to face strict ethical standards. Accordingly, prosecutors may not be members of any organization that engages in unlawful activity, they are obliged to declare bias in all matters of personal interest, and may not solicit or accept gifts, donations or other advantages in connection with their activities and must conduct themselves in private life in a manner that reflects the dignity of their profession.

As opposed to the independence of judges, Acts relating to the Prosecution Service reveal a significant difference as far as independence is concerned, stating that prosecutors are subordinate to the Prosecutor General and instructed only by the Prosecutor General and their

superior prosecutors and, furthermore, when stating that prosecutors have to comply with the instructions of the Prosecutor General or their respective superior prosecutor.

The conflict of interest of prosecutors is determined by law in the same way as the conflict of interest of judges, and prosecutors are entitled to a remuneration according to the dignity of their profession and the gravity of their responsibility.

Prosecutors are also obliged to file a financial disclosure statement.

In conclusion, many guarantees of independence for both judges and prosecutors have been enshrined in the Fundamental Law and in the laws on their status. Many of these statutory guarantees, through immunity, rules concerning conflict of interest and remuneration, and the obligation of filing a financial disclosure statement, ensure the exercise of independence in the same way for prosecutors and judges. However, there is an essential difference in the content of the two professions' independence. While judges make their decisions only in accordance with the law and their own conscience, prosecutors perform their duties in a strict hierarchical structure, always following the instructions of the Prosecutor General and their superior prosecutor as well as the rules governing the execution of these instructions.

7bis Is the interaction of prosecutor offices with courts, police, investigation authorities and other actors in criminal procedure based on the principle of prosecutorial independence and how?

The Prosecutor General and the Prosecution Service are independent, shall contribute to the administration of justice by exclusively enforcing the State’s demand for punishment as public accuser. The Hungarian Prosecution Service is headed and directed by the Prosecutor General. The Prosecutor General shall not be instructed either directly or indirectly to make or change an individual decision of a specific content.

The Prosecution Service supervises that investigation authorities conduct the preparatory proceedings and their investigations in compliance with provisions of law, and in the course of the criminal investigation it directs that part of the investigation which is carried out under a prosecutor’s supervision. The Prosecution Service decides about requests seeking legal remedy that are submitted in the course of criminal proceedings and fall within its responsibilities.
The Prosecutor General may take over the investigation of crimes from any investigation authority and assign it to the competence of the Prosecution Service, and in the course of the prosecutorial investigation of cases and during preparatory proceedings he may involve the assistance of any investigation authority. In order to fight crime the Prosecution Service may propose coordinated measures to the investigation authorities and other concerned bodies. For purposes of secret information gathering the Prosecution Service may use tools that are subject and ones that are not subject to judicial authorization.

The Prosecution Service prosecutes criminal cases at trials and may make certain decisions with regard to the charges. Prior to court decisions it may make proposals in all issues relating to cases; it may exercise rights of appeal and legal remedy guaranteed by the Hungarian Criminal Procedure Code. The Prosecutor General may file petitions to the Curia (Supreme Court of Hungary) for review or for legality review against final decisions of courts delivered in criminal cases.

In addition, the Prosecution Service also exercises supervision over the legality of the execution of punishments.

Prosecutors exercise their discretionary power in an impartial, fair way, in compliance with the law and without any external influence.
Everyone shall ensure for prosecutors the unhindered exercise of their rights guaranteed by law. When prosecutors exercise the right to issue instructions, the instructed bodies shall comply with the instructions. When carrying out their tasks and exercising their power, prosecutors may have access to and consult procedural documents and records of courts and out of court bodies applying law without any restrictions. Prosecutors may request authorities and bodies to provide data and documents, and the requested authorities and bodies shall comply with prosecutors' requests. While taking prosecutorial actions, prosecutors may enter the areas and premises that are controlled by the bodies and persons affected by the procedural actions.

Prosecutors cooperate and interact with courts, investigation authorities and other bodies at national and international level to prosecute crimes in a fair and effective way, to prevent violations of law, to ensure legality and to protect human rights.

The principle of prosecutorial independence prevails in the cooperation, interaction and relation of the Prosecution Service with other actors of the criminal procedure.

14bis What is the system of allocation, re-allocation and management of cases and is it based on objective and transparent criteria respecting the independence of prosecutors?

The Prosecution Service carries out its tasks in a hierarchically structured organization which makes it possible to identify which prosecutorial employee is responsible for a particular decision. In other words, similarly to other prosecution services in Europe the Hungarian Prosecution Service has a hierarchical organization. In such organizations it is part of the general case management that superior prosecutors assign cases to prosecutors and remove cases from one prosecutor to another.
The right to lawful prosecutor, which would be similar to the right to lawful judge, is not a guaranteed right. Unlike in the case of courts, head prosecutors exercise the right to sign and issue documents about final prosecutorial decisions, and they shall bear responsibility for them. Subordinated prosecutors only prepare these decisions. Head prosecutors bear the responsibility for the content of prosecutorial decisions and for ensuring the appropriate, lawful and timely operation of a particular organizational unit. In this way, it is a question of management who prepares a particular decision, because even in case of much workload, or when someone is on holiday or on sick leave, the continuity of case management shall be guaranteed. In addition to this, subordinated prosecutors may request that a case should be removed from a prosecutor to another at any time.
The Hungarian Criminal Procedure Code specifies cases when a prosecutor shall be excluded from a criminal procedure. These provisions shall also apply to the allocation, re-allocation of cases.

Formal written requirements are followed when cases are assigned to prosecutors, which are always recorded on and made part of case documents.
The electronic case management system operating in the Prosecution Service also separately documents the assignment of cases, thus the assignment of cases can be tracked and is transparent.

When a case is removed or re-allocated from a prosecutor to another, its reason must also be briefly recorded.

As far as the assignment and removal/re-allocation of cases are concerned, the laws in force and internal regulations, taking the hierarchical organization of the Prosecution Service into consideration, also comply with rule of law standards.

15bis Is the concept of prosecutorial independence reflected in the code of ethics and professional conduct of prosecutors? If such code exists in your country, could you please inform how it was prepared and adopted, and provide its copy in English or French if available.

The Meeting of Head Prosecutors held by the Hungarian Prosecution Service on 3 December 2014 adopted the Recommendation of the Prosecutor General on the Code of Ethics and Standards of Prosecutors' Professional Conduct. The Code of Conduct was based on Recommendation (Rec (2000) 19) of the Committee of Ministers of the Council of Europe on the role of public prosecution in the criminal justice system and on the Draft Opinion of the Working Group of the CCPE-GT number 9 (2014) on European norms and principles concerning prosecutors and on the European Guidelines on the Ethics and Conduct of Public Prosecutors, the Budapest Guidelines (CPGE (2005) 05). The Recommendation on the Code of Ethics and Standards was published in issue No 12/LXII of the Prosecution Service Gazette.

The Recommendation on the Code of Ethics and Standards states, amongst its basic obligations, that public prosecutors are to carry out their duties at all times and under all circumstances, including their obligation to take action, in accordance with the relevant national and international law; they must perform their tasks impartially, consistently, effectively and in a timely manner. They must be aware that they act on behalf of the state and in the public interest; they must, within the framework of legislation, strive to strike a balance between the general interest of society and the interests and rights of individuals. Public prosecutors must always act according to professional rules, with fairness and utmost care, they have to perform their duties free from external influence, and without fear, bias (favour) and prejudice; they must not be influenced by individual or group interests or by pressure from the public opinion and the media.

According to ethical standards, public prosecutors must also take into account that during their procedures they should not only be impartial and consistent but they even have to show these qualities by their conduct; they have to refrain from engaging in any political activity that is incompatible with the requirement of impartiality; they may exercise freedom of expression and the right to freedom of association in a manner that is compatible with their duties and which does not affect or does not appear to influence the independence or impartiality of the Prosecution Service. They must also deal with the media in a manner that is compatible with their office and their conduct must not compromise the independence and impartiality of the Prosecution Service.

According to the Recommendation on the Code of Ethics and Standards it cannot be allowed that prosecutors' own or their families' personal or financial interests, or their social or other relationships influence the official procedure of public prosecutors. In particular, public prosecutors should not act in cases in which they, their families or business associates have a private or financial interest, or they maintain private or financial relations or personal contacts with the persons involved in the case. Public prosecutors shall not undertake or commit themselves to any tasks or cases, nor shall they apply for any paid or unpaid functions or

positions which are incompatible with their office or reduce their capacity to appropriately perform their own duties.
Public prosecutors in their private conduct shall not compromise the actual or the reasonably perceived integrity, fairness and impartiality of the Prosecution Service; they shall not use any information to which they have had access in the course of their employment to further unjustifiably their own private interests or those of others.

The Recommendation on the Code of Ethics and Standards prescribes that public prosecutors shall not accept any gifts, prizes, benefits, inducements or promises of these, concerning their office, furthermore, they have to refuse any privileges given or promised for third persons referring to them; in addition, they shall not engage in any activity that may endanger their integrity or fairness and, to the extent possible, avoid foreseeable life situations and manifestations that would cause them to seem to be in such a conduct.

The ethical standards reflect the principle of public prosecutors' independence in several respects.

Iceland / Islande

MAIN QUESTION

Do you know about any judgments or decisions of the European Court of Human Rights or of the Court of Justice of the European Union, or of any other international court which refer to or in any way touch upon the independence (and preferably went on to highlight its elements):

a) of prosecutors; No
b) of the judiciary or the justice system as a whole; NO
c) of judges.
https://hudoc.echr.coe.int/eng#{"fulltext":["guðmundur"],"documentcollectionid2":["GRANDCHAMBER","CHAMBER"],"itemid":["001-191701"]} (Application no. 26374/18) Guðmundur Andri Ástráðsson v. Iceland
Paragraphs no. 104-122.
Waiting for judgement in Grand Chamber later this year.

If you know about any such judgments or decisions, the CCPE Bureau and the Working Group will be very grateful to you if you indicate their titles and also, if possible, the numbers of paragraphs or sections in these judgments and decisions where such references or indications are made. These judgments and decisions may concern any country, not only your country.

Questions

IN YOUR COUNTRY:

1. What are the general official measures taken for reacting to and implementing the decisions of international courts and treaty monitoring bodies?
a. Iceland honors any such finding according to the decisions.

2. Based on your answer to the 1st question, what are the measures taken particularly for the practical independence of the prosecution services and individual prosecutors? Can you give examples?
a. No measures in place. No examples.

3. Are these measures reflected in the law or in the prosecution policy or debate?
a. No

4. If yes, then were there any changes in the prosecution system as a consequence of such measures?

5. Are there also national decisions of the Supreme or Constitutional Courts, or any other highest judicial body at national level, dealing with the question of independence of prosecutors?
a. No

6. Does the prosecution system in your country belong to the judiciary?
a. No

6bis Are there any parallels between the independence of judges and independence of prosecutors, or the latter is considered separately, if considered at all?
a. Yes there is, but the independence of judges is manifested in the constitution but not that of prosecutors. The independence of prosecutors is regarded as a legal fact but not as well protected.

7. Are prosecutors and prosecution services independent or autonomous from the executive and legislative branches of state power?
a. Yes

7bis Is the interaction of prosecutor offices with courts, police, investigation authorities and other actors in criminal procedure based on the principle of prosecutorial independence and how?
a. Yes. Stated in Act on Criminal Procedure.

8. Is there a Council of Prosecutors or a similar equivalent body which can be considered as a mechanism to monitor and ensure prosecutorial independence, including in the way in which the prosecution services operate?
a. No

9. How many of its members are elected by their peers, and does the prosecution policy or the debate within the judiciary produce any impact on the election of the members of the Council of Prosecutors?
a. There is no Council of Prosecutors in Iceland.

10. Who has the initiative of disciplinary proceedings?
a. Superior prosecutor, head of unit.

11. Are prosecutors appointed for life or do they have to fulfil successive terms? Of how many years?
a. The DPP, deputy DPP, district prosecutor and the deputy district prosecutor are appointed for life the rest for 5 year in a row.

12. Are the rules regarding appointment, transfer, promotion and discipline of prosecutors similar to those of judges?
a. No

13. May the government instruct the prosecution services, for instance, to prosecute or not to prosecute? Are instructions general or specific in nature? Are they given in writing? Can the prosecution challenge them?
a. No the government can´t.

14. Are the instructions of superior prosecutors given in writing to those under their supervision? Can these instructions be challenged or refused?
a. If there are instructions from the DPP to the district prosecutor´s office or the chiefs of police, it is in writing. Instruction from superior prosecutors to those under their supervision in the same agency it is not in writing.

14bis What is the system of allocation, re-allocation and management of cases and is it based on objective and transparent criteria respecting the independence of prosecutors?

a. Allocation of cases is bound by low. Within a prosecutorial offices it´s up to the head of office or the superior prosecutor. If it is re-allocated it is done by the DPP on case to case bases. The criteria is always stated in the decision of the DPP.

15. Which are, if any, the main initiatives in terms of training to strengthen the awareness about the de facto dimension of the prosecutorial independence?
a. That is part of tutorial system that the DPP runes.

15bis Is the concept of prosecutorial independence reflected in the code of ethics and professional conduct of prosecutors? If such code exists in your country, could you please inform how it was prepared and adopted, and provide its copy in English or French if available.
a. The independence of the prosecutors are repeatedly stated in the codes of ethics of the prosecution. The code of ethics was written by a group of prosecutors and signed by the DPP in 2017. We have no translation available.

16. To what extent the media cover the decisions of international courts and treaty bodies as regards the practical independence of prosecutors?
a. As much as relevant. The independence of the prosecution has been in the spotlight of the media in recent cases.

17. To what extent the prosecutor offices interact with the broad public as regards the decisions of international courts and treaty bodies related to the practical independence of prosecutors?
There has not been any such decisions.

Italy / Italie

IN YOUR COUNTRY:

1. What are the general official measures taken for reacting to and implementing the decisions of international courts and treaty monitoring bodies?

As far as the judgements of the ECtHR are concerned, their translation into Italian is officially done and published when Italy is directly involved or when the judgment has great general relevance. The system aims to stimulate prompt reaction to those judgements by the Italian institutions (Ministry of Justice, Ministry of Foreign Affairs, Presidency of the Council of Ministers).

2. Based on your answer to the 1st question, what are the measures taken particularly for the practical independence of the prosecution services and individual prosecutors? Can you give examples?

No relevant cases to report.

3. Are these measures reflected in the law or in the prosecution policy or debate?

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4. If yes, then were there any changes in the prosecution system as a consequence of such measures?

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5. Are there also national decisions of the Supreme or Constitutional Courts, or any other highest judicial body at national level, dealing with the question of independence of prosecutors?

Yes, the Italian Constitutional Court dealt with the question of independence of prosecutors in several judgements, concerning the appointment of Chief prosecutors (no. 72/1991), admissibility and limits of hierarchy within the prosecution service (no. 52/1976), mandatory criminal action (n. 84/1979) and other aspects.

6. Does the prosecution system in your country belong to the judiciary?

Yes, it does.

7. Are prosecutors and prosecution services independent or autonomous from the executive and legislative branches of state power?

Yes, they are. The prosecution service as a whole, as well as single prosecutors, are completely independent from the executive and the legislative branches.

8. Is there a Council of Prosecutors or a similar equivalent body which can be considered as a mechanism to monitor and ensure prosecutorial independence, including in the way in which the prosecution services operate?

The Italian High Council of the Judiciary (CSM) is the self-government body of the Judiciary. This institution has constitutional relevance and has the duty to ensure the independence of prosecutors and of the prosecution service, as well as of judges and of judicial courts. The CSM is competent for recruitment, allocation, transfer, promotion, professional evaluation and disciplinary measures in respect of prosecutors and judges.

9. How many of its members are elected by their peers, and does the prosecution policy or the debate within the judiciary produce any impact on the election of the members of the Council of Prosecutors?

The Italian CSM is composed of 27 members. It is chaired by the President of the Republic; the First President of the Supreme Court of Cassation and the Prosecutor General are *de iure* members as well. Judges and public prosecutors, together, elect among their peers 16 members, i.e. the two thirds of the elected members (the remaining one third being "lay members", appointed by the Parliament among private lawyers and law professors). Four of the members elected by judges and prosecutors are prosecutors; two of the other elected members come from the Supreme Court and can be either prosecutors or judges.

10. Who has the initiative of disciplinary proceedings?

Both the Prosecutor General at the Supreme Court and the Minister of Justice can start the disciplinary action, independently of each other. The General Prosecution Office at the Supreme Court is in charge of investigating and prosecuting disciplinary cases. The specific section of the CSM (*Sezione disciplinare*) is the disciplinary Court, whose decisions can be appealed to the United Sections of the Court of Cassation.

11. Are prosecutors appointed for life or do they have to fulfil successive terms? Of how many years?

In Italy public prosecutors are appointed for life.

12. Are the rules regarding appointment, transfer, promotion and discipline of prosecutors similar to those of judges?

Yes, they are almost the same.

13. May the government instruct the prosecution services, for instance, to prosecute or not to prosecute? Are instructions general or specific in nature? Are they given in writing? Can the prosecution challenge them?

There is no possibility for the government to instruct the prosecution service.

14. Are the instructions of superior prosecutors given in writing to those under their supervision? Can these instructions be challenged or refused?

In the (limited) cases of possible instructions of superior prosecutors, they are in writing and can be challenged in front of the CSM. In any case, each single prosecutor is autonomous when he/she takes part in a hearing in court.

15. Which are, if any, the main initiatives in terms of training to strengthen the awareness about the *de facto* dimension of the prosecutorial independence?

The issue is widely dealt with in several training courses organised by the Italian Superior School for the Judiciary, as well as in initiatives organised by the CSM.

16. To what extent the media cover the decisions of international courts and treaty bodies as regards the practical independence of prosecutors?

The issue is covered by the media in the context of the wide national discussion concerning the justice system.

17. To what extent the prosecutor offices interact with the broad public as regards the decisions of international courts and treaty bodies related to the practical independence of prosecutors?

Latvia / Lettonie

International courts have not taken any rulings relating with the independence of the Prosecution Office of the Republic of Latvia.

1. In Latvia no measures have been taken for reacting to the decisions of international courts and treaty monitoring bodies, because no such decisions regarding Latvia are ever taken.
2. Referring to the reply to first question, we can not provide any examples.
3. No measures have been taken.
4. No changes of the prosecution system have taken place.
5. Yes, the mentioned issue is partially referred to in the judgment of 20 December 2006 of the Constitutional Court of the Republic of Latvia, wherein inter alia is emphasized that actual status of the Prosecution Office, falling within the judiciary system, is the most appropriate for safeguarding the efficient fulfilment of the Prosecution Office functions, and also the independence of judiciary in general, as well as it is fully in line with the principle of the separation of powers.
6. Yes, the Prosecution Office belongs to the judiciary.

61. Yes, both judges and prosecutors are acting independently and shall abide only by the law.

7. In Latvia the Prosecution Office is separated from the executive and legislative power. Prosecutor shall be independent from any influence of other institutions or officials with the capacity of the state power and performing public governance; Prosecutor shall abide only to the law.

7.1 In Latvia prosecutor according to the Criminal Procedure Law shall conduct the supervision of investigation and is entitled to give instructions to investigator and to lift the decisions taken by investigator in the criminal procedure. Nonetheless investigator, if he/she does not agree, is entitled to appeal the instructions given by prosecutor or decisions of prosecutor. The criminal cases shall be heard by the court. Any constraining of the court's deliberations or interference into the court's deliberations is inacceptable irrespectively of the aim or reason of such actions. The rulings taken by the court or judge shall be appealable only according to the procedures laid down by the law, and also the actions of judge shall be appealable only according to the law.

8. In our country Prosecutor General sets up the Prosecutor General's Council, collegiate advisory body, that deals with the fundamental organizational and operational issues of the Prosecution Office, as well as performs other functions provided for by the law.
9. Procedures for setting up the Prosecutor General's Council are laid down by the Law on Prosecution Office. Prosecutor General shall set up Council consisting of Head Prosecutors of the Departments of the Prosecutor General's Office and of the judicial regions, as well as Administrative Director of the Prosecution Office. Also other Prosecutors may be included into the Council. The election of the members of the Prosecutor General Council is not foreseen.
10. In Latvia Prosecutor General is entitled to impose any disciplinary sanction to any Prosecutor. In its turn Head Prosecutor is entitled to impose the disciplinary sanction – reproof or reprimand to any Prosecutor of respective unit under his/her management. In case of more serious wrongdoing Head Prosecutor may file to Prosecutor General a proposal on applying of another disciplinary sanction. The disciplinary investigation may be initiated by Prosecutor General or Head Prosecutor respectively.
11. Prosecutor General shall be appointed for five years by the Parliament upon the proposal of the Council for the Judiciary. Head Prosecutor and Deputy Head Prosecutor shall be appointed for five years by Prosecutor General. Other Prosecutors shall be appointed by Prosecutor General for indefinite term of powers. Maximal age limit of service duties for Prosecutors is 65 years. In cases provided for by the law Prosecutor General may extend the service term with Prosecutor who has reached the maximal age limit of service duties for additional two years.

12. These arrangements differ, for example, the procedures for appointing Prosecutors and Judges are different. Judge of first instance court is appointed for three years by Parliament upon the proposal of Minister of Justice. After three years Judge of first instance court shall be approved into office by the Parliament for indefinite period of time or shall be repeatedly appointed into office for a term of not exceeding two years. The disciplinary case against Judge in cases provided for by the law may be initiated by Chairman of respective court, Minister of Justice or Professional Conduct Commission of Judges. Maximal age limit for judges is 70 years.
13. The government is not entitled to give instructions to the Prosecution Office. The Parliament, the Cabinet of Ministers, public and municipal authorities, any companies or organizations, as well as any individuals are prohibited to interfere with the operation of the Prosecution Office while investigating cases or to interfere with any other functions of the Prosecution Office.
14. Superior Prosecutor is entitled to give instructions to Prosecutor, nevertheless superior Prosecutor is not entitled to give instructions or request that any Prosecutor should take any actions against Prosecutor's own views. Superior Prosecutor upon own initiative or upon request of Prosecutor shall provide instructions in a written form. Such instructions may be appealed with Head Prosecutor of next superior level Prosecution Office structure, but actions or decision of Prosecutor of the Prosecutor General's Office – to Prosecutor General. Decisions taken by these officials are not appealable.
14.1 The allocation of the criminal cases, applications and complaints among prosecutors is not specifically regulated by any legal act, it depends on operational arrangements in each particular structure of the Prosecution Office. The allocation usually is done by Head Prosecutor of any specific structure, referring to the specialization of prosecutors, workload and other conditions.
15. Any specific specialized training on de facto dimension of the prosecutorial independence have not been arranged, but the awareness on this specific aspect is being strengthened during other training events, including while training applicants to Prosecutor position, while interacting with students of higher educational institutions or pupils of the secondary schools within the frameworks of the educational programs. The documentary film on setting up the independent Prosecution Office of Latvia and its development is made for demonstration in various public events and in television. The mentioned film is recorded on USB flash drive, which is presented as souvenir both to officials of Latvia and other countries.
15.1 The self-determination and independence of Prosecutors is secured as one of the fundamental principles in the Code of Ethics of Prosecutors of Latvia (further referred as "Code of Ethics"). The Code of Ethics was developed by Prosecutors, referring to the international principles and provisions of the Code of Ethics of Judges. The given Code of Ethics was approved by the Prosecutor General's Council on 17/06/1998. The Code of Ethics in English is available at the following link: https://rm.coe.int/code-of-ethics-prosecutors-of-latvia/168071cd94

16. As no such decisions regarding the Prosecution Office of the Republic of Latvia have ever been taken, then we can only note that in some particular cases the mass media had published information on decisions taken regarding other countries.
17. No such interactions have taken place specifically concerning the decisions of international courts and treaty monitoring bodies in relation with the practical independence of prosecutors. The aspects of Prosecutor's independence in recent time were touched by Prosecutor General and other representatives of the Prosecution Office in their interviews to the mass media.

Lithuania / Lituanie

MAIN QUESTION

Do you know about any judgments or decisions of the European Court of Human Rights or of the Court of Justice of the European Union, or of any other international court which refer to or in any way touch upon the independence (and preferably went on to highlight its elements):

a) of prosecutors;

Judgement of Grand Chamber of the CJEU of 27 May 2019 in case C-509/18 (PF).

b) of the judiciary or the justice system as a whole;
c) of judges.

If you know about any such judgments or decisions, the CCPE Bureau and the Working Group will be very grateful to you if you indicate their titles and also, if possible, the numbers of paragraphs or sections in these judgments and decisions where such references or indications are made. These judgments and decisions may concern any country, not only your country.

Questions

IN YOUR COUNTRY:

1. What are the general official measures taken for reacting to and implementing the decisions of international courts and treaty monitoring bodies? Article 138 of the Constitution of the Republic of Lithuania stipulates that international treaties ratified by the Parliament are automatically part of the legal system of Lithuania. The Law on Treaties (Art. 13) prescribes that the provisions of a treaty shall prevail in cases where a ratified treaty of the Republic of Lithuania which has entered into force establishes norms other than those established by the laws. Judgments issued by the European Court of Human Rights are binding and res judicata inter partes.

Having accessed the EU on 1 May 2004, the EU law, including the judgements and the case law of the Court of Justice of the European Union (CJEU), has become a part of the national legislation of the Republic of Lithuania. The doctrine of primacy of EU law has been included in the constitutional order of the Republic of Lithuania (Decision of the Constitutional Court of the Republic of Lithuania No. 30 -1050 of 13/03/2006 - which sets the primacy of the application of European Union law in cases, where European Union law provisions stemming from the Treaties, on which the European Union is founded, are in competition with the legal framework established by Lithuanian national law).

The adaptation of the measures ruled out by the afore-said European Courts against the Republic of Lithuania for the purpose of ceasing the violation they have ascertained can require actions by all branches of government: the legislative, the executive, and the judiciary, depending on their nature and scope.

2. Based on your answer to the 1st question, what are the measures taken particularly for the practical independence of the prosecution services and individual prosecutors? Can you

give examples? In the view of the competence of the Prosecution Office of the Republic of Lithuania, the finding of the Grand Chamber of the CJEU concluded in its judgement of 27 May 2019 in case C-509/18 (PF) should be taken into account. The CJEU highlighted that the following characteristics of the Lithuanian Prosecutor General: 1) it is institutionally independent from the judiciary; 1) it has responsibility for conducting criminal prosecutions; 3) it is independent from the executive. It also found that Prosecution Office of the Republic of Lithuania has sufficient power to protect the individual's procedural and fundamental rights in the criminal proceedings and its decision-making powers are not subject to external directions/instructions, in particular from the executive.

From the point of view of the Lithuanian national legislation - the independence of prosecutors is enshrined in Constitution of the Republic of Lithuania, which provides that, when performing their functions, prosecutors shall be independent and shall obey only the law. The Code of Criminal Procedure requires that prosecutor be independent of other state institutions, officers, political parties, political and non-governmental organisations and other persons in performing their functions. Any political, economic, psychological or social pressure or any other unlawful influence that might affect prosecutors' decisions is prohibited and any attempt to induce a prosecutor to take an unlawful decision is treated by the CPP as an unlawful interference with the prosecutor's activities.

The Constitutional Court has consistently interpreted the principle of prosecutors' independence to include not only the abstinence of the legislative or executive powers and their officials from the performance of the functions of prosecutors but also the provision of sufficient guarantees of independence that allow prosecutors to discharge their functions properly. Violation of the Code of Criminal Procedure provisions on prosecutorial independence may qualify as "interference with the activities of a civil servant or a person performing the functions of public administration" under Criminal Code art. 288.

As another step of strengthening prosecutor's independence could be named the introduction of the legal provision on the prosecutors in charge of top-level corruption cases to be supervised by the Prosecutor General or a Deputy Prosecutor General and be exempt from dismissal or any other disciplinary sanction.

Although there were attempts from the Lithuanian Parliament to increase its control over the Prosecution Service, by requiring annual reports from agencies and granting the Seimas (the Parliament) power to dismiss unilaterally the Directors whose appointment is subject to the Seimas approval (including the Prosecutor general), if the Seimas did not approve the agency's annual activity report, however the Constitutional Court (decision NO. KT34-N22/2015 of 30 December 2015, found these provisions to be unconstitutional

The Law of the Seimas Anti-corruption Commission vests the Commission with the power to investigate the phenomenon of corruption and cases related to it, and control how the agencies are implementing the Commission's decisions.

While exercising its power of control the Commission can call the Prosecutor General to report to it, however, reporting does not impact the independence of the Prosecutor General, as Art. 2(3) of the same Law prohibits the Commission from interfering with the activities of law enforcement authorities, where such activities are linked to their direct functions.

3. Are these measures reflected in the law or in the prosecution policy or debate? The provisions of the prosecutor with the special status responsible for the investigation of op-level

corruption cases has been added to the Law on Prosecution Office on28/11/2017 and became valid since 01/07/2018.

4. If yes, then were there any changes in the prosecution system as a consequence of such measures? Yes. The status of the special prosecutor has been already granted, thus it proves that this legal provision works in practice.

5. Are there also national decisions of the Supreme or Constitutional Courts, or any other highest judicial body at national level, dealing with the question of independence of prosecutors? The Constitutional Court of the Republic of Lithuania has repeatedly examined in its resolutions the constitutional status and functions of prosecutors, the independence of prosecutors, the appointment and dismissal of prosecutors and Prosecutor General, and the accountability of Prosecutor's Office to the authorities. The Constitutional Court has ruled in its resolutions the following:
- the Prosecutor's Office of the Republic of Lithuania is a centralised public authority with specific managerial powers and is not a part of authorities exercising executive power, and doesn't belong to the judiciary.

- the legislative or executive branches of state power do not have the right to interfere with the prosecuting activities of prosecutors, nor to give any binding instructions regarding the exercise of their functions or to control their work in the exercise of their functions. Prosecutors may not be subject to any political, economic, psychological, social pressure or other illegal influence that could influence their decisions.

- the Law on Prosecutor's Office provides that Prosecutor General shall report to the President of the Republic and the Parliament about the activities of the Prosecutor's Office. However, the Constitutional Court of Lithuania has pointed out that this reporting cannot be understood as providing specific information on the organisation and conduct of the pre-trial investigation in specific criminal cases, or maintenance of prosecution in specific criminal cases, but only as providing general statistical information on the activities of the Prosecutor's Office. The Constitutional Court also noted that the Parliament cannot request clarifications from the Prosecutor's Office or any prosecutor regarding an ongoing or completed pre-trial investigation, or the case that is being or was examined by court.

- according to the Constitution, the Prosecutor General is appointed and dismissed by the President of the Republic with the consent of the Parliament. The Constitutional Court held that the grounds for dismissal of the Prosecutor General can only be laid down by law and Prosecutor General cannot be subjected to dismissal on the basis of declared distrust; also, the legislative power is prohibited from setting regulations regarding the Prosecutor General's accountability (inter alia annual reports on the activities of Prosecutor's Office) that would allow the Parliament to propose the dismissal of the Prosecutor General on the basis of the fact that the Parliament has not approved the annual activity report on the Prosecutor's Office.

6. Does the prosecution system in your country belong to the judiciary? No, Prosecutor's Office of the Republic of Lithuania does not belong to the judiciary.

6bis Are there any parallels between the independence of judges and independence of prosecutors, or the latter is considered separately, if considered at all? Both the judges and prosecutors are independent in their official duties - they are free to exercise their powers without interference from anybody or anything. Although they share similarities in the content of their independence, it is regulated by separate laws of the Republic of Lithuania.

7. Are prosecutors and prosecution services independent or autonomous from the executive and legislative branches of state power? Yes. See also answer to question No. 5.

7bis Is the interaction of prosecutor offices with courts, police, investigation authorities and other actors in criminal procedure based on the principle of prosecutorial independence and how? According to the Law on Prosecution Office, a prosecutor may conduct the investigation himself/herself or control the activities of the pre-trial investigation institutions (including the police). Where the prosecutors coordinate or run an investigation carried out by the police, they have the power to control its course. The prosecutor has an overall supervisory role over the investigations of the police. No police superior may take any step that will affect the investigation directly or indirectly without the prosecutor's authority. Only the prosecutor can make a final decision in terms of the investigation – either to suspend or terminate it or to pass it to the court with the bill of indictment. The Prosecutor General's instructions/ recommendations passed to the prosecutors are also mandatory to the pre-trial investigation institutions.

A legal status, competencies and procedural role of the prosecutor do not raise any uncertainties on the independence and impartiality of judges. Public prosecutors strictly respect the independence and the impartiality of judges - they neither impact their judicial decisions nor hinder their execution.

8. Is there a Council of Prosecutors or a similar equivalent body which can be considered as a mechanism to monitor and ensure prosecutorial independence, including in the way in which the prosecution services operate? Yes. Prosecutor General's Office has an advisory body namely, the Collegium of Prosecutor's Office of the Republic of Lithuania. The Collegium advises the Prosecutor General on key issues related to the activities of the Prosecutor's Office, including the independence of prosecutors.

9. How many of its members are elected by their peers, and does the prosecution policy or the debate within the judiciary produce any impact on the election of the members of the Council of Prosecutors? The members of Collegium are not elected. The Law on Prosecutor's Office provides that Deputies Prosecutor General and Chief Prosecutors of regional prosecutor's offices are the mandatory members of the Collegium, while the inclusion of other prosecutors in the Collegium is decided by the Prosecutor General. The Collegium currently comprises, in addition to the mandatory members, the Chief Prosecutors of the Departments (Divisions) of the Prosecutor General's Office and their deputies, the Chief Prosecutors of the largest district prosecutor's offices, one prosecutor of the Prosecutor General's Office, one prosecutor of the Regional Prosecutor's Office, one prosecutor of District Prosecutor's Office, and one prosecutor nominated by the Prosecutors' Trade Union upon joint agreement.

10. Who has the initiative of disciplinary proceedings? Disciplinary proceedings against public prosecutors can be initiated by the Prosecutor General on the grounds of information, which can be submitted by any person. The disciplinary power over public prosecutors is exercised solely by the Prosecutor General.

11. Are prosecutors appointed for life or do they have to fulfil successive terms? Of how many years? In Lithuania, prosecutors are appointed for life, but the compulsory retirement age is 65. There is a mandate of 5 years (with a possibility to renew the position once for additional 5 years) only for managing positions.

12. Are the rules regarding appointment, transfer, promotion and discipline of prosecutors similar to those of judges? The rules regarding appointment, transfer, promotion and discipline of prosecutors are in general the same or very similar to those of judges, although they are regulated by separate laws of the Republic of Lithuania. There are only slight differences in details of separate procedures.

13. May the government instruct the prosecution services, for instance, to prosecute or not to prosecute? Are instructions general or specific in nature? Are they given in writing? Can the prosecution challenge them? No, see answer to question No. 5.

14. Are the instructions of superior prosecutors given in writing to those under their supervision? Can these instructions be challenged or refused? The prosecutor has the right to request the superior prosecutor to give instructions in writing on the procedural acts and decisions if the instructions are not documented. A superior prosecutor cannot instruct the prosecutor what decision should be taken in the proceedings. The prosecutor must notify the (Deputy) Prosecutor General of a procedural decision taken by a superior prosecutor which is contrary to the law.

14bis. What is the system of allocation, re-allocation and management of cases and is it based on objective and transparent criteria respecting the independence of prosecutors? The cases are assigned to prosecutors by Chief Prosecutors based on the following criteria approved by the Prosecutor General:
- the place where the crime was committed;
- the qualification of a crime;
- the prosecutor's work place and territory of activity;
- pre-trial investigation authorities under the control of units of regional prosecution offices or prosecutors;
- specializations assigned to prosecutors.
In order to balance the workload of prosecutors or for other important reasons, the cases may be assigned to prosecutors by reasoned resolution of the Chief Prosecutor (Deputy Chief Prosecutor) regardless of these criteria.

15. Which are, if any, the main initiatives in terms of training to strengthen the awareness about the de facto dimension of the prosecutorial independence? So far, no separate training on this topic has taken place, but it is being integrated into other training organised by the Prosecutor's Office. Prosecutors are also encouraged to take part in the trainings on this topic organised abroad.

15bis Is the concept of prosecutorial independence reflected in the code of ethics and professional conduct of prosecutors? If such code exists in your country, could you please inform how it was prepared and adopted, and provide its copy in English or French if available. The code of ethics of prosecutors exists in Lithuania. The Law on Prosecution Service obligates prosecutors to comply with this Code and the principles described therein. Serious breach of professional ethics may be subject to strictest disciplinary sanction – dismissal. The Code of Ethics of prosecutors describes the principle of independence. According to this principle, the prosecutor must:

✔ implement the provision enshrined in the Constitution and the Law on the Prosecution Service - to be independent and having the status of immunity to act independently in the territory of the Republic of Lithuania, in compliance with the Convention for the Protection of Human Rights and Fundamental Freedoms;

✔ respect the principle of political neutrality – do not belong to any political party or political organization and do not associate with it or its members in official activities, do not express their political opinions in the prosecutor's office;

✔ disobey the instructions and requests of a state politicians, state or law enforcement officials, if in their form and content they clearly contravene the laws, this Code, other legal acts.

16. To what extent the media cover the decisions of international courts and treaty bodies as regards the practical independence of prosecutors? The media are free and operate independently of the state. The Prosecutor’s Office does not conduct media monitoring, so we cannot objectively answer this question.

17. To what extent the prosecutor offices interact with the broad public as regards the decisions of international courts and treaty bodies related to the practical independence of prosecutors? The Prosecutor’s Office regularly provides the public with comprehensive, objective and accurate information about its activities. It is aimed that this kind of information is presented in a comprehensible, clear, attractive, convenient way.

Luxembourg

1. Quelles sont les mesures officielles générales prises pour réagir aux décisions des tribunaux internationaux et des organes conventionnels et pour les mettre en œuvre ?

En droit luxembourgeois les Conventions internationales approuvées priment le droit interne, y compris constitutionnel. Tout juge a le pouvoir d'apprécier la conformité d'une loi à une Convention internationale et, en cas de contrariété, d'écarter la première au profit de la seconde (tandis que, d'une façon quelque peu paradoxale, le contrôle de la conformité des lois à la Constitution doit être soumise par le juge, par voie de question préjudicielle, à une juridiction spéciale, la Cour constitutionnelle).

La portée juridique de cette primauté du droit international dépend cependant dans chaque cas de l'objet précis de la norme concernée. Plus particulièrement, l'effet à donner à des décisions de juridictions internationales et d'organes conventionnels dépend de la portée des dispositions conventionnelles sur base desquelles elles ont été rendues.

La suite à donner en droit à des décisions ou recommandations d'organes conventionnels dépend de la portée attribuée à ces actes dans les Conventions ou instruments sur base desquels ils ont été adoptés. Elle dépend du point de savoir si ces actes sont juridiquement contraignants ou n'ont qu'une portée politique.

Le Luxembourg s'efforce en fait, d'un point de vue politique, de donner dans toute la mesure du possible suite à de tels actes, le pays étant très attaché au respect des normes internationales et soucieux de sa réputation d'Etat de droit.

Il exécute, à titre d'exemple, les arrêts de la Cour européenne des droits de l'homme. Dans cet ordre d'idées le Code de procédure pénale luxembourgeois dispose qu'une révision d'une condamnation pénale pour crime ou délit peut être demandée lorsqu'il résulte d'un arrêt de la Cour européenne des droits de l'homme rendu en application de la Convention de sauvegarde des droits de l'homme et des libertés fondamentales que cette condamnation a été prononcée en violation de cette Convention .

Le Luxembourg étant membre de l'Union européenne, l'effet des arrêts de la Cour de justice de cette Union est celui, très contraignant, qui y est attribué par le droit de cette Union. Il s'entend qu'il ne saurait, du point de vue politique, se discuter de donner suite aux arrêts de la Cour.

Le Luxembourg s'efforce par ailleurs, à titre d'illustration, de donner suite aux recommandations du Groupe d'Etats contre la corruption (GRECO) du Conseil de l'Europe ou il consulte dans le cadre de travaux actuels en cours aux fins de réviser la Constitution la Commission européenne pour la démocratie par le droit du Conseil de l'Europe (Commission de Venise).

Les décisions des juridictions et organes peuvent, selon les cas, donner lieu à l'adoption de mesures légales ou constitutionnelles. Il a été vu ci-avant qu'une condamnation du Luxembourg par la Cour de Strasbourg est une cause de révision de condamnations pénales. Les interprétations de la Convention de sauvegarde fournies par cette Cour guident par ailleurs le juge et peuvent l'amener à écarter une loi nationale contraire ou à adapter l'application de celle-ci.

Dans le cadre de la question de l'indépendance du Ministère public, le GRECO avait dans son rapport d'évaluation du Luxembourg émis dans le cadre du quatrième cycle d'évaluation la recommandation « que soit mené à terme le projet d'introduction d'un dispositif destiné à assurer davantage l'indépendance et l'objectivité des décisions du parquet » .

2. Sur la base de votre réponse à la première question, quelles sont les mesures prises notamment pour l'indépendance pratique des ministères publics et des procureurs individuels ? Pouvez-vous donner des exemples ?

S'agissant du statut du Ministère public, Il existe en droit luxembourgeois une différence entre la théorie (1) et la pratique (2) et il y a lieu de tenir compte d'un projet de réforme en cours (3).

1. La théorie

La loi dispose que « les fonctions du ministère public sont exercées, sous l'autorité du ministre de la Justice » et que « le ministre de la Justice exerce sa surveillance sur tous les officiers du ministère public » .

Par ailleurs, « le ministre de la Justice peut dénoncer au procureur général d'Etat les infractions à la loi pénale dont il a connaissance, lui enjoindre d'engager des poursuites ou de saisir la juridiction compétente de telles réquisitions écrites que le ministre juge opportune » .

Le ministère public « est tenu de prendre des réquisitions écrites conformes aux instructions qui lui sont données dans les conditions prévues aux articles 19 […]. Il développe librement les observations orales qu'il croit convenables au bien de la justice » .

A vu de ces dispositions le Ministère public n'est pas indépendant. La seule garantie légale dont il peut de ce point de vue se prévaloir est la liberté qui lui est accordée par la loi de ne pas devoir nécessairement soutenir oralement les réquisitions écrites qu'il est tenu de prendre (principe « la plume est serve, la parole est libre »).

La Constitution ne mentionne pas le Ministère public (donc ne formule à plus forte raison aucune garantie quelconque d'indépendance de ce dernier).

2. La pratique

Ce tableau sombre du point de vue de l'indépendance du Ministère public, s'éclaircit par une pratique contraire à la théorie.

D'une part, la jurisprudence a précisé que si le Ministre de la Justice peut ordonner au Ministère public d'engager une poursuite pénale, il ne peut en aucun cas lui donner des ordres astreignants ou péremptoires de s'abstenir d'une poursuite déterminée .

D'autre part, dans la pratique courante des dernières décennies le Ministre de la Justice a en fait renoncé à exercer son autorité, à surveiller le Ministère public ou à lui donner des ordres de poursuites. Contrairement à d'autres pays membres du Conseil de l'Europe, telle la France et, sauf erreur, la Belgique, le Ministre n'émet aucune circulaire à l'attention du Ministère public. Par ailleurs, il ne s'immisce pas dans le traitement des affaires. Il n'existe aucune pratique de « remontée d'informations » au sujet d'affaires en cours (le Ministre n'est pas tenu informé d'affaires courantes ni ne se renseigne à ce sujet). Le dernier ordre de poursuite remonte aux années 1980. Il ne s'agissait par ailleurs jamais d'une pratique courante.

Si la pratique diverge fortement de la théorie, il ne faut cependant pas perdre de vue que rien dans les textes ne garantit la pérennité de cette pratique, tout au contraire.

3. Le projet de réforme en cours

Depuis 2009 la Chambre des Députés (donc le Parlement luxembourgeois) est en train de préparer la révision de la Constitution luxembourgeoise. Celle-ci remonte dans sa substance à 1868, même si elle a périodiquement fait l'objet de modifications partielles. Elle ne comporte, comme rappelé ci-avant, aucune mention du Ministère public, ni à plus forte raison une quelconque garantie d'indépendance de ce dernier.

Le Parlement avait l'ambition de créer une nouvelle Constitution. Celle-ci devait comporter de nouvelles dispositions ambitieuses au sujet de la Justice (3.1.). De très récents développements mettent toutefois en cause ces projets, surtout en ce qui concerne la question de l'indépendance du Ministère public (3.2.).

3.1. Le projet de nouvelle Constitution

La révision de la Constitution suppose au Luxembourg un double vote positif du Parlement (donc de la Chambre des Députés), les deux votes devant être séparés d'un intervalle d'au moins trois mois, par deux tiers des membres de la Chambre des Députés . Le second vote peut être remplacé par un référendum, si la demande en est faite par plus d'un quart des parlementaires ou par 25.000 électeurs .

Comme la majorité gouvernementale n'est pas soutenue par plus de deux tiers des membres de la Chambre (mais ne dispose en fait depuis 2013 que d'une courte majorité, qui est actuellement de 31 députés sur 60), la révision constitutionnelle suppose un consensus parlementaire dépassant la seule majorité gouvernementale. C'est dans cet esprit que le projet de réforme a été discuté à partir de 2009. Dans le cadre de ces travaux, un consensus s'était dégagé au sujet d'un texte constitutionnel, qui a été retenu par la Commission des institutions de la Chambre des Députés en juin 2018.

Ce texte ambitieux prévoyait notamment que « le pouvoir judiciaire est exercé par les juridictions qui comprennent les magistrats du siège et ceux du ministère public » , que « le ministère public exerce l'action publique et requiert l'application de loi [et] est indépendant dans l'exercice de ces fonctions » et qu'il y a lieu d'instituer un Conseil national de la justice dont l'objet serait de veiller au bon fonctionnement de la justice et de respecter l'indépendance des magistrats .

Parallèlement le Gouvernement déposa en 2018 un projet de loi (n° 7323) aux fins d'instituer déjà dans le cadre de la Constitution actuelle le Conseil national de la justice. Ce Conseil aurait

notamment pour objet de garantir « l'indépendance du ministère public dans l'exercice de l'action publique et la réquisition de l'application de la loi » . Il a de même été proposé de supprimer toutes les dispositions législatives mettant en cause l'indépendance du Ministère public (notamment celles instituant l'autorité et le pouvoir de surveillance du Ministre de la Justice sur les magistrats du Ministère public et conférant au Ministre le pouvoir de donner au Ministère public des injonctions de poursuite).

Le projet de réforme constitutionnelle ainsi que le projet de loi n° 7323 ont été invoqués par le Gouvernement luxembourgeois pour soutenir la conformité du Luxembourg avec les recommandations du GRECO ainsi que dans le cadre de l'Avis de la Commission de Venise sur la proposition de révision de la Constitution . Au regard de ces projets, le GRECO avait conclu que l'une de ses Recommandations à l'attention du Luxembourg, à savoir celle de mener « à terme le projet d'introduction d'un dispositif destiné à assurer davantage l'indépendance et l'objectivité des décisions du parquet » « a été partiellement mise en œuvre » . L'avis précité de la Commission de Venise repose également sur la prémisse de l'adoption de ces réformes.

3.2. Les développements récents

Le projet de réforme de la Constitution a été soutenu, comme rappelé ci-avant, par une majorité de plus des deux tiers des membres de la Chambre des Députés. Cette majorité constitutionnelle comprenait également des députés de l'opposition, donc ne soutenant pas le Gouvernement. Elle comprenait notamment le principal parti d'opposition , dont un des députés avait d'ailleurs été, en 2009, à l'origine du projet de réforme, à une époque où le parti formait encore, et ce, sauf interruption de 1974 à 1979, depuis la Seconde Guerre Mondiale, le Gouvernement,. Il avait été envisagé de remplacer le second vote constitutionnel du projet par un référendum, conformément à la Constitution actuelle. A cette fin il était prévu de lancer, avant tout vote, une compagne d'information et de consultation du public.

Ce consensus politique s'est rompu après les élections législatives d'octobre 2018, à la suite desquelles le principal parti d'opposition n'a, après 2013 une seconde fois d'affilé, pas réussi à rejoindre la majorité gouvernementale. Eu égard à l'annonce faite par le Gouvernement de modifier éventuellement le système électoral, ce parti ne souhaitait plus soutenir le projet de réforme constitutionnel. Il se mit finalement d'accord avec les partis soutenant le Gouvernement de renoncer à adopter une nouvelle Constitution, mais de se limiter à réviser la Constitution actuelle sur certains points seulement. De cette révision partielle immédiate devait notamment être exclue la question d'une éventuelle réforme du système électoral.

Ces travaux sont en cours. Suivant les procès-verbaux des réunions de la Commission des institutions de la Chambre des Députés, les nouvelles dispositions constitutionnelles relatives à la Justice ne devraient plus contenir :

- l'article 93 du projet de nouvelle Constitution, qui proposait de disposer que « le pouvoir judiciaire est exercé par les juridictions qui comprennent les magistrats du siège et ceux du ministère public »,

- la phrase du second paragraphe de l'article 99 du projet de nouvelle Constitution, qui proposait de disposer que « [le ministère public] est indépendant dans l'exercice de ces fonctions [donc dans les fonctions d'exercer l'action publique et de requérir l'application de la loi] » et

- le bout de phrase de l'article 102, premier alinéa, du même projet, qui proposait de disposer que « le Conseil national de la justice veille au bon fonctionnement de la justice et respecte l'indépendance des magistrats », qui est à remplacer par « et respecte son indépendance ».

Les procès-verbaux des réunions ne contiennent que peu de précisions au sujet des motifs de ces modifications, si ce n'est que le principal parti d'opposition est opposé à l'indépendance du Ministère public. Ainsi la suppression du passage précité de l'article 102, premier alinéa, est motivé dans le procès-verbal de réunion par le motif que « le groupe politique CSV voudrait […] éviter que ce bout de phrase laisse sous-entendre que les membres du parquet soient indépendants » .

Ce même parti d'opposition demande par ailleurs l'organisation d'un échange de vues sur les contours de la séparation des pouvoirs, ce que parties soutenant le Gouvernement ont accepté. Il a été retenu que cet échange de vues devrait avoir lieu avec les pouvoirs et autorités concernés et des experts .

Les motifs de cette volte-face du principal parti d'opposition au sujet de l'indépendance du Ministère public et la portée de celle-ci n'ont jusqu'à présent pas été formellement exposés. Comme ces motifs restent incertains, il est difficile de prendre position. Il est cependant à préciser, sans qu'il ne soit cependant possible de savoir si cet élément est une cause ou un effet de la toute nouvelle contestation de l'indépendance du Ministère public, que ce parti a dénoncé au cours du printemps-été 2019 avec virulence et sur un ton scandalisé l'usage par le Ministère public de banques de données qui violeraient les règles applicables en matière de protection de données personnelles, voire seraient clandestines . Le Ministère public a tenté tant bien que mal de faire valoir, documents et arguments à l'appui, son point de vue contraire, que ce soit dans la Chambre des Députés ou au cours d'une conférence de presse. Ces tentatives d'objectivisation du débat n'ont guère porté de fruits. La fièvre du débat a été entretenue par des tirs groupés de questions parlementaires, dont les réponses ont aussitôt donné naissance à de nouvelles questions parlementaires. L'une de ces questions parlementaires a été l'occasion pour le Président de la Cour supérieure de justice et la Procureur général d'Etat d'adresser un courrier commun au Président de la Chambre des Députés aux fins de protester contre une atteinte « inadmissible au regard de la séparation des pouvoirs, principe qu'il nous tient à cœur de préserver ». Ce courrier envoyé en août 2019, est devenu public en octobre 2019 et a fait naître une nouvelle polémique.

En l'état actuel des travaux aucun compromis n'a été envisagé, tel que celui de garantir, sur le modèle de la Constitution belge, l'indépendance du Ministère public dans le cadre du traitement des affaires individuelles, tout en réservant au Ministre de la Justice un certain droit de regard sur la politique générale de poursuite. Il est par ailleurs difficile de déterminer en quoi cette opposition de principe est susceptible d'être nuancée par les résultats futurs de l'échange de vues sur les contours de la séparation des pouvoirs, que l'on aurait pu s'attendre à voir précéder, et non à suivre, les travaux relatifs aux dispositions constitutionnelles relatives à la Justice.

A supposer que la réforme constitutionnelle reste ce qu'elle est en l'état, la Constitution ne prévoirait plus l'existence d'un pouvoir judiciaire, n'énumérerait plus les magistrats du Ministère public comme faisant partie de ce pouvoir et ne garantirait plus, à quelque degré que ce soit, l'indépendance du Ministère public.

Comme certains autres textes maintenus (tel l'article 100) qualifient les membres du Ministère public comme magistrats, il est au moins retenu, en l'état, qu'ils disposent de ce statut et donc qu'ils ne sont pas de simples agents du Gouvernement.

Etant donné que le texte actuellement discuté se limite à faire l'impasse sur la question de l'indépendance du Ministère public, la loi reste libre de résoudre celle-ci. Rien n'interdit donc au législateur de consacrer cette indépendance, même si celle-ci est alors exposée aux aléas des changements de majorité et d'opinion du Parlement, qui peut la supprimer à tout moment au vote à majorité simple d'une loi abrogeant celle ayant institué cette indépendance.

Or, comme rappelé ci-avant, le projet de loi n° 7323 propose de consacrer cette indépendance, sans toucher à la Constitution, par voie législative, en supprimant les dispositions contraires actuelles. L'adoption de cette loi ne suppose qu'une majorité parlementaire simple, de sorte que, en théorie, elle pourrait avoir lieu nonobstant le refus du principal parti d'opposition.

Il est difficile de préjuger des choix politiques qui seront pris à ce sujet.

3. Ces mesures se reflètent-elles dans la loi ou dans la politique ou le débat sur les poursuites ?

Il est renvoyé à la question 2.

4. Si oui, y a-t-il eu des changements dans le système des poursuites à la suite de ces mesures ?

Il est renvoyé à la question 2.

5. Existe-t-il également des décisions nationales de la Cour suprême ou de la Cour constitutionnelle, ou de tout autre organe judiciaire supérieur au niveau national, traitant de la question de l'indépendance des procureurs ?

Il est renvoyé à la question 2, de la réponse à laquelle il résulte que la Chambre des mises en accusation (qui est une juridiction d'instruction) a précisé dans un arrêt du 24 janvier 1972 que si le Ministre de la Justice peut ordonner au Ministère public d'engager une poursuite pénale, il ne peut en aucun cas lui donner des ordres astreignants ou péremptoires de s'abstenir d'une poursuite déterminée.

La Cour de cassation a décidé que l'exercice du principe de l'opportunité des poursuites dont bénéficie le Ministère public échappe au contrôle de cette Cour .

6. Le système de poursuites de votre pays appartient-il au pouvoir judiciaire ?

Il est renvoyé à la question 2.

7. Les procureurs et le ministère public sont-ils indépendants ou autonomes par rapport aux pouvoirs exécutif et législatif de l'État ?

Il est renvoyé à la question 2.

8. Existe-t-il un Conseil des Procureurs ou un organe équivalent similaire qui peut être considéré comme un mécanisme permettant de contrôler et de garantir l'indépendance des procureurs, y compris dans la manière dont le ministère public fonctionne ?

Il est renvoyé à la question 2, de la réponse de laquelle il résulte qu'il est actuellement envisagé de créer un Conseil national de la justice, dont la mission consisterait notamment à garantir l'indépendance du Ministère public. Ce Conseil serait majoritairement composé de magistrats .

Le projet de création d'un tel Conseil reste d'actualité même après les récents développements esquissés ci-avant. Toujours est-il que la mission impartie au Conseil de garantir l'indépendance du Ministère public, qui résulte du projet de loi n° 7323, ne reflète plus le texte du projet de Constitution tel qu'il a été récemment retenu par la Commission des institutions de la Chambre des Députés. Même s'il est théoriquement possible de maintenir sur ce point le projet de loi n° 7323 (qui peut être adopté à majorité parlementaire simple, donc nonobstant le refus des députés issus du principal parti d'opposition), il reste à voir s'il sera maintenu.

9. Combien de ses membres sont élus par leurs pairs, et la politique en matière de poursuites ou le débat au sein du pouvoir judiciaire ont-ils un impact sur l'élection des membres du Conseil des Procureurs ?

Le projet de loi n° 7323 propose que le Conseil national de la justice (qui serait issu des nouvelles dispositions constitutionnelles à adopter) comporte neuf membres effectifs, parmi lesquels figurent à titre de représentants du Ministère public le Procureur général d'Etat et un magistrat du Ministère public à élire par ses pairs. Les autres membres effectifs du Conseil seraient le Président de la Cour supérieure de justice et le Président de la Cour administrative, un magistrat d'une juridiction de l'ordre judiciaire à élire par ses pairs, un magistrat d'une juridiction de l'ordre administratif à élire par ses pairs, un représentant de la société civile, à élire par la Chambre des Députés, un représentant du monde académique, à désigner par la Chambre des Députés et un avocat .

Comme ce Conseil n'existe pas encore en l'état actuel, il ne peut être donné aucune précision en ce qui concerne les circonstances de l'élection de ses membres.

10. Qui a l'initiative des procédures disciplinaires ?

Il y a lieu de distinguer l'état du droit actuel, dans le cadre duquel les procédures disciplinaires à charge des magistrats des juridictions judiciaires, y compris les magistrats du Ministère public sont régies par la loi modifiée du 7 mars 1980 sur l'organisation judiciaire, de l'état du droit futur probable, dans le cadre duquel ces procédures seront régies par la future loi sur le Conseil national de la justice.

En l'état actuel du droit, les poursuites disciplinaires sont engagées par le Procureur général d'Etat, auquel le Président de la Cour supérieure de justice, les Présidents des tribunaux d'arrondissement, les Procureurs d'Etat et les juges de paix directeurs, donc tous les chefs de corps des juridictions judiciaires, doivent dénoncer « tous les faits parvenus à leur connaissance, qui pourraient donner lieu à poursuite disciplinaire contre un magistrat » . Ces poursuites sont jugées par la Cour supérieure de justice, composée de la Cour de cassation et de la Cour d'appel (unique) du Grand-Duché de Luxembourg, dans une composition comprenant au moins neuf membres . S'agissant des magistrats relevant des juridictions de l'ordre administratif, comprenant une Cour administrative et un tribunal administratif, les

poursuites disciplinaires sont engagées par le Ministre de la Justice et décidées par la Cour administrative sur base de la loi modifiée du 7 novembre 1996 portant organisation des juridictions de l'ordre administratif .

En l'état futur probable du droit, les poursuites disciplinaires seront engagées par le Conseil national de la justice (dont la composition a été évoquée ci-avant dans le cadre de la réponse donnée à la question 9) . Elles seront jugées, en première instance, par un Tribunal disciplinaire et, en appel, par une Cour disciplinaire, qui sont des juridictions spéciales composées de magistrats du siège élus par les magistrats, y compris du Ministère public , et comprenant un Ministère public, dont les fonctions sont exercées devant le Tribunal disciplinaire par le Procureur d'Etat près le tribunal d'arrondissement de Luxembourg et devant la Cour disciplinaire par le Procureur général d'Etat .

11. Les procureurs sont-ils nommés à vie ou doivent-ils remplir des mandats successifs ? De combien d'années ?

Les nominations des magistrats du Ministère public, y compris les chefs de corps, à savoir les Procureurs d'Etat près les tribunaux d'arrondissement et le Procureur général d'Etat, se font à vie, c'est-à-dire jusqu'à l'âge légal de retraite. Le mandat de ces magistrats n'est donc pas limité dans le temps.

Il est cependant à préciser que cette solution résulte de la loi, à savoir de la loi modifiée du 8 mars 1980 sur l'organisation judiciaire. Comme évoqué ci-avant, dans le cadre de la réponse donnée à la question 2, la Constitution actuelle n'évoque même pas le Ministère public, partant, ne comporte aucune garantie au sujet d'une éventuelle inamovibilité des magistrats de ce dernier. Le projet de nouvelle Constitution disposait que les magistrats du siège sont inamovibles (Article 100, paragraphe 2) sans évoquer ceux du Ministère public. Ce point a été soulevé par la Commission de Venise, qui, dans son Avis sur la proposition de révision de la Constitution du 18 mars 2019, a recommandé de prévoir dans la Constitution que les magistrats du Ministère public sont nommés jusqu'à leur retraite .

Cette recommandation n'a jusqu'à présent pas été suivie d'effet.

12. Les règles concernant la nomination, la mutation, la promotion et la discipline des procureurs sont-elles similaires à celles des juges ?

Les règles de nomination, mutation, promotion et de nature disciplinaire des magistrats du Ministère public sont similaires à celles des magistrats du siège.

S'agissant de la nomination, mutation et promotion, en l'état actuel du droit, les magistrats sont nommés par le Gouvernement. Toutefois pour les magistrats du siège les plus élevés en rang, à savoir les conseillers de la Cour supérieure de justice (composée de la Cour de cassation et de la Cour d'appel), ainsi que les présidents et vice-présidents des tribunaux d'arrondissement, la nomination suppose l'avis de la Cour supérieure de justice . En fait, même s'il n'y est pas tenu en droit, le Gouvernement respecte l'avis de la Cour, de sorte que la Constitution est interprétée comme exigeant un avis conforme de cette dernière. Cette pratique n'est toutefois pas formellement consacrée par la Constitution. L'avis de la Cour n'est par ailleurs pas exigé pour les magistrats du Ministère public quel que soit leur rang.

Dans le cadre de la révision de la Constitution et du projet de loi n° 7323, précités, il est prévu de remplacer cette procédure et de confier au Conseil national de la justice le pouvoir de

décider de la nomination. Il appartiendrait alors à ce Conseil de présenter, par une décision motivée, un candidat. Seul le candidat présenté par le Conseil pourrait être nommé. Il est, en revanche, proposé de permettre au Chef de l'Etat (donc au Grand-Duc) de refuser un candidat par décision motivée, auquel cas le Conseil devrait présenter un autre candidat .

Cette procédure a été critiquée par la Cour supérieure de justice dans son avis sur le projet de loi n° 7323 comme impliquant de faire dépendre la nomination des magistrats « du bon vouloir d'un représentant du pouvoir politique, qui, à la limite, pourra refuser tout candidat proposé jusqu'à ce que le candidat approprié lui soit proposé » . Ces critiques ont été reprises par l'avis commun du Ministère public, qui soulève que « une telle procédure constitue une régression manifeste par rapport aux dispositions actuelles » . Le Conseil d'Etat s'est formellement opposé à cette procédure, cette critique ayant été émise dans le cadre d'un avis dont l'objet a été de vérifier si le projet de loi n° 7323 pouvait être, comme il avait été voulu par ses auteurs, adopté sur base de la Constitution actuelle, donc sans attendre la nouvelle Constitution (ou la modification de l'ancienne sur les points considérés) .

En tout état de cause, sous la réserve de l'avis de la Cour supérieure de justice requis par la Constitution pour les postes les plus importants de la magistrature du siège des juridictions judiciaires, la procédure de nomination des magistrats du Ministère public est similaire à celles du siège.

13. Le gouvernement peut-il donner des instructions au ministère public, par exemple, par exemple, de poursuivre ou de ne pas poursuivre ? Les instructions sont-elles de nature générale ou spécifique ? Sont-elles données par écrit ? Le ministère public peut-il les contester ?

Il est renvoyé à la réponse donnée ci-avant à la question 2.

En l'état actuel du droit, et en théorie, le Ministre de la Justice peut dénoncer au Procureur général d'Etat « les infractions à la loi pénale dont il a connaissance, lui enjoindre d'engager des poursuites ou de saisir la juridiction compétente de telles réquisitions écrites que le ministre juge opportunes » . La jurisprudence a précisé que si le Ministre de la Justice peut ordonner au Ministère public d'engager une poursuite pénale, il ne peut en aucun cas lui donner des ordres astreignants ou péremptoires de s'abstenir d'une poursuite déterminée . Les magistrats du Ministère public sont tenus de prendre « des réquisitions écrites conformes aux instructions qui [leur] sont [ainsi] données [mais ils développent] librement les observations orales qu'il[s] croi[ent] convenables au bien de la justice » (Article 16-2 du Code de procédure pénale, consacrant le principe « la plume est serve, la parole est libre ».

Le Ministre a donc le pouvoir de donner des instructions de poursuite, mais non des instructions de non poursuite.

Ces instructions de poursuite peuvent, en théorie, être tant générales qu'individuelles, la loi n'opérant de ce point de vue aucune distinction.

La loi n'exige pas que les instructions soient nécessairement écrites .

Au regard de l'article 16-2 du Code de procédure pénale, le Ministère public est tenu de leur donner suite dans ses réquisitions écrites, mais peut s'en distancer dans ses réquisitions orales.

Telle est la théorie au regard de l'état du droit actuel.

Ainsi qu'il a été précisé ci-avant dans le cadre de la réponse donnée à la question 2, ces textes ne trouvent pas application dans la pratique actuelle, alors que les Ministres de la Justice s'abstiennent en fait d'intervenir. La pratique est donc contraire aux textes. Il faut toutefois ajouter qu'il n'existe aucune garantie de la pérennité de cette pratique. Il en est ainsi d'autant moins que, comme rappelé ci-avant, le principal parti de l'opposition s'oppose actuellement à l'indépendance du Ministère public (il est d'ailleurs sur ce point rejoint par un autre parti d'opposition, qui avait même développé son opposition à cette indépendance sur plusieurs pages de son programme électoral en vue des dernières élections législatives de 2018).

Comme rappelé ci-avant, il a été proposé d'adopter une nouvelle Constitution garantissant l'indépendance du Ministère public et un projet de loi (n° 7323) visant à supprimer les dispositions législatives actuelles contraires à cette indépendance. Or, il n'existe actuellement plus de consensus pour inscrire cette garantie dans la Constitution (le principal parti d'opposition s'y refusant). Il reste à voir si cette indépendance sera tout de même consacrée par la loi, par l'adoption du projet de loi n° 7323, qui n'appelle pas l'accord du principal parti de l'opposition. Si ce projet de loi était adopté, le Ministre de la Justice n'aurait (même en théorie) plus le pouvoir d'émettre des instructions.

Il est en l'état difficile de faire des pronostics sur l'évolution législative future y relative.

14. Les instructions des procureurs supérieurs sont-elles données par écrit aux personnes placées sous leur contrôle ? Ces instructions peuvent-elles être contestées ou refusées ?

Il y a lieu de distinguer l'état actuel du droit, du projet de réforme résultant du projet de loi n° 7323.

En l'état actuel du droit, le Procureur général d'Etat a, à l'égard des magistrats du Ministère public, les mêmes prérogatives que le Ministre de la Justice . Il a donc le pouvoir de dénoncer des infractions à la loi pénale, d'enjoindre d'engager des poursuites ou de saisir la juridiction compétente de réquisition écrites jugées opportunes. Il ne saurait en revanche donner des ordres de non-poursuite.

Rien dans les textes actuels ne lui impose de donner ces instructions par écrit.

Les magistrats du Ministère public sont tenus de les respecter dans leurs réquisitions écrites, mais peuvent s'en écarter dans leurs réquisitions orales, conformément au principe que « la plume est serve, la parole est libre » .

Le projet de loi n° 7323 modifie ce dispositif en prévoyant que les instructions du Procureur général doivent être écrites et versées au dossier . Cette innovation est proposée « dans un souci de garantir la transparence et la sécurité juridique » .

Le GRECO a noté avec satisfaction l'existence de cette innovation, tout en se réservant le réexamen de la législation définitive après l'adoption de celle-ci .

15. Quelles sont, le cas échéant, les principales initiatives en matière de formation visant à renforcer la sensibilisation à la dimension de facto de l'indépendance des procureurs ?

Il n'existe pas en l'état de formation sensibilisant à la question de l'indépendance du Ministère public. L'explication en est double. D'une part, le Ministère public dispose actuellement en fait d'une indépendance, de sorte que la question ne se pose pour l'instant qu'en théorie. D'autre part, et de façon quelque peu paradoxale, cette indépendance n'est pour l'instant pas consacrée par la Constitution ou la loi, de sorte qu'il est difficile de sensibiliser à ce qui n'est pas prévu par les textes.

16. Dans quelle mesure les médias couvrent-ils les décisions des tribunaux internationaux et des organes conventionnels en ce qui concerne l'indépendance pratique des procureurs ?

Les médias n'ont pas couvert les recommandations et avis du GRECO et de la Commission de Venise au sujet de l'indépendance du Ministère public au Luxembourg. Ces recommandations et avis reposent sur la prémisse de l'adoption future de la nouvelle Constitution, qui aurait consacré l'indépendance du Ministère public, principe au sujet duquel il existait un consensus politique jusqu'en 2018. Eu égard à l'existence de ce consensus, il n'y avait pas matière à controverse, donc à couverture médiatique d'une telle controverse. Il en était ainsi à plus forte raison que la réforme constitutionnelle couvre de nombreux autres sujets beaucoup plus controversés, tel que système électoral, et que la question de l'indépendance du Ministère public n'est, au regard de sa technicité, guère de nature à susciter un intérêt au-delà du cercle restreint des professionnels de la justice.

Cette situation risque de changer, alors qu'il n'existe actuellement plus de consensus politique sur cette question, qui fera l'objet d'un échange de vues au sein de la Chambre des Députés, la garantie de l'indépendance du Ministère public ayant cependant d'ores-et-déjà été supprimée du projet de texte constitutionnel.

17. Dans quelle mesure le ministère public interagit-il avec le grand public en ce qui concerne les décisions des tribunaux internationaux et des organes conventionnels relatives à l'indépendance pratique des procureurs ?

Jusqu'à présent le Ministère public s'est abstenu d'interagir avec le grand public au sujet de la question de l'indépendance du Ministère public, préférant exprimer son point de vue dans le cadre des avis qu'il était invité à émettre dans la procédure législative (ou, au pire, d'envoyer, comme évoqué ci-avant dans la réponse à la question 2, un courrier de protestation au Président de la Chambre des Députés, sans en faire de communication dans les médias).

Republic of Moldova / République de Moldova

What are the general official measures taken for reacting to and implementing the decisions of international courts and treaty monitoring bodies?

In accordance with the provisions of Articles 4 and 8 of the Constitution, the Republic of Moldova is committed to comply with the Charter of the United Nations and the Treaties to which it is a party, to base its relations with other States on the unanimously recognized principles and norms of international law. If there are any inconsistencies between the agreements and treaties on fundamental human rights to which the Republic of Moldova is a party and its internal laws, priority have international regulations.
Law No. 151 of 30.07.2015 on Governmental agent regulates the procedure of representation before the European Court of Human Rights and the enforcement/monitoring of the judgments and decisions of the Court.
The Governmental agent is appointed and dismissed by the Government, at the proposal of the Minister of Justice, being subordinate to the Prime Minister and the Minister of Justice.
The Governmental agent shall also supervise the correctness of the measures taken to enforce the judgments and decisions of the European Court and shall propose to the competent authorities for adoption measures of a general nature with a view to avoiding other infringements of the convention in the future.
The implementation of the judgements of other international courts or recommendations of other monitoring bodies of the treaty to ratified by the Republic of Moldova, is under the jurisdiction of the individual institutions under the jurisdiction of the function, or by the designation of the said authorities, within the framework of the (the act) for the ratification of, or by delegation of such powers by the Government, through the Ministry of Foreign Affairs and European Integration responsible at the national level for the monitoring of the implementation of the international treaty.

Based on your answer to the 1st question, what are the measures taken particularly for the practical independence of the prosecution services and individual prosecutors? Can you give examples?

According to Article 124 of the Constitution, the Law on the Public Prosecution Service No. 3 of 2016, the prosecution service is an autonomous institution which forms part of the judicial authority. It is independent from the legislative, executive and judicial powers, any political party or social-political organisation, including any other institutions, organisations or entities. Any interference in Prosecution Service work is prohibited and the prosecutor may independently and personally take decisions on the cases s/he manages (Article 3, Law on the Public Prosecution Service).
The Law on the Public Prosecution Service entered into force on August 1st 2016 aimed at increasing the procedural autonomy of individual prosecutors by establishing in art. 12 the administrative hierarchy and the procedural hierarchy (art. 13). Initially, the art. 13 provided for that a prosecutor from a higher hierarchical level may give binding written instructions to a subordinate prosecutor as well as orders on procedural actions to be carried out which, however, cannot refer to the solution of the case. The subordinate prosecutor may refuse to execute an illegal indication and has to challenge it to the superior of the prosecutor who issued it. On July 20, 2017, the Parliament adopted the Law no. 168 (in force from August 18, 2017) on amending art. 13 of the Law on the Public Prosecution Service (hereinafter PPS) no. 3 of February 25, 2016 (in force from August 1st 2016) with following content: “The procedural

hierarchy of prosecutors and the competences of hierarchical superior prosecutors are set up in Criminal Procedure Code". In this regard, the Criminal Procedure Code was amended as to define clear rules of hierarchical interventions of hierarchic superior prosecutors in the framework of criminal investigations, including safeguards of undue or abusive influence as well as the possibility of subordinate prosecutors to challenge the indications of hierarchic superior prosecutor to the Prosecutor General or his/her deputies. Therefore, the Prosecutor General or his/her deputies shall decide upon the appeal within the timeframe of 15 days (art. 51 para 31). According to paragraph 3 of the art.51 Criminal Procedure Code (3) "In exercising his duties in criminal proceedings, the prosecutor will be independent and he/she will obey only the law. He/she will also execute written orders given by a hierarchic superior prosecutor".
A new article was introduced in Criminal Procedure Code (i.e. art. 531 Hierarchic Superior Prosecutor) which contains the tiers of hierarchy of Prosecutors and their interventions in criminal cases, as this set-up is rather appropriate to the scope of criminal procedure than to have a separate regulation in Law on the Public Prosecution Service as it was before the amendments. The Criminal Procedure Code establishes clearly in the art. 6 p. 371) who are the hierarchic superior prosecutors, i.e. the chief prosecutors of territorial prosecutor's offices and his/ her deputies, chief prosecutors of specialized prosecutor's offices and his/her deputies, chief prosecutors of General Prosecutor's Office units/departments, Deputies of the Prosecutor General and the Prosecutor General.
On October 1, 2019, the Prosecutor General issued a written notification (no 11-3d/19-3357) for all prosecutors that verbal instructions given to hierarchically subordinated prosecutors are not binding, unless they are confirmed in writing. All prosecutors signed the notification and are aware of its binding character. Up to date, there aren't any registered individual cases or complaints coming from hierarchical subordinated prosecutors against allegedly illegal or verbal hierarchical instructions or interventions within pending criminal procedures.

Are these measures reflected in the law or in the prosecution policy or debate?

These measures were fully implemented by adopting the following laws:
Law no. 3 of 25.02.2016 on the Law on the Public Prosecution Service;
Law no. 159 of 07.07.2016 on specialized prosecutor's offices.
The Regulation of the Prosecutor's Office approved by the Order of the Prosecutor General no. 24/28 of 24.09.2016, with subsequent amendments and completions. Law No. 256 of November 25, 2016 on amending art. 125 of Constitution (published in the Official Gazette No. 451 of November 11, 2016), on the procedure of appointment of the Prosecutor General. The Prosecutor General is appointed by the President of the Republic, upon proposal of the Superior Council of Prosecutors for one non-renewable seven-year term of office (the Law on Public Prosecutor's Office contains similar provisions too).
On September 16, 2019 the Parliament adopted the Law No. 128 on amending Law on the Public Prosecution Service (LPPS), entered in force on September 21st, 2019, after publication in the Official Gazette no 295/420, reversing inter alia the procedure for appointment and dismissal of Prosecutor General and composition of Superior Council of Prosecutors.
Accordingly, the composition of Superior Council of Prosecutors was increased with 3 new members, by adding two another ex-officio member, i.e. The Ombudsman and President of Moldovan Bar Association to the existing four ex-officio members, (i.e. Prosecutor General, Head Prosecutor of Autonomous Region of Gagauzia, Minister of Justice and President of the Superior Council of Magistracy and by including a non-prosecutor member, appointed by the Government). Now the SCP includes 15 members. The number of SCP members elected among prosecutors by their peers remains at 5 and by adding the two ex-officio members prosecutors (i.e. Prosecutor General and Head Prosecutor of Autonomous Region of Gagauzia) results a number of 7 prosecutors against 8 non-prosecutors members of SCP. (the Moldovan

Constitution foresees inter alia that the prosecutors represent an important part within Superior Council of Prosecutors – art. 125/1 para. 2). In its Joint opinion CDL-AD(2015)005 on the draft Law on the Public Prosecution Service of the Republic of Moldova (para.131-133), the Venice Commission expressed its misgivings about the ex-officio participation within the Superior Council of Prosecutors of the Minister of Justice and President of the Superior Council of Magistracy as well as the election of the lay members by the Parliament, given to a certain risk of politicization.
On December 9th, 2019 the Venice Commission Amicus Curiae Brief no 972/2019 CDL-AD (2019)034 on the amendments to the Law on Prosecutor's Office of the Republic of Moldova (i.e. new procedure of election/appointment/dismissal of Prosecutor General and composition of Superior Council of Prosecutors) was published. The Venice Commission considers that the balance of representation/power in the Superior Council of Prosecutors pursuant to Law no 128/2019 on amending the Law on the Public Prosecution Service are in line with previous Venice Commission recommendations and the presence of Minister of Justice in the Superior Council of Prosecutors would not seem objectionable (see para 35, 36 of aforementioned opinion).

If yes, then were there any changes in the prosecution system as a consequence of such measures?

By adopting the aforementioned laws, the following objectives were achieved: a precise determination of the place of the Public Prosecution Service in the system of law enforcement bodies and the main responsibilities of the prosecutors; establishing the role of the Superior Council of Prosecutors in the system of Public Prosecution Service bodies; the conceptual foundation of the mechanism for appointing the Prosecutor General and the hierarchically inferior prosecutors.

Are there also national decisions of the Supreme or Constitutional Courts, or any other highest judicial body at national level, dealing with the question of independence of prosecutors?

Currently, the complaint No. 168a/2019 regarding the control of the constitutionality of some provisions of the Law on the Public Prosecution Service is pending before the Constitutional Court. On the 23.10.2019 the Superior Council of Prosecutors submitted to the Constitutional Court its opinion on the subject. On December 9th, 2019 the Venice Commission published its Amicus Curiae Brief no 972/2019 CDL-AD (2019)034 on the amendments to the Law on Prosecutor's Office of the Republic of Moldova (i.e. new procedure of election/appointment/dismissal of Prosecutor General and composition of Superior Council of Prosecutors).

Does the prosecution system in your country belong to the judiciary?

According to Article 124 of the Constitution, the Prosecution Service is an autonomous institution which forms part of the judicial authority, that contributes, through criminal proceedings and other procedures provided by the law, to the administration of justice and to the defence of the rights, freedoms and legitimate interests of the individual, of the society and of the state. It is independent from the legislative, executive and judicial powers and any interference in its work is prohibited (Article 3, new LP). The Prosecution Service is organised in a hierarchical manner, each prosecutor's office being headed by a chief prosecutor who manages and supervises the work of the office.

Are there any parallels between the independence of judges and independence of prosecutors, or the latter is considered separately, if considered at all?

In regard to the independence of judges, we would like to mention that judges are independent, impartial and irremovable and are subject only to the law. Judges make decisions independently and impartially and act without any restrictions, influences, pressures, threats or interventions, direct or indirect, from any authority, including the judiciary. The hierarchical organization of jurisdictions cannot affect the individual independence of the judge.
Regarding the independence of prosecutors, we note that the prosecutor operates on the principles of legality, impartiality, reasonableness, integrity and procedural independence, which gives him the opportunity to make independent and unipersonal decisions in the cases he manages. (art. 3 of Law No.3/2016 on the Public Prosecution Service).
The procedural independence of the prosecutor is ensured by guarantees that exclude any political, financial, administrative or other influence on the prosecutor related to the exercise of his duties (art. 5 of Law No.3/2016 on the Public Prosecution Service).
According to art. 13 of Law No.3/2016 on the Public Prosecution Service and the Criminal Procedure Code, the activity of the prosecutor may be subject to control by the hierarchically superior prosecutor and the court. Art.13 of the mentioned Law regulates the procedural hierarchy of prosecutors and establishes that the procedural hierarchy of prosecutors and the attributions of the hierarchically superior prosecutor are established by the provisions of the Criminal Procedure Code.

Are prosecutors and prosecution services independent or autonomous from the executive and legislative branches of state power?

The Public Prosecution Service is independent of the legislative, executive and judicial powers, any political party or social-political organization, as well as any other institutions, organizations or persons. Any interference in the work of the Public Prosecution Service is prohibited. The Public Prosecution Service cooperates with other authorities to carry out the functions indicated in the law (Law No. 3 of 25.02.2016 on the Public Prosecution Service).

Is the interaction of prosecutor offices with courts, police, investigation authorities and other actors in criminal procedure based on the principle of prosecutorial independence and how?

During criminal investigation, the prosecutor is also independent of the criminal prosecution body, within the limits of his material and territorial competence, to exercise the duties provided in art.52 of the Criminal Procedure Code, namely, he initiates the criminal investigation; directly conducts the investigation; personally conducts the criminal investigation and verifies the lawfulness of the procedures undertaken by the criminal investigative body; controls the procedures for receiving and registering notifications of crimes; requests from the criminal investigative body for purposes of control criminal case files, documents, procedural actions, materials and other data related to the crime committed and the persons identified in a criminal case; verifies the quality of the evidence collected and ensures that any crime is solved and that every criminal is made liable and that no one is prosecuted without clear indication that he/she committed a crime, etc.
During the hearing of a criminal case in court, the prosecutor is independent of the court, within the limits of art. 53 of the Criminal Procedure Code, i.e., he represents the prosecution in the name of the state and submit in the hearing the respective evidence in a case in which he/she managed or personally conducted the criminal investigation; participate in the examination of the evidence submitted by the defense; presents new evidence necessary to support the prosecution; makes motions and expresses his/her opinion on issues that arise in the course of

the judicial arguments; requests that the court bring more severe charges against the defendant and admit new evidence provided that following the judicial inquiry it was ascertained that the defendant had allegedly committed other crimes and that existing evidence is insufficient; changes the legal qualification of the crime committed by the defendant provided that a judicial inquiry confirms that the defendant committed this crime; if the criminal investigation was incomplete, makes a motion to interrupt the hearing of the criminal case for the period provided hereunder so that new evidence can be submitted supporting the charges brought against the defendant, etc.
Is there a Council of Prosecutors or a similar equivalent body which can be considered as a mechanism to monitor and ensure prosecutorial independence, including in the way in which the prosecution services operate?

Article 1251. Superior Council of Prosecutors
(1) The Superior Council of Prosecutors is the safeguard for the independence and impartiality of individual prosecutors.
(2) The Superior Council of Prosecutors is composed, according to the law, of the prosecutors elected from prosecutor's offices of all levels, and of the representatives of other authorities, public institutions or civil society. The prosecutors shall hold a substantial part within the Superior Council of Prosecutors.
(3) The Superior Council of Prosecutors ensures the appointment, transfer, promotion to a higher position and disciplinary actions in relation to individual prosecutors.
(4) The organization and functioning of the Superior Council of Prosecutors is established by the law.
Pursuant to Law on the Public Prosecution Service (art. 68), the Superior Council of Prosecutors is an independent body with status of legal personality, established in order to participate in establishing, operation and ensuring the self-administration of the prosecution system. Superior Council of Prosecutors is the safeguard for independence and impartiality of prosecutors.

On September 16, 2019 the Parliament adopted the Law no 128 on amending Law on the Public Prosecution Service (LPPS), entered in force on September 21st, 2019, after publication in the Official Gazette no 295/420, reversing inter alia the procedure for appointment and dismissal of Prosecutor General and composition of Superior Council of Prosecutors. Accordingly, the composition of Superior Council of Prosecutors was increased with 3 new members, by adding two another ex-officio member, i.e. The Ombudsman and President of Moldovan Bar Association to the existing four ex-officio members, (i.e. Prosecutor General, Head Prosecutor of Autonomous Region of Gagauzia, Minister of Justice and President of the Superior Council of Magistracy and by including a non-prosecutor member, appointed by the Government). Now the SCP includes 15 members against 12 as it was before the amendments operated by aforementioned Law. The number of SCP members elected among prosecutors by their peers remains at 5 and by adding the two ex-officio members prosecutors (i.e. Prosecutor General and Head Prosecutor of Autonomous Region of Gagauzia) results a number of 7 prosecutors against 8 non-prosecutors members of SCP (the Moldovan Constitution foresees inter alia that the prosecutors represent an important part within Superior Council of Prosecutors – art. 125/1 para. 2). In its Joint opinion CDL-AD(2015)005 on the draft Law on the Public Prosecution Service of the Republic of Moldova (para.131-133), the Venice Commission expressed its misgivings about the ex-officio participation within the Superior Council of Prosecutors of the Minister of Justice and President of the Superior Council of Magistracy as well as the election of the lay members by the Parliament, given to a certain risk of politicization.
On December 9th, 2019, the Venice Commission published its Amicus Curiae Brief no 972/2019 CDL-AD(2019)034 on the amendments to the Law on Prosecutor's Office of the Republic of

Moldova (i.e. new procedure of election/appointment/dismissal of Prosecutor General and composition of Superior Council of Prosecutors. The Venice Commission considers that the balance of representation/power in the Superior Council of Prosecutors pursuant to Law no 128/2019 on amending the Law on Public Prosecutor's Office are in line with previous Venice Commission recommendations and the presence of Minister of Justice in the Superior Council of Prosecutors would not seem objectionable (see para 35, 36 of aforementioned opinion).

How many of its members are elected by their peers, and does the prosecution policy or the debate within the judiciary produce any impact on the election of the members of the Council of Prosecutors?

On September 16, 2019 the Parliament adopted the Law no 128 on amending Law on the Public Prosecution Service (LPPS), entered in force on September 21st, 2019, after publication in the Official Gazette no 295/420, reversing inter alia the procedure for appointment and dismissal of Prosecutor General and composition of Superior Council of Prosecutors. Accordingly, the composition of Superior Council of Prosecutors was increased with 3 new members, by adding two another ex-officio member, i.e. Now the SCP includes 15 members against 12 as it was before the amendments operated by aforementioned Law. The number of SCP members elected among prosecutors by their peers remains at 5 and by adding the two ex-officio members prosecutors (i.e. Prosecutor General and Head Prosecutor of Autonomous Region of Gagauzia) results a number of 7 prosecutors against 8 non-prosecutors members of SCP.

Who has the initiative of disciplinary proceedings?

According to the provisions of art.43 para. (l) of Law no.3/20l6 on the Public Prosecution Service, the notification regarding the deed that may constitute a disciplinary offense committed by the prosecutor can be submitted by:
a) any interested person;
b) members of the Superior Council of Prosecutors;
c) The Prosecutors' performance evaluation Board, according to the art. 3l para. (5) of Law no. 3/2016;
d) the Prosecutors' inspection, following the checks carried out.

Are prosecutors appointed for life or do they have to fulfil successive terms? Of how many years?

In accordance with the provisions of art.25 of Law No.3/20l6 on the Public Prosecution Service, the mandate of chief-prosecutor of a Prosecutor's Office, that of deputy chief-prosecutor of the Prosecutor's Office, that of chief-prosecutor of the subdivision of the General Prosecutor's Office or deputy chief-prosecutor of the General Prosecutor's Office unit/department is 5 years. Holding the same position cannot exceed 2 consecutive terms. At the end of the term, the person is proposed to be appointed, without contest, to one of the vacant positions of prosecutor, except for the one of chief-prosecutor.
The Prosecutor General is appointed for a term of 7 years, without the right to be reappointed. After the expiration of the mandate, the Prosecutor General may continue his activity in any vacant position of prosecutor, chosen by him, being appointed without contest.

Are the rules regarding appointment, transfer, promotion and discipline of prosecutors similar to those of judges?

In accordance with the provisions of art. l25/1 para. (3) of the Constitution, the Superior Council of Prosecutors, through its bodies, ensures the appointment, transfer, promotion to office and application of disciplinary measures towards prosecutors.
The Board for the selection and career of prosecutors is one of the self-administration bodies within the Public Prosecution Service, under the Superior Council of Prosecutors. The board operates under the provisions of Law No.3 of 25.02.2016 on the Public Prosecution Service and the regulation on the Board for the selection and career of prosecutors and the procedure for the selection and career of prosecutors, approved by Council's Decision No.12-14/17 of 23.02.2017.
The Board for evaluating the prosecutors' performances is conducted in accordance with art. 88 of Law No.3 of 25.02.2016 on PPS and the regulation on the organization and functioning of the Board for evaluating the prosecutors' performances and the procedure of evaluation the performances of prosecutors, approved by the decision of the Superior Council of Prosecutors no.12-256/16 of 22.12.2016.
According to art. 89 of Law No.3 of 25.02.2016 on the PPS The Disciplinary and ethics Board, examine disciplinary cases initiated against prosecutors, received from the inspection of prosecutors, and when it's appropriate, apply, disciplinary sanctions, adopt recommendations on the prevention of disciplinary misconduct within the Prosecution Service and respect of the ethics norms.
Similar competences are established for the Superior Council of Magistracy in regards of judges, by art. l23 para. (1) of the Constitution, to ensure appointment transfer, secondment, promotion to office and the application of disciplinary measures to judges.
In accordance with the provisions of art.10 of Law No. 544/20.07.95 on the status of the judge, the selection process of candidates for the position of judge is carried out according to objective criteria based on merit, taking into account the professional training, integrity, capacity and efficiency of the candidates. Candidates for the position of judge are selected by the Board for the selection and career of judges under this law.
According to art.11 of Law No. 544/20.07.95 on the status of the judge, judges of the first instance courts and judges of the courts of Appeal shall be appointed by the president of the Republic of Moldova from the number of candidates selected by competition, at the proposal of the Superior Council of Magistracy. The selected candidates shall be appointed as the initial judge for a term of 5 years. After the expiry of the 5-year period, judges are appointed until the age limit of 65 is reached.

May the government instruct the prosecution services, for instance, to prosecute or not to prosecute? Are instructions general or specific in nature? Are they given in writing? Can the prosecution challenge them?

The Public Prosecution Service is independent of the legislative, executive and judicial powers, any political party or social-political organization, as well as any other institutions, organizations or persons. Any interference in the work of the Public Prosecution Service is prohibited. The procedural independence of the prosecutor is ensured by guarantees excluding any political, financial, administrative or any other influence over the prosecutor in connection with the performance of his/her duties.

Are the instructions of superior prosecutors given in writing to those under their supervision? Can these instructions be challenged or refused?

The Criminal Procedure Code was amended as to define clear rules of hierarchical interventions of hierarchic superior prosecutors in the framework of criminal investigations, including safeguards of undue or abusive influence as well as the possibility of subordinate prosecutors to

challenge the indications of hierarchic superior prosecutor to the Prosecutor General or his/her deputies. Therefore, the Prosecutor General or his/her deputies shall decide upon the appeal within the timeframe of 15 days (art. 51 para 31). According to paragraph 3 of the art.51 Criminal Procedure Code (3) “In exercising his duties in criminal proceedings, the prosecutor will be independent and he/she will obey only the law. He/she will also execute written orders given by a hierarchic superior prosecutor”. (please see the explanations to p.2)
A new article was introduced in the Criminal Procedure Code (i.e. art. 531 Hierarchic Superior Prosecutor) which contains the tiers of hierarchy of Prosecutors and their interventions in criminal cases, as this set-up is rather appropriate to the scope of criminal procedure than to have a separate regulation in Law on the Public Prosecution Service as it was before the amendments. The Criminal Procedure Code establishes clearly in the art. 6 p. 371) who are the hierarchic superior prosecutors, i.e. the chief prosecutors of territorial prosecutor’s offices and his/ her deputies, chief prosecutors of specialized prosecutor’s offices and his/her deputies, chief prosecutors of General Prosecutor’s Office units/departments, Deputies of the Prosecutor General and the Prosecutor General.

On October 1, 2019, the Prosecutor General issued a written notification (no 11-3d/19-3357) for all prosecutors that verbal instructions given to hierarchically subordinated prosecutors are not binding, unless they are confirmed in writing (the translation is attached). All prosecutors signed the notification and are aware of its binding character. Up to date, there aren’t any registered individual cases or complaints coming from hierarchical subordinated prosecutors against allegedly illegal or verbal hierarchical instructions or interventions within pending criminal procedures.
The General Prosecutor’s Office is finalizing the procedure of drafting the amendments to the “Instruction on the role and duties of heads of General Prosecutor’s Office units/departments and chief territorial and specialized prosecutors in carrying out and leading criminal prosecutions”– which is in the phase of coordination with all prosecutor’s territorial and specialized offices – which will comprise inter alia the procedure of documentation in practice of all hierarchical interventions in individual cases Moreover, the Code of Ethics of Prosecutors foresees inter alia in section 6.2.7. that prosecutor must not execute instructions or requests coming from politicians, public servants and representatives of law agencies, if these are contrary to the legislation, other normative acts or principles of the present Code, except written instructions of the hierarchically superior prosecutor, given strictly according to the Law. In the event that he/she receives such instructions or requests, he/ shall immediately inform the superior hierarchical prosecutor, and in case if such instruction or request contains the elements of a crime, he shall react (self-report) accordingly.

What is the system of allocation, re-allocation and management of cases and is it based on objective and transparent criteria respecting the independence of prosecutors?
The head of the Prosecutor's Office assigns prosecutors to the case materials and criminal cases on the basis of the following criteria: specialized training, skills, experience, number of cases, appeals, petitions, level of complexity, and the specificity of each case in particular, situations of incompatibility and conflict of interests, to the extent known, by carrying out individual and the collective evaluation of the performances of the prosecutors. For details, please see the p. 160-161 of GRECO 4th Evaluation round on Republic of Moldova (https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/168075bb45).

Which are, if any, the main initiatives in terms of training to strengthen the awareness about the de facto dimension of the prosecutorial independence?

Professional training is one of the most important guarantees of the prosecutor's independence and impartiality in the exercise of his duties, that's why it continues to be on the yearly agenda, and the responsibility for that lies on the National Institute of Justice, the chief-prosecutors of the General Prosecutor's Office units/departments, the territorial and specialized prosecutors' offices, as well as each individual prosecutor (art. 32 of Law No. 3 of 25.02.2016 on PPS and art. 30, 31 of Law No. 152 of 08.06.2006 on the National Institute of Justice).
The continuous professional training of the prosecutor essentially represents the deepening the knowledge on the domestic legislation, the international acts to which the Republic of Moldova is a party, the jurisprudence of the national and international courts and is carried out through the National Institute of Justice.
The National Institute of Justice (NIJ) was inaugurated on 9 November 2007. According to the law on the National Institute of Justice, adopted by the Parliament of the Republic of Moldova on June 8, 2006, NIJ is a public institution with its own heritage, administrative, scientific and educational autonomy.

Is the concept of prosecutorial independence reflected in the code of ethics and professional conduct of prosecutors? If such code exists in your country, could you please inform how it was prepared and adopted, and provide its copy in English or French if available.

The Code of Ethics of the prosecutors was adopted by the General Assembly of Prosecutors on May 27, 2016. Code of Ethics of the prosecutors is a public document, which establishes the principles and standards of professional ethics mandatory for prosecutors. It contains rules of conduct of the prosecutor in the exercise of his duties and in private life.
One of the main principles stated of the Code is that of the prosecutor's independence, according to which the prosecutor must:
- be independent in decision-making and in the performance of his duties;
- to exercise the duties, impartially, honestly, irreproachable, showing high moral conduct and maximum fairness and to contribute to the effective implementation of the act of justice;
- make decisions based on impartial and objective evaluation of evidence etc.
Independence is not a privilege or prerogative conferred on prosecutors in the personal interest, but a guarantee of a fair, impartial and effective justice that protects the public and private interest in society.
By Decision no. 1-16/19 of February 14, 2019 the Superior Council of Prosecutors proposed for approval to the General Assembly of Prosecutors draft amendments to the Code of ethics of prosecutors, adopted by the General Assembly of Prosecutors on May 27, 2016(hereinafter - Code), having the following purposes: inclusion in the Code of additional values for prosecutors to adhere to; a detailed description of principles and rules of conduct for prosecutors, taking into account the European Guidelines on Prosecutor's Ethics and Conduct ("Budapest Guidelines", adopted at the Conference of Prosecutors General in Europe on May 31, 2005); defining transparency as a rule and a factor capable of increasing the confidence of the Prosecutor's Office in the spirit of Recommendation Rec (2003) 13 of the Committee of Ministers to the Member States on the provision of information through the media in relation to criminal proceedings; development of the institute of confidential counselling.
On February 22, 2019 the General Assembly of the Prosecutors with the majority of votes of the present prosecutors voted the changes submitted by the SCP. The amendments made include those related to point 11 of the Code, so that its wording is as follows: "11. The Disciplinary and Ethics Board will develop additional written guidance on interpreting ethical rules that prosecutors will face, including coming up with practical examples of violating the provisions of this Code. The granting of confidential counselling in certain specific cases, at the request of the interested prosecutor, will be provided by persons appointed by the SCP as Ethics Advisers, who are to be selected among former members of the self-governing bodies of Prosecution

Service. The selection shall take into account the prosecutor's reputation and his/her communication skills. The SCP will make public the list with the identity of the advisers, the contact details and will determine the conditions for conducting discussions and keeping confidentiality".
(http://csp.md/sites/default/files/inline-files/CODUL%20de%20Etica%20Redactat%2015.07.2019_0.pdf)
During the SCP meeting of January 23, 2020, were discussed the priorities for the year 2020, one of which is pertaining to finalization, expertise and publication of the Guide of good practices on matters of prosecutors' ethics.
National Institute of Justice (hereinafter NIJ) – responsible for initial and in-service training of judges and prosecutors has organised throughout the year 2019, on regular basis, trainings of a practice-oriented nature related to Ethics, Deontology – which are included in the annual training curricula. For example, on April 5 and on October 29, NIJ organized two modules of training courses on Management of Ethical and Professional Conduct and solving conflicts for a total number of 60 prosecutors

To what extent the media cover the decisions of international courts and treaty bodies as regards the practical independence of prosecutors?

The General Prosecutor's Office has an official website - www.procuratura.md, where the information that reflects the work of the institution, is published systematically, as well as the normative acts, decisions and international recommendations on the work of prosecutors. Also, the Superior Council of Prosecutors recently launched its own website www.csp.md.

To what extent the prosecutor offices interact with the broad public as regards the decisions of international courts and treaty bodies related to the practical independence of prosecutors?

Superior Council of Prosecutors in 2019 launched its website www.csp.md, which facilitated the dialogue with society. This online platform plays an important role in strengthening decision-making transparency, but also in ensuring institutional identity and publicity. The decisions of the Superior Council of Prosecutors and its subordinated boards shall be published, within 10 working days from the date of issue, on the official website of the Superior Council of Prosecutors (art.77 para.(7) and art.85 para.(1) of Law No.3/2016).
We would also like to mention that both the meetings of the Superior Council of Prosecutors and those of the subordinated boards are recorded (video/audio), which are annexed to the transcripts of the meetings. After drafting and signing the transcripts, they are placed on the website of the Superior Council of Prosecutors, in the appropriate directory (art.77 para. (8) and art.84 para.(6) of Law No.3/2016).
This way, by reflecting all the work carried out by the Superior Council of Prosecutors, the principle of transparency and accessibility in the decision-making process of this public authority is respected.
Similarly, the General Prosecutor's Office has an official website - www.procuratura.md, where the information that reflects the work of the institution, is placed systematically.

The Netherlands / Les Pays-Bas

1. What are the general official measures taken for reacting to and implementing the decisions of international courts and treaty monitoring bodies?
   No doubt, every decision of an international court will have its impact on the Dutch judicial system, be it on the way of working of the prosecution service, but also on its decisions regarding to prosecute or not, be it on the judges in their decisions in court, be it on the Dutch legislator, that will have to bring the Dutch criminal law in line with the decision of the relevant international courts: Court of HR Strasbourg, EU Court of Justice, Luxembourg

2. Based on your answer to the 1st question, what are the measures taken particularly for the practical independence of the prosecution services and individual prosecutors? Can you give examples? For example the decisions of the CJEU (2019) regarding the role of the prosecutors in EAW's. This decision demands a fully independent prosecutor to be able to order EAW's by a prosecutor. The Dutch prosecutor however theoretically can be ordered by the MoJ to prosecute or not, in public of course. This lack of 100% independency excluded the Dutch prosecutor from ordering EAW's. Therefore the Dutch Criminal Code was changed, and since December 2019 it is the Investigative Judge that orders the EAW.

3. Are these measures reflected in the law or in the prosecution policy or debate? Both

4. If yes, then were there any changes in the prosecution system as a consequence of such measures? If necessary, yes, see 2

5. Are there also national decisions of the Supreme or Constitutional Courts, or any other highest judicial body at national level, dealing with the question of independence of prosecutors? Could, but not recently

6. Does the prosecution system in your country belong to the judiciary? yes

7. Are prosecutors and prosecution services independent or autonomous from the executive and legislative branches of state power? From the legislative power, yes, but from the executive power not fully 100%, see 2

8. Is there a Council of Prosecutors or a similar equivalent body which can be considered as a mechanism to monitor and ensure prosecutorial independence, including in the way in which the prosecution services operate? No

9. How many of its members are elected by their peers, and does the prosecution policy or the debate within the judiciary produce any impact on the election of the members of the Council of Prosecutors? N.a.

10. Who has the initiative of disciplinary proceedings? N.a.

11. Are prosecutors appointed for life or do they have to fulfil successive terms? Of how many years? None of these, prosecutors are appointed for an indefinite time but can be fired for specific reasons, like committing a crime, etc.

12. Are the rules regarding appointment, transfer, promotion and discipline of prosecutors similar to those of judges? More or less

13. May the government instruct the prosecution services, for instance, to prosecute or not to prosecute? Are instructions general or specific in nature? Are they given in writing? Can the prosecution challenge them? See 2, always in writing and in public, the last time it happened was in 1997 in a case regarding euthanasia.

14. Are the instructions of superior prosecutors given in writing to those under their supervision? Can these instructions be challenged or refused? Yes, they are, but more likely a professional discussion will take place between prosecutor and supervisor. Written instructions cannot be refused.

15. Which are, if any, the main initiatives in terms of training to strengthen the awareness about the *de facto* dimension of the prosecutorial independence? Important part of the training of prosecutors is to make their independent position clear.

16. To what extent the media cover the decisions of international courts and treaty bodies as regards the practical independence of prosecutors? Not very much

17. To what extent the prosecutor offices interact with the broad public as regards the decisions of international courts and treaty bodies related to the practical independence of prosecutors? Not very much

North Macedonia / Macédoine du Nord

1. What are the general official measures taken for reacting to and implementing the decisions of international courts and treaty monitoring bodies?

- The general official measures that are being taken in our country, for implementing the decisions of international courts are enactment of laws which prescribe obligation for the judges and prosecutors, in concrete cases, to directly apply the final and executive decisions of the European Court of Human Rights, the International Criminal Court and other courts, whose authority is acknowledged by our country. This obligation is prescribed in the Law on courts and the new Law on Public Prosecutor Office that was enacted by the Parliament on 16th of February 2020, and it will be inforced on 30th of June 2020. In practise, the decisions of the international courts are mandatory and the courts and the Prosecutor Office are bind to apply them.

2. Based on your answer to the 1st question, what are the measures taken particularly for the practical independence of the prosecution services and individual prosecutors? Can you give examples?

- Regarding the independence of the Prosecutor Office and individual prosecutors, it is significant to mention the enactment of the new Law on Public Prosecutor Office on 16th of February 2020, that will come into force on 30th of June 2020. With this new law, the status, the independence and the responsibility of the public prosecutors are strengthen, also firmer criterias for appointment, grading and promotion of the prosecutors are prescribed, as well as more precise mechanisms for disciplinary responsibility. On other hand, bigger measures for protection and security of the public prosecutors are prescribed, higher budget and more significant role of the Public Prosecutor Office for securing the needed budget, as well as increasement of the capacities and the resources. Also, this law prescribes an obligation for the public prosecutors, when practising their authority, to mandatory apply the standpoints of the final decisions of the European Court of Human Rights. With this Law, also the status of the cases of the Special Prosecutors Office is regulated, having in mind that the mandate of this Office ended.

3. Are these measures reflected in the law or in the prosecution policy or debate?

- These new regulations, particilary the new Law on Public Prosecutor Office is considered to be a significant step forward, towards strengthening the independence of the public prosecutors.

4. If yes, then were there any changes in the prosecution system as a consequence of such measures?

- Having in mind that the new Law on Public Prosecutor Office will come into force in 4 months, the changes in the prosecution system, will be a subject of an additional analysis.

5. Are there also national decisions of the Supreme or Constitutional Courts, or any other highest judicial body at national level, dealing with the question of independence of prosecutors?

For questions connected with the constitutionality and the legality of the work of the Public Prosecutor Office, The Public Prosecutor of RNM, can submite an initiative to the Constitutional Court. On the other hand the Supreme Court acts upon extraordinary legal remedies against legally-binding decisions of the courts, and also establishes general standpoints and general legal opinions on questiones that are important for securing unified implementation of the laws by the courts. In this framework, they can also decide on matters that are in relation with the independance of the public prosecutors. Last year, at the end of January, the Supreme Court od RNM, acted upon an initiative of a defense lawyer and established a general legal opinion, on a general session of the supreme judges, that had an impact of the work and the authorization of the public prosecutors from the Special Prosecutor's Office (Public prosecutors Office for prosecuting crimes that are connected and that arise from the content of the illegal phone tapping). According to this general legal opinion of the Supreme Court, the Special Prosecutor's Office was not permitted to submit new indictments to the court, after the expiration of 18 months, from receiving the materials of the illegal phone tapping. This was considered to be a limited interpretation of the Law on the Special Prosecutor's Office, that prescirbed a period of 18 months for the special public prosecutors to finish their investigations and eventually submit indictments, counting from the day of receiving the materials of the illegal phone tapping, but also from the day of receiving the cases from the other Prosecutor offices. With this decision, the authorization of the special public prosecutors was disputed, and it could be considered as a decision that had an impact of the independence of the prosecutors. With the new Law on the Publc Prosecutor Office, this unfavourable situation is resloved. The validity of the Law on the Special Prosecutor's Office ended, and all cases that were previously carried out by the Special Prosecutor Office are handed over to the Public Prosecutor of the RNM, and assigned to other prosecutor offices. The special deadline of 18 months for finishing investigations, prescribed in the Law on the Special Prosecutor's Office, does not apply. According to the Code of criminal procedure this is considered to be an inclusive, not preclusive period for finishing investigations, having in mind the statute of limitation, for criminal prosecution.

6. Does the prosecution system in your country belong to the judiciary?

- The Public Prosecutor Office is a self-contained and unique state organ, which is considered to be a part of the judicial sustem.

7. Are prosecutors and prosecution services independent or autonomous from the executive and legislative branches of state power?

- The Public Prosecutor Office is a unique and self-contained state organ, that prosecute perpetrators of crimes and other punishable acts by the law and also execute other matters according to the law. According to the Constitution and the laws, the Public Prosecutor Office while acting upon it's authorizations, is independant from the executive and legislative power, meaning no one is allowed to interfere in the legal, unpartial and objective execution of the function of the Public Prosecutor Office. But, according to the principles of division of state power, there are certain mechanisms by which the executive and legislative power can control the work of the Public Prosecutor Office. In regards to the legislative and executive branch, the main laws regarding the functioning of the Public Prosecutor Office are enacted by the Parliament, on a proposal by the Government (The Ministry of justice). The quality of the proposed and enacted laws affect the overall functioning of the the Public Prosecutor Office. In the election of the head of the Public Prosecutor Office, crutial role play the legislative and executive power, since the Public Prosecutor od RNM is elected by the Parliament, on a proposal by the Government. The Public Prosecutor od RNM is responsable for his/her work to

the Parliament and once a year he/she submits a written report to the Parliament, on the work of all prosecutor offices and for the crime situation in RNM. The Budget of the Public Prosecutor od RNM has to be coordinated with the Ministry of finance and it is voted by the Parliament. The working space, the material means, the equipment and other working conditions are secured by the Government. In the Council of Public Prosecutors there are four members, that are elected by the Parliament. In this regards, there are certain aspects, by which the executive and legislative power, funcionally influence the work of the Public Prosecutor Office.

8. Is there a Council of Prosecutors or a similar equivalent body which can be considered as a mechanism to monitor and ensure prosecutorial independence, including in the way in which the prosecution services operate?

- Yes, the Law on the Council of public prosecutors was enacted on 12 th December 2007, and since then the Council of public prosecutors has been established as a self-contained organ that secures and guaranties the independance of the public prosecutors in executing their function. The Council of public prosecutors follows the work of the public prosecutors, through the grading of their work, and among other authorizations, appoints and discharges all of the public prosecutors, accept the Public Prosecutor of RNM.

9. How many of its members are elected by their peers, and does the prosecution policy or the debate within the judiciary produce any impact on the election of the members of the Council of Prosecutors?

- From a total of 11 members, 7 members of the Council of public prosecutors are public prosecutors. The Public Prosecutor of RNM, is a member of the Council, according to the law, and the other 6 public prosecutors are elected on a direct election, by a secret vote, by all prosecutors (1 elected public prosecutor must come from an ethnic minority). In the Council of public prosecutors, the other 4 members are elected by the Parliament, from the row of eminent legal professionals (2 of them must come from an ethnic minority).

10. Who has the initiative of disciplinary proceedings?

- The public prosecutor of RNM, can initiate a disciplinary proceeding for all public prosecutors, and the chef prosecutors of the basic and higher public prosecutors, ex officio, or by a given information of a britch of law, can initiate a disciplinary procedure for public prosecutors from their office. Also a member of the Council of public prosecutors can initiate a disciplinary proceeding for a public prosecutor. The disciplinary proceeding is executed by a Commision of 5 prosecutors (one prosecutor from the Public Prosecutor Office of RNM, and four prosecutors from the Higher Prosecutor Offices). The Council of public prosecutors acts on second instance, when appeal is submitted. The disciplinary proceeding can be initiated in a period of 6 months from finding out about the commited offence, but maximum in 3 years from the day when the offence was commited.

11. Are prosecutors appointed for life or do they have to fulfil successive terms? Of how many years?

- The public prosecutors are appointed without limitation of their mandate. The Public Prosecutor of RNM is appointed for a period of 6 years, with the right for one additional mandate.

12. Are the rules regarding appointment, transfer, promotion and discipline of prosecutors similar to those of judges?

- Yes, these rules are pretty much harmonized. The new Law on Public Prosecutor Office, that was brought on 16th February 2020, and will come into force on 30June 2020 is harmonized with the Law on courts, especially in the part of promotion, that previously was not harmonized. With the new Law on Public Prosecutor Office, in the part of promotion, it is prescirbed that the public prosecutors can gradually be promoted according to the career sustem (the same as the judges), meaning that in the Higher prosecutor offices can only be appointed a public prosecutor that has previously worked certain period of time in the Basic public prosecutor office, and has been graded with high grades. Other candidates, outside the prosecutor's office, can not be appointed in the higher prosecutor offices. In first instance, in the Basic Public Prosecutors Offices and in the Basic Courts, can only be appointed candidates who besades the general requered conditions, have finished the Academy for judges and public prosecutors accoding to the law. In estabblishing disciplinary responsability, the Council of public prosecutors and the Judicial Council, have there own role. A new solution in the new Law on Public Prosecutors Office is that the Chef prosecutor of the Basic Public Prosecutor Office for prosecuting organized crime and corruption will be elected on a general direct election, by all the prosecutors. On the other hand in the Law on Judicial Council, there is a norm that prescribes that a candidate that is not appointed for a judge can submit an appel to the Supreme Court of RNM, meaning that the decisinon of the Judicial Council for appointment of a judge is not coming into force immediately, which is not the case with the appointment of the public prosecutors.

13. May the government instruct the prosecution services, for instance, to prosecute or not to prosecute? Are instructions general or specific in nature? Are they given in writing? Can the prosecution challenge them?

- The Government can not give instructions to the prosecutors whether to prosecute or not. The Public Prosecitor Office is a self-contained state organ and no one can't influence the legal, unpartial and objective execution of the function of the Public Prosecutor Office.

14. Are the instructions of superior prosecutors given in writing to those under their supervision? Can these instructions be challenged or refused?

- The Public Prosecutor of RNM and the Higher Public Prosecutors have the right to give explaned mandatory general written directions to the lower public prosecutor offices, that concerns undertaking measures and activities for protection of basic human rights and freedoms, protection of the public interest, more efficient discovering and prosecution of crimes, submitting legal remedies and application of the law. But they can not refer to the work on a concrete case of the public prosecutors. These general directions must be obliged.

15. Which are, if any, the main initiatives in terms of training to strengthen the awareness about the de facto dimension of the prosecutorial independence?

- The main training of the public prosecutors are conducted by the Academy for judges and public prosecutors, that organizes seminars and training on different areas. A topic on this trainings are also the independance of the public prosecutors and judges, as well as the judicial practise of the European Court of Human Rights.

16. To what extent the media cover the decisions of international courts and treaty bodies as regards the practical independence of prosecutors?

- The intensity and the forms by which the media informes about the decisions of the international courts are different. Most often the internet is used as a medium, but also the decisions can be presented on a TV debate, or the news. The decisions of the European Court of Human Rights are usually treated from the point of view of the consequences for the individual and the community. Sometimes these decisions are connected to the work of the public prosecutors, for example, cases where the public prosecutors fail to conduct efficient investigation. But, this process lacks an organized, highly expert and professional debate about the decisions of the European Court of Human Rights and their impact on the legal system, as well as on the practical independance of the public prosecutors.

17. To what extent the prosecutor offices interact with the broad public as regards the decisions of international courts and treaty bodies related to the practical independence of prosecutors?

- The public prosecutors in their proceeding, have a duty to apply the law in practise thoroughly, consistently and unselectively, and these aspects of their work are subjects of the international court decisions. In our country there is a need for a higher commitment and afirmation of the practise of the European Court of Human Rights, more organized and systematic analysis of the decisions of the European Court of Human Rights, as well as initiations for a public debate, in which the public prosecutors can more actively participate.

Poland / Pologne

MAIN QUESTION

Do you know about any judgments or decisions of the European Court of Human Rights or of the Court of Justice of the European Union, or of any other international court which refer to or in any way touch upon the independence (and preferably went on to highlight its elements):

a) of prosecutors;
b) of the judiciary or the justice system as a whole;
c) of judges.

If you know about any such judgments or decisions, the CCPE Bureau and the Working Group will be very grateful to you if you indicate their titles and also, if possible, the numbers of paragraphs or sections in these judgments and decisions where such references or indications are made. These judgments and decisions may concern any country, not only your country.

Questions

IN YOUR COUNTRY:

1. What are the general official measures taken for reacting to and implementing the decisions of international courts and treaty monitoring bodies?

If it is necessary to change the law in connection with an international court ruling, it is possible to take legislative action.

2. Based on your answer to the 1st question, what are the measures taken particularly for the practical independence of the prosecution services and individual prosecutors? Can you give examples?

The independence of prosecutors is guaranteed by law.

3. Are these measures reflected in the law or in the prosecution policy or debate?

The principle of the prosecutor's independence is set out in Articles 7- 8 of the Act on the Public Prosecutor's Office.

4. If yes, then were there any changes in the prosecution system as a consequence of such measures?

Yes, the approach to this issue has changed over the years in terms of detailed solutions.

5. Are there also national decisions of the Supreme or Constitutional Courts, or any other highest judicial body at national level, dealing with the question of independence of prosecutors?

There is case-law of both courts and the Constitutional Tribunal regarding the status of a prosecutor, which also raises, although usually marginally, the issue of independence,
(e.g. the judgment of the Constitutional Tribunal of 18 July 2011, reference number SK 10/10, decision of the Constitutional Tribunal of 26 June 2019,reference number K 26/16, judgment of the Supreme Court of 17 September 2001, reference number III SZ 8/01, judgment of the Supreme Court of 18 February 2013, reference number II PK 147/12).

6. Does the prosecution system in your country belong to the judiciary?

No, it does not.

6bis Are there any parallels between the independence of judges and independence of prosecutors, or the latter is considered separately, if considered at all?

7. Are prosecutors and prosecution services independent or autonomous from the executive and legislative branches of state power?

Prosecutors in the performance of their tasks are independent of the legislative and executive authorities. The Prosecutor General, as the superior of prosecutors, operates within a different type and scope of competences than competences vested in the executive body, which is the Minister of Justice, both areas do not overlap, as they are clearly delimited by applicable law.

7bis Is the interaction of prosecutor offices with courts, police, investigation authorities and other actors in criminal procedure based on the principle of prosecutorial independence and how?

8. Is there a Council of Prosecutors or a similar equivalent body which can be considered as a mechanism to monitor and ensure prosecutorial independence, including in the way in which the prosecution services operate?

In accordance with the Act on the Public Prosecutor's Office, the National Council of Prosecutors safeguards the independence of prosecutors.

9. How many of its members are elected by their peers, and does the prosecution policy or the debate within the judiciary produce any impact on the election of the members of the Council of Prosecutors?

The National Council of Prosecutors consists of 22 prosecutors, including 16 elected by equal prosecutors (4 elected by the meeting of prosecutors of the National Prosecutor's Office, 1 elected by the meeting of prosecutors of the Institute of National Remembrance and 11 elected by the assembly of prosecutors in regional prosecution offices).

10. Who has the initiative of disciplinary proceedings?

The disciplinary commissioner initiates and conducts explanatory and disciplinary proceedings and is a prosecutor in a disciplinary court. The disciplinary commissioner initiates explanatory proceedings at the request of the Prosecutor General, the competent regional or circuit prosecutor, as well as on his own initiative.

11. Are prosecutors appointed for life or do they have to fulfil successive terms? Of how many years?

For a lifetime.

12. Are the rules regarding appointment, transfer, promotion and discipline of prosecutors similar to those of judges?

Nomination.
The rules are different. Prosecutors of common organizational units of the public prosecution office are appointed by the Prosecutor General at the request of the National Prosecutor. The judges are appointed by the President of the Republic of Poland at the request of the National Council of the Judiciary.

Transfer.
The rules regarding prosecutors are similar to those regarding judges, but not identical.
Transferring a prosecutor or a judge to another place of service(i.e. to another unit of the prosecution office or other court) in principle can only take place with his consent, but the law provides for exceptions. Exceptions are similar for both professions. The prosecutor is transferred by the National Prosecutor and the judge – the Minister of Justice, with the judge being entitled to appeal to the Supreme Court in certain cases.

Promotion.
Promotion rules are similar. Both in the case of prosecutors and judges, the condition for promotion to a higher position is a specific period of work in a previous position (Article 76 of the Act on the Public Prosecutor's Office, Articles 63-64 of the Law on the System of Common Courts). In the case of prosecutors, an exceptionally earlier promotion is possible if it constitutes a prize (Article 133, paragraph 2 of the Act on the Public Prosecutor's Office).

Disciplinary proceedings.
It is similar. The definition of misconduct is practically the same for both professions. This also applies to penalties. In the first phase, the body conducting the disciplinary proceedings is a disciplinary commissioner, appointed respectively from among judges or prosecutors, then in the first instance a disciplinary court composed of representatives of each profession or the Supreme court, and in the second instance only the Supreme Court.

13. May the government instruct the prosecution services, for instance, to prosecute or not to prosecute? Are instructions general or specific in nature? Are they given in writing? Can the prosecution challenge them?

The government cannot issue instructions the prosecution service to prosecute a particular category of crime, as the obligation to prosecute is based on the law and is based on the principle of legalism.

14. Are the instructions of superior prosecutors given in writing to those under their supervision? Can these instructions be challenged or refused?

An order regarding the content of an action issued in a specific case is always in writing. If the prosecutor does not agree with the order, he may demand that the order be changed or that he

be excluded from performing in the case. Instructions on how to conduct a particular category of proceedings are also issued in writing.

14bis What is the system of allocation, re-allocation and management of cases and is it based on objective and transparent criteria respecting the independence of prosecutors?

15. Which are, if any, the main initiatives in terms of training to strengthen the awareness about the de facto dimension of the prosecutorial independence?

15bis Is the concept of prosecutorial independence reflected in the code of ethics and professional conduct of prosecutors? If such code exists in your country, could you please inform how it was prepared and adopted, and provide its copy in English or French if available.

16. To what extent the media cover the decisions of international courts and treaty bodies as regards the practical independence of prosecutors?

17. To what extent the prosecutor offices interact with the broad public as regards the decisions of international courts and treaty bodies related to the practical independence of prosecutors?

The prosecution office can communicate with the general public through spokespersons, website messages, etc.

Portugal

Do you know about any judgments or decisions of the European Court of Human Rights or of the Court of Justice of the European Union, or of any other international court which refer to or in any way touch upon the independence (and preferably went on to highlight its elements):

a) of prosecutors;
b) of the judiciary or the justice system as a whole;
c) of judges.

If you know any such judgments or decisions, the CCPE Bureau and the Working Group will be very grateful to you if you indicate the titles of these judgments and also, if possible, the numbers of paragraphs or sections in these judgments and decisions where such references or indications are made. These judgments and decisions may concern any country, not only your country.

Regarding judges, one could refer to the following decisions of the ECHR: Ramos Nunes de Carvalho e Sá c. Portugal (arrêt de la Grande Chambre, du 6 novembre 2018, affaires n.ºs 55391/13, 57727/13 e 74041/13); Ibrahim Gurkan c. Turquie, arrêt du 2 juillet 2012 (tribunal militar); Baka c. Hongrie, arrêt du 23 juin 2016, de la Grande Chambre; Thiam c. France, arrêt du 18 de octobre 2018; Oleksandr Volkov c Ukraine, arrêt du 9 janvier 2013.

Regarding prosecutors, one could refer to the following decisions: Moulin c. France, arrêt du 23 novembre 2010 (affaire n.º 37104/06) (paragraphes 55 et suivants); Vasilescu c. Roumanie, arrêt du 22 mai 1998 (paragraphes 40 et 41).

Regarding judicial independence, one could refer to the following cases: Stafford c. Royaume Uni, arrêt du 28 mai 2002 (paragraphe 78); Kleyn et autres c. Pays-Bas, arrêt de la Grande Chambre, du 6 mai 2003) (paragraphes 190 et suivants)

Questions

IN YOUR COUNTRY:

1. What are the general official measures taken for reacting to and implementing the decisions of international courts and treaty monitoring bodies?

Once Portugal has ratified a treaty or convention establishing the competence of an international court or quasi-judicial body (as a treaty monitoring body), it will have to accept and abide by their decisions.
Domestic courts, particularly higher courts, are very attentive to decisions by international courts or treaty monitoring bodies having an impact on their activity and refer to such decisions frequently

2. Based on your answer to the 1st question, what are the measures taken particularly for the practical independence of the prosecution services and individual prosecutors? Can you give examples?

Whenever a decision reached by an international court or treaty monitoring body relates to judges or public prosecutors, or the judicial activity as a whole, it is to be expected such decision to be referred to in the subsequent domestic case law.

3. Are these measures reflected in the law or in the prosecution policy or debate?

Since norms contained in duly ratified or approved international conventions come into force in Portuguese internal law once they have been officially published and remain so for as long as they are internationally binding on the Portuguese state, decisions taken by international courts or treaty monitoring bodies, whose competence has been recognised by Portugal, are expected to be abided and respected by the State.

4. If yes, then were there any changes in the prosecution system as a consequence of such measures?

For the preparation of the Statutes of the Public Prosecution which followed the approval of the Constitution of 1976, particularly attention was given to relevant international law, decisions by international organs, such as international courts, as well as comparative law. The same happened with the subsequent changes to the same Statute.

5. Are there also national decisions of the Supreme or Constitutional Courts, or any other highest judicial body at national level, dealing with the question of independence of prosecutors?
Judgements of the Constitutional Court:
- 204/15, 220/15, 440/15, 441/15 – the public prosecution service is independent and autonomous, this meaning, in a negative dimension, to be independent from political interference and, in a positive dimension, to be able to take autonomous decisions, respecting legality, objectivity and impartiality. These characteristics are particularly important in the criminal procedure. It is however incumbent on judges to perform judicial functions, as they integrate the courts
- 305/11 – the constitutional autonomy of the public prosecution implies forms of self-government and the exercise of powers of direction and orientation within its hierarchical structure, namely the appointment of prosecutors to specific functions within the public prosecution service. The activity of the public prosecution requires a unified and coordinated action of its members, in order to ensure the equality of all before the law
- 336/95, 305/11 - The autonomy of prosecutors is not similar to the independence of courts and of judges, since prosecutors are integrated within a hierarchy and are responsible before such hierarchy. However, both judges and prosecutors should enjoy security of tenure
- 254/92 – the autonomy of the public prosecution would not be respected if the Government were to appoint the majority of the members of the High Council for the Prosecution. However, this does not prevent the Minister of Justice to appoint 2 members to the said High Council
- 160/10, 436/16 – since it is incumbent on the prosecution service to uphold democratic legality, it should have at its disposal possibilities to appeal in order to preserve legality and the good administration of justice
- 291/02 – the public prosecution may appeal judicial decisions which are deemed to be contrary to the law, even if in the interest of the defendant, therefore ensuring the respect for the principle of legality, although these decisions may be in line with its own interventions in the criminal procedure
- 226/11, 660/11 - in the case of administrative offences, whenever an administrative authority applies a sanction, there is a possibility to appeal before a court. It is then incumbent on the public prosecution to press charges. However, if the public prosecution decides to withdraw the charges, it will need to obtain the agreement of the administrative authority. This does not infringe the autonomy of the public prosecution

- 7/87, 23/90, 334/94, 517/96, 610/96, 694/96, 395/04, 121/21 – it is incumbent on the prosecution to direct and carry out inquiries in the criminal procedure, having competence to decide and carry out investigation activities and the gathering of evidence, ensuring the respect for the principle of legality, with the exception of those activities which may infringe fundamental rights and freedoms, which need to be authorized by a judge
- 581/00, 121/21 – the involvement of the public prosecution in the inquiry is aimed at ensuring the impartiality of the judge, who, before the trial, applies measures that may infringe fundamental rights of the defendant
- 121/21 – the judge involved in the phase of the inquiry is to be conceived as a judge of fundamental rights and freedoms, not an investigating judge. If such a judge were to have an excessive prominence, this would infringe the autonomy of the prosecution service as regards instituting criminal proceedings and change the model of the criminal proceedings from an accusatorial into an inquisitorial model. The validity of the decision of the prosecution service to consider a person as a defendant and the ensuing statement of identity and residence is therefore outside the competence of the judge
- 581/00 – the public prosecution has competence to direct and carry out inquiries in the criminal procedure and to press charges, even when the offended person is the public prosecution itself, the High Council for the Prosecution or the Prosecutor General, but it must always respect the rule of law and the principles of legality and impartiality, due process guarantees and the rights of the defence
- 101/16, 274/16, 278/16, 139/17 – the provisional suspension of the criminal proceedings requires the agreement of the public prosecution, the victim and the judge presiding over the inquiry in matters relating to fundamental rights and freedoms. However, if the judge disagrees with the suspension, such a decision is not subject to appeal. Such decision does not infringe the principle of autonomy of the public prosecution
- 361/16 – the public prosecution service is not allowed to appeal a sentence of acquittal if, when presenting its oral pleadings during the trial, it has pleaded for the acquittal of the defendant, as such a change of position may infringe the duty of loyalty and the fair play in the criminal procedure. This seems to be an acceptable restriction to the possibility for the public prosecution to change its opinion during the proceedings, for instance, upon re-evaluation of the principle of legality in the case at hand
- 59/91, 33/2012 – the public prosecution is allowed to perform a procedural act within 3 working days of the expiry of the established time limit without the need for the payment of a fine and without the need for a previous statement concerning the intention to use such a possibility. This does not infringe the principle of equality or of due process guarantees, since the possibility for performing a procedural act within 3 working days also applies to the other parties in the proceedings

6. Does the prosecution system in your country belong to the judiciary?

Yes. Prosecution services in Portugal are seen as a part of the judiciary, although prosecutors don’t perform judicial functions and are not seen as integrating the courts, conceived as organs of sovereignty.

6bis Are there any parallels between the independence of judges and independence of prosecutors, or the latter is considered separately, if considered at all?

Yes. The legal framework and the existing safeguards are the same for judges and prosecutors.

7. Are prosecutors and prosecution services independent or autonomous from the executive and legislative branches of state power?

Yes.

7bis Is the interaction of prosecutor offices with courts, police, investigation authorities and other actors in criminal procedure based on the principle of prosecutorial independence and how?

The direction of criminal investigations is a prerogative of the Public Prosecution Service. However, frequently, it is the Criminal Investigation Police (Polícia Judiciária - PJ) that leads and executes most complex investigations. This is the case as regards more serious and complex crimes since the Criminal Investigating Police has at its disposal all the necessary, though often insufficient, technical, and forensic means. However, the final decision to press charges, or dismiss a case, lies with the prosecutor, although this decision can be challenged before a court.

8. Is there a Council of Prosecutors or a similar equivalent body which can be considered as a mechanism to monitor and ensure prosecutorial independence, including in the way in which the prosecution services operate?

Yes, there is. The High Council for the Prosecution is the competent body for disciplinary and all career related issues and has also competence to oversee the general functioning of the prosecution services and the activity of prosecutors.

9. How many of its members are elected by their peers, and does the prosecution policy or the debate within the judiciary produce any impact on the election of the members of the Council of Prosecutors?
7 (out of 19) of the members of the High Council are elected by their peers. Usually, several lists run, there is a campaign and therefore a debate about current issues concerning prosecution services and overall justice.
The remaining composition of the Council is the following: the Prosecutor General, 4 district prosecutors (by virtue of their office), 5 members elected by the Parliament, 2 members appointed by the Minister of Justice

10. Who has the initiative of disciplinary proceedings?

The High Council for the Prosecution and the Prosecutor General, but only the High Council has disciplinary powers.

11. Are prosecutors appointed for life or do they have to fulfil successive terms? Of how many years?

Prosecutors, like judges, are appointed for life.

12. Are the rules regarding appointment, transfer, promotion and discipline of prosecutors similar to those of judges?

Yes, they are.

13. May the government instruct the prosecution services, for instance, to prosecute or not to prosecute? Are instructions general or specific in nature? Are they given in writing? Can the prosecution challenge them?

Neither the government nor any other institution or person outside the prosecution service can give such orders or instructions, in criminal proceedings, to prosecutors or prosecution services.

14. Are the instructions of superior prosecutors given in writing to those under their supervision? Can these instructions be challenged or refused?

Orders have to be given in writing and they can be challenged and/or refused, under grounds of unlawfulness or serious violation of one's legal conscience. Whether or not these orders can be given for specific cases was a matter of dispute and debate in Portugal.

Recently, in November 2020, the Prosecutor General has issued Directive 4/2020, setting guidelines for the exercise of hierarchical powers in criminal proceedings.
The direct hierarchical superior may now give orders and instructions to their subordinated prosecutors in a particular criminal file. These orders and instructions are given in writing and registered in a distinct file.
The subordinated prosecutor who is handling the criminal file will have to mention expressly, in his/her decision, that he/she is acting under a duty of hierarchical obedience.
However, the subordinated prosecutor may refuse, in writing, to obey such orders or instructions.

14bis What is the system of allocation, re-allocation and management of cases and is it based on objective and transparent criteria respecting the independence of prosecutors?

Cases are allocated following abstract and general criteria previously established by the directors of the existing investigative departments of the public prosecution.

15. Which are, if any, the main initiatives in terms of training to strengthen the awareness about the de facto dimension of the prosecutorial independence?

Besides specific training on Ethics and Deontology, given in the National School for Judges and Prosecutors, at the outset of their judicial training, regular training is yearly provided for prosecutors on the independence of public prosecution and public prosecutors.

15bis Is the concept of prosecutorial independence reflected in the code of ethics and professional conduct of prosecutors? If such code exists in your country, could you please inform how it was prepared and adopted, and provide its copy in English or French if available.
There are already, for many years, existing ethical and disciplinary obligations, laid down in the Statute for the Public Prosecution, that prosecutors must strictly follow. However, following GRECO recommendations, the State has passed a Law that foresees the drafting of a Code of Ethics and professional conduct for prosecutors and establishes the responsibility of the High Council for the Prosecution to approve it. The High Council for the Prosecution has already finalised a first version of this Code, which was until recently open to public consultation.
The contributions received will now be scrutinised and a final version of the Code will afterwards be submitted for approval before the High Council for the Prosecution.

16. To what extent the media cover the decisions of international courts and treaty bodies as regards the practical independence of prosecutors?
Media are normally very attentive to decisions of international courts and monitoring treaty bodies relating to Portugal, particularly when they relate to courts and their functioning, or the work performed both by judges and prosecutors.
They are also paying attention to cases of other countries where attacks on the independence either of judges or prosecutors are taking place.

17. To what extent the prosecutor offices interact with the broad public as regards the decisions of international courts and treaty bodies related to the practical independence of prosecutors?
The Prosecutor General's Office has a press unit, which regularly issues press releases whenever the public needs to be informed about the activity of the prosecution service, namely in particular mediatic cases.
This would also happen whenever a decision by an international court or monitoring treaty body would apply to the prosecution service or the prosecutors.

Annex

United Nations Human Rights Committee
(under the International Covenant on Civil and Political Rights)

A. General Comments

The Human Rights Committee has addressed issues regarding prosecutors and prosecutorial work in some of its General Comments:

a) General Comment 13 (1984) (Article 14 – administration of justice) (replaced by General Comment 32 – see § 1 of this General Comment):

7. The Committee has noted a lack of information regarding article 14, paragraph 2 and, in some cases, has even observed that the presumption of innocence, which is fundamental to the protection of human rights, is expressed in very ambiguous terms or entails conditions which render it ineffective. By reason of the presumption of innocence, the burden of proof of the charge is on the prosecution and the accused has the benefit of doubt. No guilt can be presumed until the charge has been proved beyond reasonable doubt. Further, the presumption of innocence implies a right to be treated in accordance with this principle. It is, therefore, a duty for all public authorities to refrain from prejudging the outcome of a trial.

8. Among the minimum guarantees in criminal proceedings prescribed by paragraph 3, the first concerns the right of everyone to be informed in a language which he understands of the charge against him (subpara. (a)). The Committee notes that State reports often do not explain how this right is respected and ensured. Article 14 (3) (a) applies to all cases of criminal charges, including those of persons not in detention. The Committee notes further that the right to be informed of the charge "promptly" requires that information is given in the manner described as soon as the charge is first made by a competent authority. In the opinion of the Committee this right must arise when in the course of an investigation a court or an authority of the prosecution decides to take procedural steps against a person suspected of a crime or publicly names him as such. The specific requirements of subparagraph 3 (a) may be met by stating the charge

either orally or in writing, provided that the information indicates both the law and the alleged facts on which it is based.

12. Subparagraph 3 (e) states that the accused shall be entitled to examine or have examined the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him. This provision is designed to guarantee to the accused the same legal powers of compelling the attendance of witnesses and of examining or cross-examining any witnesses as are available to the prosecution.

15. In order to safeguard the rights of the accused under paragraphs 1 and 3 of article 14, judges should have authority to consider any allegations made of violations of the rights of the accused during any stage of the prosecution.

b) General Comment 32 (2007) (Right to equality before courts and tribunals and to a fair trial):

13. The right to equality before courts and tribunals also ensures equality of arms. This means that the same procedural rights are to be provided to all the parties unless distinctions are based on law and can be justified on objective and reasonable grounds, not entailing actual disadvantage or other unfairness to the defendant. There is no equality of arms if, for instance, only the prosecutor, but not the defendant, is allowed to appeal a certain decision. The principle of equality between parties applies also to civil proceedings, and demands, inter alia, that each side be given the opportunity to contest all the arguments and evidence adduced by the other party. In exceptional cases, it also might require that the free assistance of an interpreter be provided where otherwise an indigent party could not participate in the proceedings on equal terms or witnesses produced by it be examined.

28. All trials in criminal matters or related to a suit at law must in principle be conducted orally and publicly. The publicity of hearings ensures the transparency of proceedings and thus provides an important safeguard for the interest of the individual and of society at large. Courts must make information regarding the time and venue of the oral hearings available to the public and provide for adequate facilities for the attendance of interested members of the public, within reasonable limits, taking into account, inter alia, the potential interest in the case and the duration of the oral hearing. The requirement of a public hearing does not necessarily apply to all appellate proceedings which may take place on the basis of written presentations, or to pretrial decisions made by prosecutors and other public authorities.

30. According to article 14, paragraph 2 everyone charged with a criminal offence shall have the right to be presumed innocent until proven guilty according to law. The presumption of innocence, which is fundamental to the protection of human rights, imposes on the prosecution the burden of proving the charge, guarantees that no guilt can be presumed until the charge has been proved beyond reasonable doubt, ensures that the accused has the benefit of doubt, and requires that persons accused of a criminal act must be treated in accordance with this principle. It is a duty for all public authorities to refrain from prejudging the outcome of a trial, e.g. by abstaining from making public statements affirming the guilt of the accused. Defendants should normally not be shackled or kept in cages during trials or otherwise presented to the court in a manner indicating that they may be dangerous criminals. The media should avoid news coverage undermining the presumption of innocence. Furthermore, the length of pretrial detention should never be taken as an indication of guilt and its degree. The denial of bail or findings of liability in civil proceedings do not affect the presumption of innocence.

33. “Adequate facilities” must include access to documents and other evidence; this access must include all materials that the prosecution plans to offer in court against the accused or that are exculpatory. Exculpatory material should be understood as including not only material establishing innocence but also other evidence that could assist the defence (e.g. indications that a confession was not voluntary). In cases of a claim that evidence was obtained in violation of article 7 of the Covenant, information about the circumstances in which such evidence was obtained must be made available to allow an assessment of such a claim. If the accused does not speak the language in which the proceedings are held, but is represented by counsel who is familiar with the language, it may be sufficient that the relevant documents in the case file are made available to counsel.

39. Paragraph 3 (e) of article 14 guarantees the right of accused persons to examine, or have examined, the witnesses against them and to obtain the attendance and examination of witnesses on their behalf under the same conditions as witnesses against them. As an application of the principle of equality of arms, this guarantee is important for ensuring an effective defence by the accused and their counsel and thus guarantees the accused the same legal powers of compelling the attendance of witnesses and of examining or cross-examining any witnesses as are available to the prosecution. It does not, however, provide an unlimited right to obtain the attendance of any witness requested by the accused or their counsel, but only a right to have witnesses admitted that are relevant for the defence, and to be given a proper opportunity to question and challenge witnesses against them at some stage of the proceedings. Within these limits, and subject to the limitations on the use of statements, confessions and other evidence obtained in violation of article 7, it is primarily for the domestic legislatures of States parties to determine the admissibility of evidence and how their courts assess it.

50. A system of supervisory review that only applies to sentences whose execution has commenced does not meet the requirements of article 14, paragraph 5, regardless of whether such review can be requested by the convicted person or is dependent on the discretionary power of a judge or prosecutor.

c) General Comment 35 (2014) (Article 9 – Liberty and security of person):

15. To the extent that States parties impose security detention (sometimes known as administrative detention or internment) not in contemplation of prosecution on a criminal charge, the Committee considers that such detention presents severe risks of arbitrary deprivation of liberty. Such detention would normally amount to arbitrary detention as other effective measures addressing the threat, including the criminal justice system, would be available. If, under the most exceptional circumstances, a present, direct and imperative threat is invoked to justify the detention of persons considered to present such a threat, the burden of proof lies on States parties to show that the individual poses such a threat and that it cannot be addressed by alternative measures, and that burden increases with the length of the detention. States parties also need to show that detention does not last longer than absolutely necessary, that the overall length of possible detention is limited and that they fully respect the guarantees provided for by article 9 in all cases. Prompt and regular review by a court or other tribunal possessing the same attributes of independence and impartiality as the judiciary is a necessary guarantee for those conditions, as is access to independent legal advice, preferably selected by the detainee, and disclosure to the detainee of, at least, the essence of the evidence on which the decision is taken.

29. The second requirement of paragraph 2 concerns notice of criminal charges. Persons arrested for the purpose of investigating crimes that they may have committed or for the purpose of holding them for criminal trial must be promptly informed of the crimes of which they are suspected or accused. That right applies in connection with ordinary criminal prosecutions and also in connection with military prosecutions or other special regimes directed at criminal punishment.

31. The first sentence of paragraph 3 applies to persons “arrested or detained on a criminal charge”, while the second sentence concerns persons “awaiting trial” on a criminal charge. Paragraph 3 applies in connection with ordinary criminal prosecutions, military prosecutions and other special regimes directed at criminal punishment.

32. Paragraph 3 requires, firstly, that any person arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power. That requirement applies in all cases without exception and does not depend on the choice or ability of the detainee to assert it. The requirement applies even before formal charges have been asserted, so long as the person is arrested or detained on suspicion of criminal activity. The right is intended to bring the detention of a person in a criminal investigation or prosecution under judicial control. If a person already detained on one criminal charge is also ordered to be detained to face an unrelated criminal charge, the person must be promptly brought before a judge for control of the second detention. It is inherent to the proper exercise of judicial power that it be exercised by an authority which is independent, objective and impartial in relation to the issues dealt with. Accordingly, a public prosecutor cannot be considered as an officer exercising judicial power under paragraph 3. .

d) General Comment 36 (2019) (Article 6 – Right to life):

41. Violation of the fair trial guarantees provided for in article 14 of the Covenant in proceedings resulting in the imposition of the death penalty would render the sentence arbitrary in nature, and in violation of article 6 of the Covenant. Such violations might involve the use of forced confessions; the inability of the accused to question relevant witnesses; lack of effective representation involving confidential attorney-client meetings during all stages of the criminal proceedings, including criminal interrogation, preliminary hearings, trial and appeal; failure to respect the presumption of innocence, which may manifest itself in the accused being placed in a cage or being handcuffed during the trial; lack of an effective right of appeal; lack of adequate time and facilities for the preparation of the defence, including the inability to access legal documents essential for conducting the legal defence or appeal, such as official prosecutorial applications to the court, the court’s judgment or the trial transcript; lack of suitable interpretation; failure to provide accessible documents and procedural accommodation for persons with disabilities; excessive and unjustified delays in the trial or the appeal process; and general lack of fairness of the criminal process, or lack of independence or impartiality of the trial or appeal court.

46. Any penalty of death can be carried out only pursuant to a final judgment, after an opportunity to resort to all judicial appeal procedures has been provided to the sentenced person, and after petitions to all other available non-judicial avenues have been resolved, including supervisory review by prosecutors or courts, and consideration of requests for official or private pardon. Furthermore, death sentences must not be carried out as long as international interim measures requiring a stay of execution are in place. Such interim measures are designed to allow review of the sentence before international courts, human rights courts and commissions, and international monitoring bodies, such as the United Nations treaty

bodies. Failure to implement such interim measures is incompatible with the obligation to respect in good faith the procedures established under the specific treaties governing the work of the relevant international bodies.

B. Concluding Observations on States parties' reports

The Human Rights Committee has also addressed the problem of prosecutorial independence and prosecutorial autonomy in its Concluding Observations on the review of several States parties' reports:

Angola (08/05/2019)

Independence of the judiciary and administration of justice

37. The Committee welcomes efforts to decentralize courts through the adoption, in 2015, of Act No. 2/15 establishing the principles and rules for the organization and operations of ordinary courts. However, it remains concerned about reports claiming persistent shortcomings in the administration of justice, particularly the lack of independence of the judiciary and the insufficient number of trained judges, prosecutors and lawyers, which may prevent many citizens from accessing justice (art. 14).

38. The State party should pursue its efforts to reform the justice system and ensure that all court proceedings are conducted in full observance of the due process guarantees set forth in article 14 of the Covenant. In particular, it should:

(a) Strengthen the independence of the judiciary and the prosecution service;

(b) Intensify its efforts to eliminate corruption in the judiciary, including by prosecuting and punishing perpetrators, including judges and prosecutors, who may be complicit therein;

(c) Continue efforts to increase the number of trained judges, prosecutors and lawyers through education and training, as well as their deployment in rural areas;

(d) Accelerate implementation of the judicial reform with a view to ensuring that the newly established tribunals and courts (municipal and provincial) are fully staffed and operational in order to ensure that justice is accessible to all, in particular to disadvantaged persons and those living in rural areas;

(e) Ensure that free legal aid is accessible in all cases in which it is required in the interest of justice.

Azerbaijan (16/11/2016)

Judicial independence

26. The Committee, while acknowledging the steps taken to reform the judiciary, remains concerned about the continued lack of judicial independence from the executive branch, including prosecuting authorities. In particular, it is concerned that: (a) the Judicial-Legal Council, which has been granted extensive powers in matters related to the appointment, promotion and disciplining of judges, is susceptible to undue interference by the executive branch; and (b) allegations of corruption within the judiciary continue to be reported. The Committee is also concerned about the number of disciplinary proceedings that have been instituted against judges in recent years and regrets the lack of information on safeguards in place to ensure that judges cannot be sanctioned for minor infractions or for a controversial interpretation of the law (arts. 2 and 14).

27. The Committee reiterates its previous recommendations (see CCPR/C/AZE/CO/3, para. 12). The State party should take all measures necessary to safeguard, in law and in practice, judicial independence. In particular, it should:

(a) Ensure that the Judicial-Legal Council is fully independent from the executive branch and operates with full transparency and, to that end, ensure that decisions affecting the personal independence of judges are not influenced by political considerations;

(b) Ensure that decisions related to the selection, disciplining, evaluation and permanent appointment of judges after probation are based on objective criteria explicitly provided for by law;

(c) Step up efforts to effectively prosecute and punish perpetrators of corruption, and ensure that the subject of fighting corruption is part of the training curriculum for judges;

(d) Ensure that an independent body is responsible for judicial discipline and that sufficient safeguards are in place to prevent disciplinary actions being taken against judges for minor infractions or for a controversial interpretation of the law.

Belarus (22/11/2018)

Independence of the judiciary and fair trial

39. While noting the measures taken as part of judicial reform, such as the 2016 amendments to the Code on the Judicial System and the Status of Judges, the Committee remains concerned that the independence of the judiciary continues to be undermined by the President's role in, and control over, the selection, appointment, reappointment, promotion and dismissal of judges and prosecutors and by the lack of security of tenure of judges, who are appointed initially for a term of five years with the possibility of reappointment for a further term or for indefinite terms. It is also concerned that the salaries of judges are determined by presidential decree rather than by law. The Committee is further concerned about: (a) the violation of the presumption of innocence for criminal defendants who continue to be held in glass or metal cages in court proceedings, and who are sometimes required to enter and leave the courtroom shackled and in a bent position, as addressed repeatedly by the Committee in its Views under the Optional Protocol; and (b) the reported failure to observe fair-trial guarantees, including the right to a public hearing, access to counsel and respect for the presumption of innocence during the trial of opposition candidates and activists relating to the elections of 2006 and 2010 (art. 14).

40. The State party should take all measures necessary to safeguard, in law and in practice, the full independence of the judiciary, including by: (a) reviewing the role of the President in the selection, appointment, reappointment, promotion and dismissal of judges; (b) considering establishing an independent body to govern the judicial selection process; and (c) guaranteeing judges' security of tenure. The State party should also ensure that defendants are afforded all fair trial guarantees, including the presumption of innocence, and should discontinue the practices referred to in paragraph 39 (a) above.

Bulgaria (15/11/2018)

Independence of the judiciary and administration of justice

43. While noting the constitutional amendments of 2015 reinforcing the independence of the Supreme Judicial Council (see para. 3 (b) above), the Committee remains concerned at the low proportion of judges elected by their peers and the high proportion of members elected by the National Assembly in the Council, which may lead to potential politicization of its decisions. The Committee is also concerned that the election by the National Assembly of the members of the Inspectorate of the Council, which has disciplinary functions, creates a risk of political influence over this body. While noting the amendments of 2017 to the Judicial System Act, the Committee remains concerned by the weak accountability of the Prosecutor General, who (a) is essentially immune from criminal prosecution and irremovable by means of impeachment for other misconduct; (b) can request that the Council automatically suspend judges when they are suspected of committing an intentional indictable offence without an obligation to review the substance of the accusations or hearing the person affected; and (c) has coercive administrative powers outside of the criminal law. The Committee is also concerned about the uneven workload among the courts and the public's lack of trust in the judiciary (art. 14).

44. The State party should continue to review the legislative framework and take measures to further guarantee and protect the full independence and impartiality of the judiciary by, inter alia, ensuring that judges operate without pressure and interference from the executive branch and raising awareness about the importance of the independence of the judiciary. In this regard, the State party should (a) increase the proportion of judges elected by their peers within the Supreme Judicial Council; (b) reinforce the political detachment of the Inspectorate and enhance the role of the Council in disciplinary proceedings; (c) strengthen the accountability structure of the Prosecutor General in cases of misconduct and circumscribe the powers of the prosecution service in the non-criminal sphere; and (d) place sufficient resources at the disposal of the judicial system, particularly for overburdened courts.

Central African Republic (30/04/2020)
Administration of justice
27. While noting the State party's stated willingness to bring its current legislation into line with the requirements of judicial independence, the Committee regrets that these efforts have not yet led to such a reform and that frequent allegations of corruption in the judiciary have been reported but have not thus far been specifically addressed. The Committee is concerned at the shortage of judges and the uneven geographical coverage of the justice system, which has made justice inaccessible in practice to some sectors of the population (arts. 2 and 14).
28. In the light of the Committee's previous concluding observations (CCPR/C/CAF/CO/2, para. 18), the State party should:

(a) Fight corruption within the judiciary, including by reforming the Supreme Council of the Judiciary to make it independent of the executive and by strengthening procedures for shielding judges and prosecutors from any form of interference or corruption;

(b) Ensure, in practice, that judges and prosecutors have security of tenure;

(c) Recruit and train enough judges to ensure the proper administration of justice throughout its territory and to combat crime and impunity;

(d) Allocate adequate budgetary resources to the administration of justice;

(e) Strengthen measures to ensure access to justice for all, including investment in mobile justice systems, while taking account of the constraints currently faced as a result of the situation of insecurity.

Czech Republic (06/12/2019)
Independence of judges and prosecutors
32. The Committee is concerned about reports that the judiciary is susceptible to political interference, especially in high-profile cases, and that the independence of judges and prosecutors from the executive and legislative branches is not sufficiently secured under the law, owing in particular to: the current procedures for the selection, appointment, promotion and transfer of judges; the status of the Supreme Public Prosecutor's Office, formally part of the executive branch; and the procedure for the selection, appointment and removal of the Supreme Public Prosecutor and other public prosecutors. The Committee notes in this respect the plans for judicial reform, including the development of a new Code of Civil Procedure and the proposed amendments to the courts and judges act and to the Public Prosecutor Act (art. 14).
33. The State party should eradicate all forms of undue interference with the judiciary by the legislative and executive branches and safeguard, in law and in practice, the full independence and impartiality of judges and the independence and effective autonomy of the Supreme Public Prosecutor's Office, by, inter alia, ensuring that the procedures for the selection, appointment, promotion, transfer and removal of judges and prosecutors are in compliance with the Covenant and relevant international standards, including the Basic Principles on the Independence of the Judiciary and the Guidelines on the Role of Prosecutors. The State party should give due consideration to establishing a supreme judicial council, or other similar bodies, that would be

mandated to govern the judicial selection process, be fully independent, comprise mostly judges and prosecutors elected by professional self-governing bodies and operate with full transparency.

Equatorial Guinea (22/08/2019)
Independence of the judiciary and administration of justice
48. The Committee is concerned about the lack of independence of the judiciary, in particular the absence of a transparent procedure for the appointment and dismissal of judges and prosecutors, and the fact that many of them do not have adequate legal training. It notes with concern, moreover, that the executive plays a prominent role in the organization of the judiciary. While the Committee takes note of the delegation's explanation, it is concerned at reports that civilians can be tried by the military courts (art. 14).
49. The State party should continue its efforts to reform the justice system and ensure that all court proceedings are conducted in full observance of the due process guarantees set forth in article 14 of the Covenant. In particular, it should:
(a) Guarantee the tenure and independence of judges and the impartiality of public prosecutors, by protecting the work of the judiciary from any interference;
(b) Intensify its efforts to eliminate corruption in the judiciary by, inter alia, prosecuting and punishing perpetrators, including any judges and prosecutors who are complicit therein;
(c) Ensure that judges and public prosecutors are appointed through an independent process that is based on objective, transparent criteria for assessing candidates' suitability in terms of the required skills, competence and reputation;
(d) Ensure that military courts adjudicate only cases involving military personnel, in keeping with domestic legislation.

Guatemala (07/05/2018)
Judicial independence, autonomy of the public prosecution service and efforts to combat corruption
30. The Committee regrets that, owing to the suspension of the constitutional reform process, the State party has not been able to strengthen the independence of the judiciary. In this regard, the Committee is concerned about the fact that judges of first instance, justices of the peace and magistrates have a limited five-year mandate. It is also concerned about the politicization of the system for the selection and appointment of high-level judicial and prosecution authorities and the lack of separation between the judicial and administrative functions of the Supreme Court. While the Committee commends the Public Prosecutor's Office and the International Commission against Impunity in Guatemala (CICIG) on the progress they have made in combating corruption, it remains concerned about political decisions that may hamper further progress, such as the attempt made by the President of the Republic to have the CICIG Commissioner, Ivan Velázquez, declared persona non grata. The Committee is further concerned that the selection of a new Attorney General and the Comptroller General by the corresponding nominating committees may be subject to political interference. Furthermore, the Committee is concerned about reports of frequent attempts at outside interference in judicial decisions, the initiation of allegedly baseless disciplinary proceedings against justice officials and the spurious complaints, threats and attacks directed at judges, prosecutors, victims and witnesses involved in high-impact cases (arts. 14 and 25).
31. The State party should:
(a) Place priority on the adoption of constitutional and legislative reforms to ensure the security of tenure of judges and magistrates and to ensure that the administrative functions of the Supreme Court are carried out by an independent and impartial body;
(b) Ensure that the selection and appointment of magistrates, judges and prosecutors, as well as of the Attorney General and the Comptroller General, are based entirely on the use of

objective, transparent criteria for the assessment of candidates' merits in terms of their qualifications, competence and integrity;

(c) Develop a protocol for the protection of justice officials and persons involved in judicial proceedings, strengthen the witness protection programme and uphold the independence of judicial officials in their deliberations, determinations and work;

(d) Amend the law on preliminary misconduct proceedings (Ley en Materia de Antejuicio) in order to clarify its scope;

(e) Strengthen support for the International Commission against Impunity in Guatemala and for the Attorney General's Office and ensure that they remain independent so that they can effectively combat corruption and impunity.

Lao People's Democratic Republic (23/11/2018)

Independence of the judiciary and fair trial

29. The Committee is concerned about (a) the influence and control exerted on the judiciary by the ruling party owing to, inter alia, the procedures for the appointment, transfer and removal of judges and prosecutors; (b) the constitutionally secured oversight of the National Assembly over people's courts and the Office of the Public Prosecutor, including competence to refer court decisions back in the event of identified irregularities; (c) allegations of violation of fair trial guarantees in practice, including of the right to be informed promptly and in detail about charges and failure to respect the presumption of innocence; and (d) the reported passive role of defence counsel during trial (arts. 2 and 14).

30. The State party should take all measures necessary to eradicate all forms of undue interference with the judiciary by the legislative and executive branches and safeguard, in law and in practice, the full independence and impartiality of the judiciary by, inter alia, ensuring that procedures for the selection, appointment, promotion, suspension, removal of and disciplinary action against judges and prosecutors are in compliance with the Covenant and relevant international standards, and by revisiting the oversight role of the National Assembly over the judiciary and court decisions with a view to ensuring full respect for the principle of legal certainty and the separation of powers. It should ensure that accused persons are afforded all fair trial guarantees, including effective legal representation, and that the presumption of innocence is strictly observed in practice.

Lebanon (09/05/2018)

Independence of the judiciary and the right to a fair trial

41. The Committee is concerned about the political pressure reportedly exerted on the judiciary, particularly in the appointment of key prosecutors and investigating magistrates, and about allegations that politicians use their influence to protect supporters from prosecution. It regrets the lack of comprehensive information on the procedures and criteria for the selection, appointment, promotion, suspension, disciplining and removal of judges and notes that bills aimed at ensuring the independence of the judiciary are currently under discussion (arts. 2 and 14).

42. The State party should take all measures necessary to safeguard, in law and in practice, the full independence and impartiality of the judiciary, including by ensuring that the procedures for the selection, appointment, promotion, suspension, disciplining and removal of judges are in compliance with the principles of independence and impartiality, as set out in the Covenant. The State party should strengthen its efforts to guarantee that the judiciary can carry out its functions without any form of political interference.

Mongolia (22/08/2017)

Right to a fair trial and independence of the judiciary

31. The Committee welcomes the State party's amendments to the Law on Establishing Courts with a view to ensuring that access to justice is guaranteed in all districts of the country, and appreciates the steps taken by the State party to provide the judiciary with both adequate remuneration and tenure security, and to investigate allegations of corruption within the judiciary. However, it remains concerned about reports that corruption continues to exist within the judiciary, undermining the independence of judges and the confidence of the public in the justice system (art. 14).
32. The State party should continue to take steps to protect the full independence and impartiality of the judiciary, guarantee that it is free to operate without interference and ensure transparent and impartial processes for appointments to the judiciary. It should continue its efforts to fight corruption and ensure that disciplinary procedures and sanctions applicable to judges and prosecutors are duly established by law.

Niger (16/05/2019)
Independence of the judiciary and administration of justice
40. The Committee welcomes the State party's efforts to reform and modernize the justice system, including the organization of national consultations on the justice system in November 2012, and the adoption of Act No. 2018-36 of 24 May 2018 establishing regulations governing the judiciary. It notes with concern, however, that the independence of the judiciary is not sufficiently guaranteed and that the executive plays a significant role in the organization of the judicial branch. The Committee is also concerned about allegations of interference by the executive branch in judicial decisions (art. 14).
41. The State party should uphold the principle of the independence of the judiciary, as guaranteed under article 16 of the Constitution, and ensure that judges and public prosecutors are appointed on the basis of objective and transparent criteria that allow for candidates' qualifications to be assessed in terms of the required skills, competence and integrity. It should also guarantee the tenure and independence of judges and the impartiality of public prosecutors by protecting the work of the judiciary from any interference.

Paraguay (20/08/2019)
Independence of the judiciary
34. The Committee is concerned about the numerous reports of high levels of politicization and corruption within the judiciary, including interference in the judiciary by the executive and legislative branches of government, and the considerable number of politicians who serve as members of the bodies responsible for administering justice and applying judicial ethics. The Committee is further concerned about the information it has received on the possible interference by the Office of the Prosecutor in the judiciary, in particular with regard to the Curuguaty case. The Committee is also concerned that the system for selecting and appointing judges and prosecutors advocated by the Council of the Judiciary may not adequately ensure the independence and competence of the judiciary and the Office of the Prosecutor (arts. 2 and 14).
35. The State party should:
(a) Strengthen its efforts to combat corruption within the judiciary, including by raising awareness among judges, prosecutors and police officers of the most effective ways to fight corruption;
(b) Eradicate all forms of interference in the judiciary by other branches of government; ensure prompt, thorough, independent and impartial investigations into all allegations of interference and corruption; and prosecute and punish the persons responsible;
(c) Review the laws and operations of the institutions responsible for administering justice, appointing judges and prosecutors and ensuring judicial ethics in order to ensure that, in law and in practice, the system in place guarantees the independence and impartiality of the

judiciary and the autonomy of the Office of the Prosecutor, as well as transparency and public scrutiny.

Romania (11/12/2017)
Right to fair trial and independence of the judiciary
39. The Committee is concerned about reports of undue attacks on the independence of the judiciary by public officials and the media and the reported politicization of the public prosecutor's office. It is also concerned about reports of practical difficulties in obtaining effective legal assistance and representation during pretrial proceedings (art. 14).
40. The State party should continue its efforts to ensure and protect the full independence and impartiality of the judiciary and guarantee that it can carry out its judicial functions without any form of pressure or interference. The State party should also take measures to protect the prosecution against any undue interference and ensure that lawyers are able to effectively represent detainees in pretrial proceedings.

Serbia (10/04/2017)
Administration of justice
34. While acknowledging the national judicial reform strategy and recent efforts to reduce the large backlog of cases, the Committee is concerned about: (a) the probation period of three years for new judges; (b) alleged cases of pressure and retribution exercised by politicians and the media on judges, prosecutors, the High Judicial Council and the State Prosecutorial Council; (c) the remaining backlog of court cases; and (d) the delays in the adoption of the draft law on free legal aid (art. 14).
35. The State party should: (a) take steps to entrench judicial independence, including by ensuring the tenure of new judges and preventing any political interference in the work of the High Judicial Council and the State Prosecutorial Council; (b) take steps to ensure that all cases of political and media pressure on the judiciary and prosecutors are promptly investigated and sanctioned; (c) strengthen its efforts to ensure that trials take place in a reasonable time and reduce the backlog of court cases; and (d) strengthen its efforts to adopt the draft law on free legal aid.

Swaziland (23/08/2017)
Independence and impartiality of the judiciary and traditional courts
38. The Committee is concerned at reports of political interference in the judiciary by the executive and that recent measures taken by the State party are insufficient to guarantee the independence and impartiality of the judiciary. The Committee is also concerned that the traditional justice system does not meet the fair trial standards provided under the Covenant and that its jurisdiction is not sufficiently limited (art. 14).
39. The State party should put in place specific constitutional guarantees to protect judges and prosecutors from any form of political influence in their decision-making and effectively ensure that they are free of pressure and interference in the performance of their work. The State party should align the traditional justice system with fair trial standards under the Covenant. It should also ensure that the jurisdiction of traditional courts is limited to minor civil and criminal matters and that their judgments may be validated by State courts.

Tajikistan (22/08/2019)
Independence of the judiciary and the right to a fair trial
37. While noting the measures taken to reform the judiciary, including the constitutional amendments of 22 May 2016, the Committee remains concerned (CCPR/C/TJK/CO/2, para. 18) that the judiciary is still not fully independent owing, inter alia, to the role of and influence exerted by the executive and legislative branches; the criteria for selection, appointment,

reappointment and dismissal of judges; and the lack of security of tenure of judges. The Committee is also concerned about the insufficient independence of prosecutors, owing mainly to the procedure for their appointment and dismissal, and about the extensive powers vested in them. The Committee is concerned about allegations of unfair trials, including violations of equality of arms between the defence and the prosecution; a bias in favour of the prosecution, violation of the presumption of innocence and an extremely low acquittal rate (about 0.1 per cent in 2018), unfair trials, closed to the public, in the case of the leaders of the Islamic Renaissance Party, and closed trials in cases not involving national security charges (arts. 2 and 14).

38. The State party should take all the measures necessary to safeguard, in law and in practice, the full independence of judges and prosecutors, including by:

(a) Ensuring that procedures for the selection, appointment, reappointment, suspension, removal of and disciplinary action against judges and prosecutors are in compliance with the Covenant and relevant international standards;

(b) Guaranteeing the security of tenure of judges, including by considering providing for the automatic extension of the contract of a judge for a new 10-year term if the judge has performed his duties conscientiously;

(c) Reducing the excessive powers of the Prosecutor's Office;

(d) Ensuring that defendants are in practice afforded all fair trial guarantees, regardless of their political affiliation or opinion, including equality of arms and presumption of innocence;

(e) Ensuring that any restrictions on the right to a public hearing are construed narrowly and are necessary, proportionate and justified in accordance with the Covenant.

Viet Nam (29/08/2019)

Independence of the judiciary and fair trial

33. The Committee is concerned regarding the influence on the procuracy and the judiciary of the ruling party, thereby undermining their independence, and the lack of confidence of the public in the justice system. It also remains concerned at judges' lack of security of tenure.

34. The Committee reiterates its recommendation (CCPR/CO/75/VNM, para. 9) that the State party should take immediate steps to protect the independence and impartiality of the judiciary and the procuracy, guarantee that they are free to operate without interference and ensure transparent and impartial processes for appointments to the judiciary and the procuracy.

Romania / Roumanie

1. Among the general official measures envisaged, there are: legislative initiatives and amendments, the creation of working groups in order to monitor and propose solutions, inter-institutional meetings, changes in the organization and functioning of some units and so on.

2. An eloquent example is the amendment of art. 67 paragraph 2 of Law no. 304/2004 regarding the judicial organization, which, in the current version, has the following content: "The prosecutor is boundless to present to the court the conclusions he/she considers to be justified, according to the law, taking into account the administered evidences in the case. The prosecutor may appeal to the Section for prosecutors of the Superior Council of Magistracy the intervention of the superior hierarchical prosecutor, in order to influence the conclusions, in any manner.

3. Yes.

4. Yes.

5. Yes.

6. In Romania, the Public Ministry is part of the judicial authority. Prosecutors have the status of magistrates.

6. As regards the relations with the other authorities, the Public Ministry is independent and exercises its powers only under the provisions of the law and for ensuring its compliance.
According to the constitutional provisions, the prosecutors carry out their activity under the authority of the Minister of Justice.
This does not mean that the Public Ministry is subordinated to the Minister of Justice.
In our legislation, the authority of the Minister of Justice does not have the meaning of a hierarchical subordination, but that of an administrative relationship, similar to the relationship between the Minister of Justice and the courts. The Public Ministry is not under the authority or subordination of the Ministry of Justice, the prosecutor cannot receive orders from the officials of this ministry.
The manners by which the Minister of Justice exercises his authority over the Public Ministry, were established by art. 69 of Law 304/2004 on judicial organization, as follows:

(1) The Minister of Justice, when he/she deems it necessary, at his/her own initiative or at the request of the Section for prosecutors of the Superior Council of Magistracy, exercises the control over the prosecutors, by the instrumentality of the prosecutors designated by the General Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice or, as the case may be, by the Chief Prosecutor of the National Anticorruption Directorate, by the Chief Prosecutor of the Directorate for Investigating Organized Crime and Terrorism or by the Minister of Justice.
(2) The control consists in the verification of the managerial efficiency, of the manner in which the prosecutors fulfill their duties and in which the professional relations with the litigants and with the other persons involved in the works within the competence of the prosecutor's offices. The control cannot concern the measures ordered by the prosecutor during the criminal investigation and the adopted solutions.

(3) The Minister of Justice may ask the General Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice or, as the case may be, the Chief Prosecutor of the National Anticorruption Directorate, the Chief Prosecutor of the Directorate for Investigating Organized Crime and Terrorism, for information on the activity of prosecutors' offices and to give written guidance on the measures to be taken in order to prevent and effectively fight crime.

These competences represent the expression of the authority of the Minister of Justice, without having the meaning of a subordination.

The Public Ministry is not financially or organizationally subordinate to the Ministry of Justice, it has its own legal personality and is the main authorizing officer.

8. The Superior Council of Magistracy is established and within it, two sections operate: one for judges and one for prosecutors.

The revised constitutional provisions stipulate the number of 19 members of the Superior Council of Magistracy, out of which:

- 14 of them are elected in the general meetings of the magistrates and validated by the Senate; they are part of two sections, one for judges and one for prosecutors; the first section is composed of 9 judges, and the second section of 5 prosecutors;
- 2 representatives of the civil society, specialists in the field of law, having at least 7 years experience in a legal profession or in higher legal education, who enjoy a high professional and moral reputation, elected by the Senate; they only participate in the plenary sessions and enjoy voting rights;
- the Minister of Justice, the President of the High Court of Cassation and Justice and the General Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice.

According to art. 75 paragraph 2 of Law 303/2004 regarding the status of judges/or prosecutors, "The section for prosecutors of the Superior Council of Magistracy has the right, respectively the obligation that, upon request or ex officio:

a) to defend the prosecutors against any act of interference in their professional activity or related to it, which could affect their impartiality or independence in the provision of solutions ..., as well as against any act that would create suspicions regarding them;

b) to defend the professional reputation of prosecutors."

9. By the instrumentality of its sections, The Superior Council of Magistracy fulfills the role of a court in the field of disciplinary accountability of the prosecutors and judges, as well as the assistant magistrates of the High Court of Cassation and Justice. In the case of the offenses committed by judges, prosecutors and assistant magistrates, the disciplinary action is exercised by the Judicial Inspection, through the judicial inspector. The Judicial Inspection can be notified ex officio or it can be notified in writing and motivated by any interested person, including the Superior Council of Magistracy, in connection with the disciplinary violations committed by judges and prosecutors.

10. The prosecutors are appointed for an undetermined period, but the leading positions within the Public Ministry have a determined duration.

11 . Basically, the rules are the same, but there are some differences.

12. See the answer to question no. 7.

13. The provisions of the superior hierarchical prosecutor, given in writing and in accordance with the law, are mandatory for the subordinate prosecutors. In the ordered solutions, the

prosecutor is independent, under the conditions provided by the law. The prosecutor may appeal to the Section for Prosecutors of the Superior Council of Magistracy, within the verifying procedure of the conduct of judges and prosecutors, the intervention of the superior hierarchical prosecutor, expressed in any form, during carrying out the criminal prosecution or in adopting the solution. The solutions adopted by the prosecutor can be rejected by the superior hierarchical prosecutor, when they are considered to be illegal or unreasonable.

14. Within the National Institute of Magistracy, there are initial training programs for justice auditors and continuous training programs for active magistrates. Among the considered disciplines, there are: ethics and judicial organization, ECHR jurisprudence, EU law etc. Also, the prosecutors participate or organize internal or international events, during which important aspects of the analyzed topic are being debated or popularized.

15. Generally, in Romania, the media is interested in the status, the activity and the results of prosecutors. Therefore, these decisions are of interest, as well.

16. On the website of the Public Ministry, there are basically published releases, analyzes, points of view, proposals, translations of recommendations, approvals, opinions, reports, etc., which are relative to or related to the activity or the status of prosecutors. Also, articles of interest are being published in a magazine.

Slovak Republic / République slovaque

1. What are the general official measures taken for reacting to and implementing the decisions of international courts and treaty monitoring bodies?

The Prosecutor's Office of the Slovak Republic reacts to the decisions of international courts and treaty monitoring bodies by drafting systematic modification, namely changes in the wording needed for the elimination of deficiencies outlined in the decisions of international courts and treaty monitoring bodies, and by applying principal propositions to the drafted legislative motions submitted to the legislative process.

In the criminal proceedings, the prosecutor is authorized to submit a special legal remedy when the decision of the European Court of Human Rights states that in a decision of a prosecutor or court of the Slovak Republic or in previous proceedings, there was a breach of fundamental human rights and freedoms of the accused, if such negative cause of the decision cannot be remedied in another manner.

In case of affirming a conflict of the national law with an international treaty binding the Slovak Republic, the General Prosecutor of the Slovak Republic is competent to initiate proceedings on the conformity of the provisions with the international treaty, by submitting a motion to the Constitutional Court of the Slovak Republic.

2. Based on your answer to the 1st question, what are the measures taken particularly for the practical independence of the prosecution services and individual prosecutors? Can you give examples?

The Prosecutor's Office of the Slovak Republic does not have specific information on the appliance of measures taken in the practical independence of the Prosecutor's Office and of the specific prosecutors, nor it does not have information concerning any systematic deficiencies or interventions into the independence of the procedural performace of the prosecutors.

3. Are these measures reflected in the law or in the prosecution policy or debate?

There is an ongoing discussion at the Prosecutor's Office on the further development of the constitutional system and on the position and roles of the main bodies of the Prosecutor's Office within the latter. The General Prosecutor's Office of the Slovak Republic and also specific prosecutors carrying out professional activities support the preservation of the position of the Prosecutor's Office of the Slovak Republic as of an independent authority separated from the executive, legislative and court power, as well as of other principles in accordance with the recommendations of the Venice Commission.

4. If yes, then were there any changes in the prosecution system as a consequence of such measures?

There were no major changes made in the position of the Prosecutor's Office nor in the position and competence of the specific prosecutors.

5. Are there also national decisions of the Supreme or Constitutional Courts, or any other highest judicial body at national level, dealing with the question of independence of prosecutors?

Previously, the issue of the independence of the Prosecutor's Office and of the prosecutors was particularly dealt by the Constitutional Court of the Slovak Republic. In the finding no. PL. ÚS 105/201 of 7 May 2014, it has affirmed a conflict of some parts of the Act on the Prosecutor's Office and of the Act on Prosecutors and Trainees of the Prosecutor's Office in respect to the Constitution of the Slovak Republic. Namely, concerning provisions enabling the impact of executive power (Minister of Justice) on the procedure of the Prosecutor's Office and of the prosecutors and/or that were limiting the competence of the General Prosecutor of the Slovak Republic.

Namely, it concerned provisions which:
- entitled the Minister of Justice to submit a motion for disciplinary proceedings of a prosecutor,
- limited the General Prosecutor in issuing opinions binding the prosecutors and assistants of prosecutors in such a way, that the opinion had to be proposed by the commission of members nominated by the Minister of Justice represented in the same number as those nominated by the General Prosecutor,
- outlined the creation of a commission carrying out the selection proceedings of prosecutors, of transferring a prosecutor to a superior level and for the function of a chief prosecutor, without any competence of a General Prosecutor in creating the Selection Commission and in proposing candidates as members of the Selection Commission, as well as in regards to the result of the selection process.

6. Does the prosecution system in your country belong to the judiciary?

The Prosecutor's Office is not a part of the judiciary system in the Slovak Republic.

7. Are prosecutors and prosecution services independent or autonomous from the executive and legislative branches of state power?

The Prosecutor's Office in the Slovak Republic is a sui generis authority. It is not dependent of the legislative or executive power. The Prosecutor's Office is an autonomous and hierarchically organized system of public bodies lead by the General Prosecutor, where prosecutors act in relations based on subordination and superiority.

8. Is there a Council of Prosecutors or a similar equivalent body which can be considered as a mechanism to monitor and ensure prosecutorial independence, including in the way in which the prosecution services operate?

The self-administration bodies of prosecutors are set for the protection of rights and interests of prosecutors. The role of self-administration bodies of prosecutors is not to monitor and assure the independence of the Prosecutor's Office, nor to monitor the manner of operation of the Prosecutor's Office.

The representative of self-administration of prosecutors is:
a) Assembly of the Prosecutors of the General Prosecutor's Office and the Prosecutors' Council of the General Prosecutor's Office,

b) Assembly of the Prosecutors of the Regional Prosecutor's Office and the Prosecutors' Council of the Regional Prosecutor's Office,
c) Council of Prosecutors.

9. How many of its members are elected by their peers, and does the prosecution policy or the debate within the judiciary produce any impact on the election of the members of the Council of Prosecutors?

The members of self-administration bodies of prosecutors (Prosecutors' Council of the General Prosecutor's Office and of the Regional Prosecutor's Offices) are elected at the assembly of prosecutors in a secret ballot from among the prosecutors. The Council of Prosecutors consists of the Chairmen of the Prosecutors' Councils. The result of the ballot of self-administration bodies of prosecutors is an expression of individual will of the specific prosecutors. Having regard to the form of the ballot, no other factors affect its outcome.

10. Who has the initiative of disciplinary proceedings?

The motion to commence disciplinary proceedings may be submitted by the petitioner who may be:
a) the General Prosecutor against a prosecutor of any Prosecutor's Office,
b) the General Prosecutor or Special Prosecutor against a European Delegated Prosecutor for reasons unrelated to the performance of duties of a European Delegated Prosecutor pursuant to a separate regulation,
c) the Chief European Prosecutor or European Prosecutor of the Slovak Republic against a European Delegated Prosecutor for reasons related to the performance of duties of a European Delegated Prosecutor pursuant to a separate regulation,
d) an Ombudsman against a prosecutor of any Prosecutor's Office supposing that while performing his duties he breached the fundamental rights and freedoms of the motion's author seeking legal protection by the ombudsman, where such conduct would be in conflict with the national law or principles of democratic rule of law,
e) a Deputy of the General Prosecutor against prosecutors of the General Prosecutor's Office and Chief Prosecutors under his competence,
f) a competent Regional Prosecutor against a prosecutor of a Regional Prosecutor's Office or of a District Prosecutor's Office,
g) a competent district prosecutor against a prosecutor of a District Prosecutor's Office,
h) an entity authorized to submit a motion to commence disciplinary proceedings against the General Prosecutor regulated by a separate provision.

11. Are prosecutors appointed for life or do they have to fulfil successive terms? Of how many years?

The prosecutor is appointed by the General Prosecutor into the function of a prosecutor without any time limitation to a specified District Prosecutor's Office.

12. Are the rules regarding appointment, transfer, promotion and discipline of prosecutors similar to those of judges?

The rules of appointment, transfer and disciplinary measures are regulated by separate laws; concerning the judges pursuant to the Act on Judges and Associate Judges, regarding prosecutors pursuant to the Act on Prosecutors and Trainees of the Prosecutor's Office.

Generally they may be assessed as similar to each other. They differ in entities authorized to appoint judges and prosecutors into their function, or transferring them to another court or Prosecutor's Office, further in the type of disciplinary measures and in the amount and time-period of the measure of reduction of salary.

The judge is appointed by the President of the Slovak Republic based on the motion of the Court Council without any time limitation.

A judge may be transferred to another court by the Court Council only with their previous consent, based on their request or based on the decision of the Disciplinary Senate. A judge may be transferred to a vacant position set by the Minister pursuant to a separate provision. If it is a transfer of a judge within a court of the same instance, the judge may be transferred to a vacant position determined after the judge's request for a transfer to another court.
The judge will be transferred to a court of superior instance based on the results of the selection procedure and in accordance with the principles of promotion of judges.
A judge will be transferred to a court of inferior instance by the Court Council based on the decision of the Disciplinary Senate.

Within disciplinary proceedings, a judge may be imposed:
a) a reprimand,
b)a reduction of salary up to 30% for 3 months maximum. In a repeated disciplinary misconduct committed by the judge in the time before the expiration of the disciplinary measure, it may be imposed up to 6 months,
c) to issue publicly a decision on the fact that the judge did not prove the source of the accruement of his assets in the correspondent year in the manner set by law.

For a serious disciplinary misconduct, the Disciplinary Senate shall impose a disciplinary measure from among the following:
a) transferring the judge to a court of inferior instance,
b) reduction of salary from 50% to 70% from 3 months to 1 year,
c) to issue publicly a decision on the fact that the judge did not prove the source of the accruement of his assets in the correspondent year in the manner set by law, damaging so the seriousness and dignity of the function of a judge or endangering the confidence in independent, impartial and fair decisions of courts.

The prosecutor is appointed into the function of a prosecutor by the General Prosecutor without any time limitation to the determined District Prosecutor's Office.

The transfer of a prosecutor to another Prosecutor's Office is decided by the General Prosecutor under the conditions laid down by the Act on Prosecutors and Legal Trainees of the Prosecutor's Office.
The prosecutor may be transferred to another Prosecutor's Office only if they agree with the transfer or the transfer is requested by themselves, if it is not otherwise laid down.
The General Prosecutor will transfer a prosecutor to another Prosecutor's Office even without their consent, if it is imposed by a disciplinary measure (transfer to a subordinate Prosecutor's Office).
The General Prosecutor will transfer a prosecutor to another Prosecutor's Office even without their consent, if it is a transfer to a Prosecutor's Office of the same level within the territorial unit of the same municipality.

A prosecutor may be transferred to a Prosecutor's Office of a superior level only on the basis of a selection process and in accordance with the principles of promotion of prosecutors approved by the General Prosecutor and by the Council of Prosecutors.

In the disciplinary proceedings, the prosecutor may be imposed:

a) written reprimand,
b) reduction of base salary up to 15% for 3 months maximum. In a repeated disciplinary misconduct committed by the prosecutor in the time before the expiration of the disciplinary measure, it may be imposed up to 6 months.

For a serious disciplinary misconduct, a disciplinary measure will be imposed to the prosecutor under the conditions laid down by this Act:
a) reduction of base salary from 15% to 50% up to 1 year,
b) withdrawal from the position of a Chief Prosecutor,
c) transfer to a Prosecutor's Office of a subordinate level,
d) depose of a prosecutor's function.

13. May the government instruct the prosecution services, for instance, to prosecute or not to prosecute? Are instructions general or specific in nature? Are they given in writing? Can the prosecution challenge them?

The government cannot issue instructions to the Prosecutor's Office on the procedures within the criminal proceedings.

14. Are the instructions of superior prosecutors given in writing to those under their supervision? Can these instructions be challenged or refused?

(1) If it is not further otherwise laid down, a superior prosecutor has the right to
a) instruct the subordinate prosecutor on how to act in proceedings and how to perform the tasks,
b) carry out actions of a subordinate prosecutor or decide that it will be carried out by another subordinate prosecutor.

(2) The instruction given to the subordinate prosecutor shall always be in writing. The subordinate prosecutor is obliged to act under instruction if not otherwise herein provided. If the matter cannot be delayed, the superior prosecutor may issue the instruction also orally, by phone, fax or electronic means. The instruction issued orally, by phone, fax or electronic means without a certified electronic signature must reissued by the prosecutor within 48 hours in written form or by electronic means with a certified electronic signature, otherwise the instruction is invalid. The superior prosecutor who issued the instruction is responsible for actions based on the instruction that became invalid. The instruction on withdrawing the matter must be justified in writing. The instruction on withdrawing a matter is made public.

(3) When appearing before a court of law, the subordinate prosecutor is not obliged to act under the superior prosecutor's instruction, provided that there is a change in the presentation of facts and proof in the court proceedings.

(4) The subordinate prosecutor is obliged to disobey the orders and instructions, provided that by obeying the same he would commit a crime, offence or any other tort, or a professional misconduct. The prosecutor´s disobedience of the instructions must be duly reasoned in writing.

(5) The subordinate prosecutor may disobey the instructions, provided that by obeying the same he would directly and seriously put his life or health in a risk, or provided that by obeying the same he would directly and seriously jeopardise the life or health of a person close to him.

(6) Should the subordinate prosecutor assume that acting under instructions might result in a loss or damage, he is obliged to inform the superior prosecutor about the same.

(7) If the subordinate prosecutor deems the instruction to be contrary to law or to his legal opinion, he may submit a written request to the superior prosecutor that he should be disqualified from handling the matter. Such a request must be duly reasoned. The superior prosecutor shall grant his application and allocate the matter to another prosecutor or handle the matter himself.

(8) The superior prosecutor cannot issue an instruction to a subordinate prosecutor on not commencing a criminal prosecution, not raising charges, not submitting a motion for a custody of accused, to refer the matter to be dealt by a different body, to suspend a criminal prosecution, not to submit a prosecution or an ordinary or specific legal remedy against the accused.

(9) The superior prosecutor cannot issue an instruction to a subordinate prosecutor on not to submit a motion for the commencement of court proceedings, on not entering into the court proceedings, on not submitting a legal remedy against the court's decision pursuant to separate regulations, not to submit a prosecutor's protest or not to submit a notice of a prosecutor.

(10) The superior prosecutor cannot carry out or decide himself the acts in paragraphs (8) and (9) that cannot be instructed to subordinate prosecutor, nor he cannot decide that those acts would be carried out by another subordinate prosecutor. They may be directly carried out only by a superior prosecutor.

(11) The instruction to a European Delegated Prosecutor may be issued only in conformity with a separate regulation. In matters where the European Delegated Prosecutor performs tasks of the prosecutor of the Special Prosecutor's Office, this Act applies to the issuing of instruction to the European Delegated Prosecutor.

15. Which are, if any, the main initiatives in terms of training to strengthen the awareness about the de facto dimension of the prosecutorial independence?

Regarding the professional and non-professional public, prosecutors present an independent position of the bodies of the Prosecutor's Office resulting from the constitutional position within the set of authorities of the State, namely in lectures, teaching activities via the Judicial Academy and other educational institutions, by publishing, participation in working groups within the legislative process, as well as by attending working meetings of the public bodies, other State authorities or the Police Force.
The educational activities supporting the awareness on the independence of the Prosecutor's Office are aimed for the legal trainees of the Prosecutor's Office.

16. To what extent the media cover the decisions of international courts and treaty bodies as regards the practical independence of prosecutors?

The media do not show interest in the decision-making process of international courts and treaty bodies regarding the independence of the Prosecutor's Office. They do not publish articles on this topic.

17. To what extent the prosecutor offices interact with the broad public as regards the decisions of international courts and treaty bodies related to the practical independence of prosecutors?

The Prosecutor's Office does not communicate with the broad public via media regarding this topic. The media is not interested in covering this topic, nor to develop a professional discussion or informing on the independence of the Prosecutor's Office via the interpretation of decisions of international courts and treaty bodies.
The decisions of international courts are reflected only in the decision-making process of the Prosecutor's Office and of the courts. They are published in professional legal literature or in networks of the judicial authorities.

Slovenia / Slovénie

1. What are the general official measures taken for reacting to and implementing the decisions of international courts and treaty monitoring bodies?

Adoption of new instruments/recomendations/regulations.

2. Based on your answer to the 1st question, what are the measures taken particularly for the practical independence of the prosecution services and individual prosecutors? Can you give examples?

A. Based on GRECO recommendations The State Prosecution Service Act was amended, and a Code of State Prosecutorial Ethics had been adopted. Based on these changes the Commission for Ethics and Integrity of the State Prosecutors´ Council had started its work and adopted Clarifications to the Code of State Prosecutorial Ethics, Recommendations on conflict of interest, etc.
The Code of State Prosecutorial Ethics lays down rules for the official and private conduct and conduct of state prosecutors in order to safeguard the independence, impartiality and fairness of state prosecutors and the reputation of the state prosecutor's office.

B. In 2019 The National Council adopted a request for the parliamentary inquiry in order to investigate and establish the political responsibility of public officials; state prosecutors and judges involved in prosecution and trial in several cases of one politician for corruption offenses. As a result of such legislative branch’s interference into the independence of the prosecution and judiciary, GRECO initiated an ad hoc procedure pursuant to Rule 34. GRECO points out that a parliamentary inquiry could interfere with the principle of separation of powers and would be a grave interference with the principle of independence, and also point to the respect for this principle in future similar procedures involving influential persons or holders of political power.
The Constitutional Court (on the initiative of the Supreme State Prosecutor's Office, the Supreme Court and the Judicial Council) suspended the execution of the parliamentary inquiry in the part concerning the state prosecutors and judges. The final decision has not yet been taken; the case is still pending.

3. Are these measures reflected in the law or in the prosecution policy or debate?

See above.

4. If yes, then were there any changes in the prosecution system as a consequence of such measures?

The measures, described above, did not bring changes in the prosecution system.

5. Are there also national decisions of the Supreme or Constitutional Courts, or any other highest judicial body at national level, dealing with the question of independence of prosecutors?

The Constitutional Court issued a ruling no. U-I-42/12 on 7 February 2013 as regards to the prosecutor's office. The Court said the State Prosecutor's Office is a system of self-dependent

state bodies. Prosecutors perform their prosecution functions in the name of the State and in the public interest. The Court stated that the independence of prosecutors must be ensured in concrete cases.

As already mentioned above in 2019 The National Council adopted a request for the parliamentary inquiry in order to investigate and establish the political responsibility of public officials; state prosecutors and judges involved in prosecution and trial in several cases of one politician for corruption offenses. With regard to the parliamentary inquiry, the Office of the State Prosecutor General and the State Prosecutor General have filed a petition with the Constitutional Court to initiate the procedure for the review of the constitutionality and legality, as well as a constitutional complaint, of the Parliamentary Inquiries Act, which allows the determination of political responsibility, which is in contravention of the Constitution of the Republic of Slovenia.

The Constitutional Court (on the initiative of the Supreme State Prosecutor's Office, the Supreme Court and the Judicial Council) suspended the execution of the parliamentary inquiry in the part concerning the state prosecutors and judges. The final decision has not yet been taken; the case is still pending.

6. Does the prosecution system in your country belong to the judiciary?

The position of the State Prosecution Service in Slovenia is specific. The Constitutional Court said the State Prosecutor's Office is a system of self-dependent state bodies.
The State Prosecution Service Act: The State Prosecutor's Offices shall be self-dependent state bodies within the system of justice.

7. Are prosecutors and prosecution services independent or autonomous from the executive and legislative branches of state power?

Yes. In the performance of the state prosecution service, the prosecutors are autonomous and bound by the Constitution and the Law. Prosecutors perform their prosecution functions in the name of the State and in public interest.

8. Is there a Council of Prosecutors or a similar equivalent body which can be considered as a mechanism to monitor and ensure prosecutorial independence, including in the way in which the prosecution services operate?

The State Prosecutors´ Council is an autonomous state body that performs the tasks and duties of state prosecution self-governance and administrative tasks, and also participates in ensuring the uniformity of prosecution and safeguarding the autonomy of state prosecutors.

The State Prosecutors' Council is responsible for:
- the appointment and dismissal of the heads of district state prosecutors' offices,
- takes part in the appointment procedure of state prosecutors,
- gives opinions on prosecution policy, and
- is responsible for safeguarding autonomy in the performance of the state prosecution service.

9. How many of its members are elected by their peers, and does the prosecution policy or the debate within the judiciary produce any impact on the election of the members of the Council of Prosecutors?

The State Prosecutors Council was established in 2011 and has nine members, who are appointed and/or elected for a mandate of six years.
Four members elected by state prosecutors from among the state prosecutors who do not hold leading posts, such that one each thereof holding the title of supreme state prosecutor, higher state prosecutor, district state prosecutor, and local state prosecutor are appointed;
Four members elected by the Parliament on the proposal of the President of the Republic from among legal experts;
One member appointed by the Minister from among the heads of District State Prosecutor's Offices.
The State Prosecutor General and the Deputy cannot be the members of the Council.

The prosecution policy or the debate within the judiciary does not have any significant impact on the election of the members of the Council of Prosecutors.

10. Who has the initiative of disciplinary proceedings?

The proposal for the institution of disciplinary proceedings can be filed by the head of the state prosecutor's office, the State Prosecutor General, the State Prosecutors' Council and the Minister. In this case the disciplinary prosecutor is not obliged to institute disciplinary proceedings. If the petitioner insists on such proposal, the disciplinary tribunal of first instance shall issue a final decision on whether or not to institute disciplinary proceedings.
A request for the institution of disciplinary proceedings can be filed by the State Prosecutor General, the State Prosecutors' Council and the Minister. On the basis of the filed written request referred to in the preceding sentence, the disciplinary prosecutor must request the institution of disciplinary proceedings.

Disciplinary sanctions are imposed on state prosecutors who violate their obligations either intentionally or as a result of negligence. But, even when disciplinary procedure is in place, it is not allowed to interfere with the state prosecutors' autonomy (when making decisions in a specific case/while performing their prosecution service). Also, state prosecutors may not be brought before a disciplinary tribunal for an opinion they expressed during the performance of the state prosecution service.

11. Are prosecutors appointed for life or do they have to fulfil successive terms? Of how many years?

The position of a state prosecutor in Slovenia is a permanent position.

12. Are the rules regarding appointment, transfer, promotion and discipline of prosecutors similar to those of judges?

Yes. State prosecutors are officials engaged in an official employment with the Republic of Slovenia. They are equal to judges in terms of rights and obligations arising from their official service.

The main difference is regarding the appointment/election. The state prosecutor is appointed by the government on the proposal of Minister of Justice. The judges are elected by the parliament.

13. May the government instruct the prosecution services, for instance, to prosecute or not to prosecute? Are instructions general or specific in nature? Are they given in writing? Can the prosecution challenge them?

No. In the performance of the state prosecution service, the prosecutors are autonomous and bound by the Constitution and the Law. They are also be bound by the general principles of international law and by international treaties. State prosecutors who believe that their autonomy was violated may request the State Prosecutor's Council to address the violation.

14. Are the instructions of superior prosecutors given in writing to those under their supervision? Can these instructions be challenged or refused?

Decisions made by state prosecutors in individual cases may not be interfered with, except by way of general instructions and the re-assignment of cases in the manner defined by the State Prosecution Service Act. Each state prosecutor is as an independent state functionary and may not be given instructions or orders for his work in a specific criminal case.

General instructions on the conduct of state prosecutors relating to uniform application of the law and to guide and ensure the uniformity of prosecution policy are permitted. Such instructions are issued by the State Prosecutor General or the head of a district state prosecutor's office.

15. Which are, if any, the main initiatives in terms of training to strengthen the awareness about the de facto dimension of the prosecutorial independence?

Trainings and seminars on the independence of prosecutors have been organized (and more are planned in the future) within the Supreme State Prosecutor's Office and the Judicial Training Centre of the Ministry of Justice.

16. To what extent the media cover the decisions of international courts and treaty bodies as regards the practical independence of prosecutors?

The national media reports are sometimes quite extensive and usually based on appropriate knowledge of the matter. On the other hand, some reports of media under the influence of particular political parties can be less objective or even (ab)used for individual political interests.

The launch of the above-mentioned parliamentary inquiry in 2019 has elicited wider media outreach due to the emphasis on investigating the political responsibility of judges and prosecutors. The critical responses of international organizations to the launch of a parliamentary inquiry (e.g. GRECO and OECD) have been extensively summarized and reported by the Slovenian media. In this regard, the media also reported violations of the rule of law under Article 2 TEU in other countries.

17. To what extent the prosecutor offices interact with the broad public as regards the decisions of international courts and treaty bodies related to the practical independence of prosecutors?

In 2017 a Communication Strategy was adopted and publish. Different communication tools are envisaged by the Strategy such as Internal Rules on Communicating with the Media, which provide recommendation on how state prosecutors should handle so as to provide timely information to the media whilst contributing to a better public image of prosecution services.

The public prosecutor organization strives to operate in a transparent manner and ensures regular communication with the public. Thus, the State Prosecutor's Office provides information on a particular topic to the public on its own initiative (press releases and as a publication on the website of a public prosecutor's organization) or provides it as a response to a specific journalistic question.

MAIN QUESTION

Do you know about any judgments or decisions of the European Court of Human Rights or of the Court of Justice of the European Union, or of any other international court which refer to or in any way touch upon the independence (and preferably went on to highlight its elements):

a) of prosecutors;
b) of the judiciary or the justice system as a whole;
c) of judges.

If you know about any such judgments or decisions, the CCPE Bureau and the Working Group will be very grateful to you if you indicate their titles and also, if possible, the numbers of paragraphs or sections in these judgments and decisions where such references or indications are made. These judgments and decisions may concern any country, not only your country.

We are not aware of such judgments or decisions.

Questions

IN YOUR COUNTRY:

1. What are the general official measures taken for reacting to and implementing the decisions of international courts and treaty monitoring bodies?

Adoption of new instruments/recomendations/regulations.

2. Based on your answer to the 1st question, what are the measures taken particularly for the practical independence of the prosecution services and individual prosecutors? Can you give examples?

A. Based on GRECO recommendations The State Prosecution Service Act was amended in 2015 and a Code of Ethics for state prosecutors had been adopted. Based on these changes the Commission for Ethics and Integrity of the State Prosecutors´ Council had started its work and adopted Clarifications to the Code of Ethics for state prosecutors, Recommendations on conflict of interest, etc.
The Code of Ethics for state prosecutors lays down rules for the official and private conduct and conduct of state prosecutors in order to safeguard the independence, impartiality and fairness of state prosecutors and the reputation of the state prosecutor's office.

B. In 2019 The National Council adopted a request for the parliamentary inquiry in order to investigate and establish the political responsibility of public officials; state prosecutors and

judges involved in prosecution and trial in several cases of one politician for corruption offenses. As a result of such legislative branch's interference into the independence of the prosecution and judiciary, GRECO initiated an ad hoc procedure pursuant to Rule 34. GRECO points out that a parliamentary inquiry could interfere with the principle of separation of powers and would be a grave interference with the principle of independence, and also point to the respect for this principle in future similar procedures involving influential persons or holders of political power.
The Constitutional Court (on the initiative of the Supreme State Prosecutor's Office, the Supreme Court and the Judicial Council) suspended the execution of the parliamentary inquiry in the part concerning the state prosecutors and judges. The final decision has not yet been taken; the case is still pending.

3. Are these measures reflected in the law or in the prosecution policy or debate?

See above.

4. If yes, then were there any changes in the prosecution system as a consequence of such measures?

The measures, described above, did not bring changes in the prosecution system.

5. Are there also national decisions of the Supreme or Constitutional Courts, or any other highest judicial body at national level, dealing with the question of independence of prosecutors?

The Constitutional Court issued a ruling no. U-I-42/12 on 7 February 2013 as regards to the prosecutor's office. The Court said the State Prosecutor's Office is a system of self-dependent state bodies. Prosecutors perform their prosecution functions in the name of the State and in the public interest. The Court stated that the independence of prosecutors must be ensured in concrete cases. (see also answer no. 6)

As already mentioned above in 2019 The National Council adopted a request for the parliamentary inquiry in order to investigate and establish the political responsibility of public officials; state prosecutors and judges involved in prosecution and trial in several cases of one politician for corruption offenses. With regard to the parliamentary inquiry, the Office of the State Prosecutor General and the State Prosecutor General have filed a petition with the Constitutional Court to initiate the procedure for the review of the constitutionality and legality, as well as a constitutional complaint, of the Parliamentary Inquiries Act, which allows the determination of political responsibility, which is in contravention of the Constitution of the Republic of Slovenia.

The Constitutional Court (on the initiative of the Supreme State Prosecutor's Office, the Supreme Court and the Judicial Council) suspended the execution of the parliamentary inquiry in the part concerning the state prosecutors and judges. The final decision has not yet been taken; the case is still pending.

6. Does the prosecution system in your country belong to the judiciary?

In short, no.

From the Constitutional Court decision no. U-I-42/12: In Slovenia, state power is exercised on the principle of separation of power into legislative, executive and judicial branch of power.

Justice system in a broad sense includes and characterizes all those entities that are directly and permanently connected with the functioning of the judiciary (courts/judiciary and public prosecutor's office, attorney's office, notary). Justice system in the narrow sense, however, means only the judiciary. The functional connection of the public prosecutor's office with the judiciary derives from the Constitution, since the basic function of the public prosecutor's office is to file and represent criminal charges. However, understanding the public prosecutor's office as a part of the judiciary in the broad sense does not mean that the public prosecutor's office falls within the judicial branch of power. The State Prosecutor's Office does not belong to the judiciary as it does not exercise judicial function. Only the courts have judicial power, or only the judges exercise judicial power.
At the core of the prosecution function is the prosecution of offenders. Determining acts that are so reprehensible or that they damage such important goods that they should be classified as criminal acts, goes to the very core of the sovereignty of the state. That is why the public prosecutor's office exercises an important part of the state power. In a constitutional order in which the legislature passes laws defining criminal offenses and where the judiciary independently and impartially decides on the existence of the crime and the guilt of the alleged perpetrator, the prosecutorial function can only be an executive function. The prosecution of criminals is carried out on behalf of the state and in the public interest. In this respect, it is the prosecutorial function which, in addition to the police, most often demonstrates state power or state monopoly over the use of coercion. In this respect, it is one of the classic functions of state power. All this places the prosecutorial function in the executive branch of power.
But, although the prosecutor's office is considered to be part of the executive branch, it has a slightly different position from that of other state bodies in terms of its scope of activity within the executive branch. Within the executive branch, the prosecution is an autonomous body. The prosecutor's office must be professionally and politically independent from the administrative bodies. In our constitutional system, the public prosecutor's office is not an authority that could be subordinated to the executive branch of power. In the performance of the state prosecution service, the prosecutors are autonomous and bound by the Constitution and the Law. With regard to the exercise of the public prosecutor's function, the public prosecutor is not such a part of the executive power which in specific cases could be directed by the government or any ministry in terms of political and professional instructions.

6.1. Are there any parallels between the independence of judges and independence of prosecutors, or the latter is considered separately, if considered at all?

The Constitution of the Republic of Slovenia
The Judiciary:
Article 125: Judges shall be independent in the performance of the judicial function. They shall be bound by the Constitution and laws.
Article 129: The office of a judge is permanent. The age requirement and other conditions for election are determined by law. The retirement age of judges is determined by law.
Article 130: Judges are elected by the National Assembly on the proposal of the Judicial Council.
Article 134: No one who participates in making judicial decisions may be held accountable for an opinion expressed during decision-making in court.
If a judge is suspected of a criminal offence in the performance of judicial office, he may not be detained, nor may criminal proceedings be initiated against him without the consent of the National Assembly (immunity).

The State Prosecutor’s Office:

Article 135: State Prosecutors file and present criminal charges and have other powers provided by law.

The State Prosecution Service Act
Article 3: In the performance of the state prosecution service, state prosecutors shall be autonomous and bound by the Constitution and an Act. In accordance with the Constitution, state prosecutors shall also be bound by the general principles of international law and by ratified and published international treaties.
Decisions made by state prosecutors in specific cases may not be interfered with, except by way of general instructions and the assignment of cases in the manner defined by this Act
Article 5: The office of state prosecutor is permanent. (The age requirement and other conditions for election are also determined by this Act.)
Article 34: State prosecutors are appointed by the Government on the proposal of the Minister.

The first paragraph of Article 135 of the Constitution implicitly contains the principle of functional independence of state prosecutors with regard to the filing and presentation of criminal charges. The Constitution does not guarantee state prosecutors independence in such content as judges. The requirement for the independence of judges derives directly from the principle of separation of powers.

7. Are prosecutors and prosecution services independent or autonomous from the executive and legislative branches of state power?

Yes. In the performance of the state prosecution service, the prosecutors are autonomous and bound by the Constitution and the Law. Prosecutors perform their prosecution functions in the name of the State and in public interest. (see also answer no. 6).

In the case of public prosecutors, the request for their independence can be justified on the basis of the principle of separation of powers, but - given that the public prosecutor's office falls within the executive branch of power - only in relation to the legislative and judicial branches (in relation to other bodies of the executive branch of power, their independence or autonomy does not stem from the principle of separation of powers).

As already explained, the public prosecutor's office in our constitutional system cannot be viewed as an authority that could be subordinated to the executive branch of power, since it is a (functionally) independent body. The decision on whether to bring a criminal charge to court and how to represent it in court is up to the public prosecutor. In doing so, the public prosecutor must, in concrete procedures, respect the principle of equality before the law and proceed from the adopted policy of prosecuting offenders. However, it is the public prosecutor who is competent to decide, within the constitutional and statutory framework, whether to file a criminal charge and how to represent it; this decision must be his own decision, which he must make conscientiously and in his best professional judgment. This is not his right, but his jurisdiction, and thus his duty and responsibility in the performance of the state prosecutor's office.

7.1. Is the interaction of prosecutor offices with courts, police, investigation authorities and other actors in criminal procedure based on the principle of prosecutorial independence and how?

Yes.

8. Is there a Council of Prosecutors or a similar equivalent body which can be considered as a mechanism to monitor and ensure prosecutorial independence, including in the way in which the prosecution services operate?

The State Prosecutors´ Council is an autonomous state body that performs the tasks and duties of state prosecution self-governance and administrative tasks, and also participates in ensuring the uniformity of prosecution and safeguarding the autonomy of state prosecutors.

The State Prosecutors' Council is responsible for:
- the appointment and dismissal of the heads of district state prosecutors' offices,
- takes part in the appointment procedure of state prosecutors,
- gives opinions on prosecution policy, and
- is responsible for safeguarding autonomy in the performance of the state prosecution service.

9. How many of its members are elected by their peers, and does the prosecution policy or the debate within the judiciary produce any impact on the election of the members of the Council of Prosecutors?

The State Prosecutors Council was established in 2011 and has nine members, who are appointed and/or elected for a mandate of six years.
Four members elected by state prosecutors from among the state prosecutors who do not hold leading posts, such that one each thereof holding the title of supreme state prosecutor, higher state prosecutor, district state prosecutor, and local state prosecutor are appointed;
Four members elected by the Parliament on the proposal of the President of the Republic from among legal experts;
One member appointed by the Minister from among the heads of District State Prosecutor's Offices.
The State Prosecutor General and the Deputy cannot be the members of the Council.

The prosecution policy or the debate within the judiciary does not have any significant impact on the election of the members of the Council of Prosecutors.

10. Who has the initiative of disciplinary proceedings?

The proposal for the institution of disciplinary proceedings can be filed by the head of the state prosecutor's office, the State Prosecutor General, the State Prosecutors' Council and the Minister. In this case the disciplinary prosecutor is not obliged to institute disciplinary proceedings. If the petitioner insists on such proposal, the disciplinary tribunal of first instance shall issue a final decision on whether or not to institute disciplinary proceedings.
A request for the institution of disciplinary proceedings can be filed by the State Prosecutor General, the State Prosecutors' Council and the Minister. On the basis of the filed written request referred to in the preceding sentence, the disciplinary prosecutor must request the institution of disciplinary proceedings.

Disciplinary sanctions are imposed on state prosecutors who violate their obligations either intentionally or as a result of negligence. But, even when disciplinary procedure is in place, it is not allowed to interfere with the state prosecutors' autonomy (when making decisions in a specific case/while performing their prosecution service). Also, state prosecutors may not be brought before a disciplinary tribunal for an opinion they expressed during the performance of the state prosecution service.

11. Are prosecutors appointed for life or do they have to fulfil successive terms? Of how many years?

The position of a state prosecutor in Slovenia is a permanent position.

12. Are the rules regarding appointment, transfer, promotion and discipline of prosecutors similar to those of judges?

Yes. State prosecutors are officials engaged in an official employment with the Republic of Slovenia. They are equal to judges in terms of rights and obligations arising from their official service.

The main difference is regarding the appointment/election. The state prosecutor is appointed by the government on the proposal of Minister of Justice. The judges are elected by the parliament.

13. May the government instruct the prosecution services, for instance, to prosecute or not to prosecute? Are instructions general or specific in nature? Are they given in writing? Can the prosecution challenge them?

No. In the performance of the state prosecution service, the prosecutors are autonomous and bound by the Constitution and the Law. They are also be bound by the general principles of international law and by international treaties. State prosecutors who believe that their autonomy was violated may request the State Prosecutor's Council to address the violation.

14. Are the instructions of superior prosecutors given in writing to those under their supervision? Can these instructions be challenged or refused?

Decisions made by state prosecutors in individual cases may not be interfered with, except by way of general instructions and the re-aallocation of cases in the manner defined by the State Prosecution Service Act. Each state prosecutor is as an independent state functionary and may not be given instructions or orders for his work in a specific criminal case.

General instructions on the conduct of state prosecutors relating to uniform application of the law and to guide and ensure the uniformity of prosecution policy are permitted. Such instructions are issued by the State Prosecutor General or the head of a district state prosecutor's office.

14.1. What is the system of allocation, re-allocation and management of cases and is it based on objective and transparent criteria respecting the independence of prosecutors?

The allocation of cases to state prosecutors is regulated by the State Prosecution Service Act and in more details in the State Prosecutors' Rules. It is based on objective and transparent criteria.

As a rule, cases are allocated to state prosecutors in the order of their receipt, taking into consideration the organisation of work, specialised legal fields and an even workload distribution. The rules for the allocation of cases and implementation of procedural tasks is defined in detail by the annual work schedule in accordance with the State Prosecutors' Rules.

The case in which directing of the police or investigative tasks were performed during the on-call duty is generally allocated to the public prosecutor who participated in the investigative task or directed the pre-trial procedure.
If a state prosecutor is released from a case and the case is re-allocated, the head of the state prosecutor's office issues an order on the re-allocation of the case either to another state prosecutor whose turn it is to take on a case in accordance with the annual work schedule, or to themselves for consideration.
The case may also be allocated to another state prosecutor in the event of a longer absence, in the event that the state prosecutor is burdened with other extensive and legally complex matters, for reasons of exclusion, etc.
Depending on the nature and complexity of a specific case, the head of the state prosecutor's office can designate the state prosecutors and the legal staff that will cooperate with the state prosecutor to whom the case has been allocated under the team-work principle, and defines the extent and manner of their cooperation.

The head of a district state prosecutor's office may take over a specific case or task which has been assigned to a state prosecutor at that state prosecutor's office for consideration or may reassign such case or task to another state prosecutor (re-allocation of a case).
The reasons substantiating the re-allocation of a case are:
- disagreement in substantive terms with the decision and/or reasons for the decision of the state prosecutor with respect to the established prosecution policy;
- suspicion of serious irregularities or unlawfulness in the case resolution process;
- unconscientious, late, inadequate or negligent case resolution process;
- acting in contravention of the general instructions issued pursuant to the provisions of the State Prosecution Service Act;
- other actions meeting the criteria of disciplinary violations under the State Prosecution Service Act committed in the process of case resolution.

15. Which are, if any, the main initiatives in terms of training to strengthen the awareness about the de facto dimension of the prosecutorial independence?

Trainings and seminars on the independence of prosecutors have been organized (and more are planned in the future) within the Supreme State Prosecutor's Office and the Judicial Training Centre of the Ministry of Justice.

15.1. Is the concept of prosecutorial independence reflected in the code of ethics and professional conduct of prosecutors? If such code exists in your country, could you please inform how it was prepared and adopted, and provide its copy in English or French if available.

Based on GRECO recommendations The State Prosecution Service Act was amended in 2015. Among other, new articles have been added to specify the obligation to adopt the Code of Ethics. The Code of ethics for State Prosecutors shall lay down the rules of professional and private conduct of state prosecutors with a view to protecting their autonomy, impartiality and integrity, and the reputation of the state prosecutor's office. The Code of Ethics is adopted by the State Prosecutors´ Council, which also appointed the Commission for Ethics and Integrity of the State Prosecutors´ Council. The Commission already adopted Clarifications to the Code of Ethics for state prosecutors, Recommendations on conflict of interest, etc.
The Code of Ethics in English is available here: https://www.drzavnotozilski-svet.si/code-of-ethics-of-state-prosecutors

16. To what extent the media cover the decisions of international courts and treaty bodies as regards the practical independence of prosecutors?

The national media reports are sometimes quite extensive and usually based on appropriate knowledge of the matter. On the other hand, some reports of media under the influence of particular political parties can be less objective or even (ab)used for individual political interests.

The launch of the above-mentioned parliamentary inquiry in 2019 has elicited wider media outreach due to the emphasis on investigating the political responsibility of judges and prosecutors. The critical responses of international organizations to the launch of a parliamentary inquiry (e.g. GRECO and OECD) have been extensively summarized and reported by the Slovenian media. In this regard, the media also reported violations of the rule of law under Article 2 TEU in other countries.

17. To what extent the prosecutor offices interact with the broad public as regards the decisions of international courts and treaty bodies related to the practical independence of prosecutors?

In 2017 a Communication Strategy was adopted and publish. Different communication tools are envisaged by the Strategy such as Internal Rules on Communicating with the Media, which provide recommendation on how state prosecutors should handle so as to provide timely information to the media whilst contributing to a better public image of prosecution services.

The public prosecutor organization strives to operate in a transparent manner and ensures regular communication with the public. Thus, the State Prosecutor's Office provides information on a particular topic to the public on its own initiative (press releases and as a publication on the website of a public prosecutor's organization) or provides it as a response to a specific journalistic question.

Sweden / Suède

MAIN QUESTION

Do you know about any judgments or decisions of the European Court of Human Rights or of the Court of Justice of the European Union, or of any other international court which refer to or in any way touch upon the independence (and preferably went on to highlight its elements):

a) of prosecutors;
b) of the judiciary or the justice system as a whole;
c) of judges.

If you know about any such judgments or decisions, the CCPE Bureau and the Working Group will be very grateful to you if you indicate their titles and also, if possible, the numbers of paragraphs or sections in these judgments and decisions where such references or indications are made. These judgments and decisions may concern any country, not only your country.

Questions

IN YOUR COUNTRY:

1. What are the general official measures taken for reacting to and implementing the decisions of international courts and treaty monitoring bodies?

It depends on the content of the decisions of the international courts and treaty monitoring bodies. If legislative changes are necessary for Sweden to be able to act in accordance with the decision, this is handled by the legislature.

However, if it is changes in working methods or similar which is required, this is taken care of by the national authorities. For example, the Swedish Prosecution Authority follows the jurisdiction of the European Court of Justice as well as the European Court of Human Rights when it comes to the use of the European Arrest Warrant and extradition to third states.

2. Based on your answer to the 1st question, what are the measures taken particularly for the practical independence of the prosecution services and individual prosecutors? Can you give examples?

No particular measures have been taken for the practical independence of the prosecution services and individual prosecutors. However, information and clarifications regarding some of the decisions and the role of the prosecutor have been disseminated within the prosecution services.

3. Are these measures reflected in the law or in the prosecution policy or debate?

The independence of the prosecution services and individual prosecutors are reflected in law.

Chapter 12 Section 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.

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.

4. If yes, then were there any changes in the prosecution system as a consequence of such measures?

There have been no changes in the prosecution system as a consequence of such measures.

5. Are there also national decisions of the Supreme or Constitutional Courts, or any other highest judicial body at national level, dealing with the question of independence of prosecutors?

No, there are no decisions of the Supreme Courts, or any other high judicial body at the national level, dealing with the question of independence of prosecutors.

6. Does the prosecution system in your country belong to the judiciary?

The prosecution authorities in Sweden are considered judicial (prosecutorial) authorities (C-625/19 PPU).

6bis Are there any parallels between the independence of judges and independence of prosecutors, or the latter is considered separately, if considered at all?

There are parallels between the independence of judges and independence of prosecutors. According to Chapter 12 Section 2 of the Instrument of Government (the Constitution of Sweden) no public authority (government) nor the Swedish parliament may influence or determine how an authority shall decide an individual case, nor how a rule of law is to be applied.

7. Are prosecutors and prosecution services independent or autonomous from the executive and legislative branches of state power?

Prosecutors and prosecution services are independent and autonomous from the executive and legislative branches of state power in Sweden.

Chapter 12 Section 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 a rule of law is to be applied.

Thus, a prosecutor is completely independent and free to make their own decisions.

7bis Is the interaction of prosecutor offices with courts, police, investigation authorities and other actors in criminal procedure based on the principle of prosecutorial independence and how?

Yes, prosecutors should pay particular attention to the division of roles between prosecutors and the law enforcement authorities. The prosecutors are obliged to continuously exercise an independent and objective control of the investigation.

8. Is there a Council of Prosecutors or a similar equivalent body which can be considered as a mechanism to monitor and ensure prosecutorial independence, including in the way in which the prosecution services operate?

Sweden does not have a Council of Prosecutors.

The appointment of the prosecutors is arranged as to guarantee their independence. Prosecutors are appointed by the Prosecutor General and the appointments follow a transparent procedure. A certain board make recommendations regarding positions as senior public prosecutor and chief prosecutor. The recruitment procedure is based on meritocratic principles. To ensure that principles are followed, an applicant who is denied a position has the right to appeal the Prosecutor Generals decision to a State Committee which is a supervising all appointments of civil servants. The security of tenure for prosecutors, as well as other Swedish officials, is a fundament in the Swedish system.

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.

The Chancellor of Justice 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 law and other regulations and fulfil their duties among others.

The Committee of the Constitution ensure that the government and ministers follow the rules 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 in a wrong way e.g. ministerial rule.

9. How many of its members are elected by their peers, and does the prosecution policy or the debate within the judiciary produce any impact on the election of the members of the Council of Prosecutors?

The Swedish National Disciplinary Offence Board is an independent body which takes decisions on disciplinary responsibility regarding state employees (for example prosecutors and judges) The authority where the employee is employed is obliged to report misconduct to the Swedish National Disciplinary Offence Board.

The Parliamentary Ombudsmen (JO) and The Chancellor of Justice also have the right to report to the Swedish National Disciplinary Offence Board.

10. Who has the initiative of disciplinary proceedings?

Swedish prosecutors have normal Swedish employment terms and are not obliged to fulfil successive terms.

11. Are prosecutors appointed for life or do they have to fulfil successive terms? Of how many years?

No, for example judges are appointed by the government and have a stronger security of tenure. Otherwise, it is similar, regarding for instance disciplinary proceedings.

12. Are the rules regarding appointment, transfer, promotion and discipline of prosecutors similar to those of judges?

The government is not allowed to instruct the prosecution services to prosecute or not to prosecute.

Chapter 12 Section 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 a rule of law is to be applied.

13. May the government instruct the prosecution services, for instance, to prosecute or not to prosecute? Are instructions general or specific in nature? Are they given in writing? Can the prosecution challenge them?

A prosecutor is completely independent and free to make their own decisions during the investigative process and legal proceedings in court.

A prosecutor's head (Chief Prosecutor) is not permitted to issue directives on how a matter is to be handled or what is to be decided during the investigative process and legal proceedings in court.

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. It is the prosecutor, not the authority where he or she is employed, who takes decisions regarding whether legal proceedings are to be taken. It is the prosecutor who participates in court proceedings.

The role of prosecutor is thereby exerted by an identifiable person with a personal responsibility.

However, The Directors of Public Prosecution (and their deputy) may themselves take on an assignment that would otherwise be the responsibility of a subordinate prosecutor.

14. Are the instructions of superior prosecutors given in writing to those under their supervision? Can these instructions be challenged or refused?

Training to strengthen the awareness about the de facto dimension of the prosecutorial independence is provided continuously. For instance, during the mandatory basic training and thereafter during different higher trainings and seminars.

14bis What is the system of allocation, re-allocation and management of cases and is it based on objective and transparent criteria respecting the independence of prosecutors?

It is the public prosecutor at each chamber who is responsible for the allocation of cases. The allocation of cases is based on predetermined criteria, such as suitability and partiality, to ensure the independence of prosecutors.

As mentioned before each prosecutor is solely responsible for his or her decisions and these decisions cannot be changed by a prosecutor's superior.

15. Which are, if any, the main initiatives in terms of training to strengthen the awareness about the de facto dimension of the prosecutorial independence?

Training to strengthen the awareness about the de facto dimension of the prosecutorial independence is provided continuously. For instance, during the mandatory basic training and thereafter during different higher trainings and seminars.

15bis Is the concept of prosecutorial independence reflected in the code of ethics and professional conduct of prosecutors? If such code exists in your country, could you please inform how it was prepared and adopted, and provide its copy in English or French if available.

In June 2014 a set of ethical guidelines were imposed by the Prosecutor-General regarding all prosecutors and other employees of the Swedish Prosecution Authority and the Swedish Economic Crime Authority. The ethical guidelines are constantly updated (last updated 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 prosecutors. Also, each year a set of ethical dilemmas are distributed to all workplaces in 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.

16. To what extent the media cover the decisions of international courts and treaty bodies as regards the practical independence of prosecutors?

The media does not cover the decisions of international courts and treaty bodies as regards the practical independence of prosecutors.

Normally, there is a high confidence in the authorities´ independence in Sweden. It could be an explanation as to why there is no or low media coverage regarding the decisions of international courts and treaty bodies as regards the practical independence of prosecutors.

17. To what extent the prosecutor offices interact with the broad public as regards the decisions of international courts and treaty bodies related to the practical independence of prosecutors?

The prosecutor offices do not interact with the broad public as regards the decisions of international courts and treaty bodies related to the practical independence of prosecutors.

Turkey / Turquie

MAIN QUESTION

Do you know about any judgments or decisions of the European Court of Human Rights or of the Court of Justice of the European Union, or of any other international court which refer to or in any way touch upon the independence (and preferably went on to highlight its elements):

a) of prosecutors;
b) of the judiciary or the justice system as a whole;
c) of judges.

If you know about any such judgments or decisions, the CCPE Bureau and the Working Group will be very grateful to you if you indicate their titles and also, if possible, the numbers of paragraphs or sections in these judgments and decisions where such references or indications are made. These judgments and decisions may concern any country, not only your country.

Questions

IN YOUR COUNTRY:

1. What are the general official measures taken for reacting to and implementing the decisions of international courts and treaty monitoring bodies?

Usually the Ministry of Justice reacts at this point. The other public institutions and agencies react in coordination with the Ministry of Justice as to the parts concerning judicial matters.

2. Based on your answer to the 1st question, what are the measures taken particularly for the practical independence of the prosecution services and individual prosecutors? Can you give examples?

The Ministry of Justice deals with the matters related to the prosecution services.
The CJP carries out the measures for the independence of the prosecutors.

3. Are these measures reflected in the law or in the prosecution policy or debate?

Yes.

4. If yes, then were there any changes in the prosecution system as a consequence of such measures?

The Independence of prosecutors is guaranteed by the Constitution.

5. Are there also national decisions of the Supreme or Constitutional Courts, or any other highest judicial body at national level, dealing with the question of independence of prosecutors?

There is no specific decision in this regard, but all the public institutions and agencies as well as citizens have internalized the fact that the independence of prosecutors is guaranteed by the Constitution.

6. Does the prosecution system in your country belong to the judiciary?

Yes, the prosecution system is part of the judiciary. Its physical needs and interinstitutional relations are dealt with through the Ministry of Justice.

6bis Are there any parallels between the independence of judges and independence of prosecutors, or the latter is considered separately, if considered at all?

It is parallel. The CJP ensures the independence of judges and prosecutors. (The administrative acts and actions of the prosecutors are carried out through the Ministry of Justice)

7. Are prosecutors and prosecution services independent or autonomous from the executive and legislative branches of state power?

Prosecutor office is independent from the executive and legislative branches of the State. (The administrative acts and actions of the prosecutors are carried out through the Ministry of Justice.)

7bis Is the interaction of prosecutor offices with courts, police, investigation authorities and other actors in criminal procedure based on the principle of prosecutorial independence and how?

The prosecutor office is not dependent on any of the actors above mentioned. The prosecutor office interacts with all the actors based on the principle of the independence of posecutors. Prosecutor is the chief of the police and investigation authorities from the moment of start of the prosecution. The police and investigation authorities have to obey instructions of prosecutors.

8. Is there a Council of Prosecutors or a similar equivalent body which can be considered as a mechanism to monitor and ensure prosecutorial independence, including in the way in which the prosecution services operate?

Yes, the CJP performs this duty.

9. How many of its members are elected by their peers, and does the prosecution policy or the debate within the judiciary produce any impact on the election of the members of the Council of Prosecutors?

Since 2017 the prosecutors (also judges) do not vote in the election of the CJP members.

10. Who has the initiative of disciplinary proceedings?

The CJP has the initiative of disciplinary proceedings.

11. Are prosecutors appointed for life or do they have to fulfil successive terms? Of how many years?

They are appointed for a life term. They are not retired before age 65 against their will (as guaranteed by the Constitution).

12. Are the rules regarding appointment, transfer, promotion and discipline of prosecutors similar to those of judges?

Yes. The CJP conducts the same procedures for prosecutors as those it carries out for judges.

13. May the government instruct the prosecution services, for instance, to prosecute or not to prosecute? Are instructions general or specific in nature? Are they given in writing? Can the prosecution challenge them?

The government definitely cannot give instructions to the prosecutors.

14. Are the instructions of superior prosecutors given in writing to those under their supervision? Can these instructions be challenged or refused?

Senior prosecutors cannot give those under their supervision or junior prosecutors any verbal or written instruction.

14bis What is the system of allocation, re-allocation and management of cases and is it based on objective and transparent criteria respecting the independence of prosecutors?

Chief prosecutors decides the allocation and management of cases as division of work that was determined by him/her before and also known by the prosecutors working with him/her.

15. Which are, if any, the main initiatives in terms of training to strengthen the awareness about the de facto dimension of the prosecutorial independence?

The code of ethics was prepared and published. The pre-vocational and vocational training hereof is effectively carried out.

15bis Is the concept of prosecutorial independence reflected in the code of ethics and professional conduct of prosecutors? If such code exists in your country, could you please inform how it was prepared and adopted, and provide its copy in English or French if available.

It is reflected in the code of ethics in depth. The Declaration of Judicial Ethics was adopted at the General Assembly meeting of the CJP on 6 March 2019. It was announced to the public with a press meeting on 11 March 2019, and was communicated to all serving judges and prosecutors. It has essentially been based upon the fundamental principles of respect for human rights, independence, impartiality and integrity. Adherence to ethical principles is one of the main criteria for the appointment and promotion of judges and prosecutors.

16. To what extent the media cover the decisions of international courts and treaty bodies as regards the practical independence of prosecutors?

Since this topic (the decisions of international courts and treaty bodies as regards the practical independence of prosecutors) is very specific, generally the media is not interested in.

17. To what extent the prosecutor offices interact with the broad public as regards the decisions of international courts and treaty bodies related to the practical independence of prosecutors?

The prosecutor offices learn about these decisions in the vocational training courses and seminars held by the Ministry of Justice and the Justice Academy of Turkey (Generally there is no interaction with the broad public).

DECLARATION OF ETHICS FOR TURKISH JUDICIARY

Judges and prosecutors are 'wise, perceptive, honest, trustworthy, honourable and resilient' persons who ensure in the performance of their duties that justice is provided with the utmost sensitivity and accuracy, act with professional responsibility, and are aware that they affect the lives of humans and the society through all their acts, decisions, and behaviours, and that the protection of their reputation in the eyes of the society will also enhance the reputation of the Turkish judiciary. They conduct their duties independently and impartially within the authority granted to them by the Constitution and laws, adopting universal values with a free conscience. They sincerely adopt the principles stated in this declaration and promise, on their honour and conscience, to act in line with these principles in their professional and social lives.

Judges and prosecutors:
1- Respect human dignity, protect human rights and treat everyone equally

1.1. Reflecting our civilization's embracement as well as the universal acceptance of the inviolability of human dignity, always rely on human dignity and act in compliance with human rights and freedoms.
1.2. are aware that the principle of human rights-based state can be fulfilled only through efficient protection of human rights and freedoms, and are conscious of their responsibility thereof.

1.3. accept that living together entails respect for differences, understanding each other, and treating everyone equally.
1.4. absolutely reject discrimination on the basis of language, religion, sect, race, ethnicity, nationality, sex, political view, social and economic status, birthplace, lifestyle, age, health status, physical appearance, marital status and so on, and they do not use a discriminatory discourse. They know that positive discrimination enshrined in the Constitution shall not be considered as violation of the principle of equality.
1.5. give confidence to the society and all those involved in judicial processes, including their colleagues, lawyers, judicial staff, witnesses, experts, and particularly those wishing to access justice, that the principle of equality is applied. They prevent, within their area of duty and authority, any actions that might undermine this trust.

2- Are independent

2.1. are the guarantee of fair trial and rule of law, with their independence.
2.2. act with the awareness that judicial independence is granted for fulfilling the judicial function free from any influence or pressure.
2.3. unconditionally reject any influence or pressure that might directly or indirectly affect their independence.
2.4. render their decisions independently, without any concern about any possible negative reaction from individuals, institutions, or public, and without feeling obliged to please them.
2.5. are aware that for ensuring and maintaining trust in the judiciary, it is important to not only be independent but also to appear as such.
2.6. are aware that independence does not mean being irresponsible and privileged, but on the contrary, it aims to ensure justice in accordance with the principle of accountability.
2.7. know that accountability, according to the procedures and substantives specified in laws, does not undermine their independence, but rather consolidates it by increasing public legitimacy.

3- Are impartial

3.1. act impartially by refraining from discriminating against or favouring any party, in pursuance of a fair trial.
3.2. not only act impartially but also take a stance to eliminate any doubt about their impartiality from an objective perspective. They are aware that for ensuring and maintaining trust in the judiciary, it is important to not only be impartial but also to appear as such.
3.3. refrain from any kind of discriminatory discourse and conduct incompatible with the principle of impartiality in their professional and social lives, and they take care not to violate their impartiality through their speech or body language.
3.4. act with the foresight that any comment, evaluation, or statement shared via mass media, especially the social media, might easily result in certain consequences that go beyond its original purpose and thus make their impartiality questionable.
3.5. do not let their personal opinions and ideas cast doubt on their impartiality and do not act with prejudice. They monitor themselves not to be influenced by their own biases or preferences in performing their duties.
3.6. maintain their impartiality even in cases where a positive or negative public opinion has been formed.
3.7. refuse to engage in any biased behaviour for the interests of their own, their relatives, or their social circles in the exercise of their duties, and do not compromise their impartiality.

3.8. do not provide any advantages to their colleagues or former colleagues who currently work as lawyers, experts, mediators, or perform other judicial professions, and they do not create such an impression.

4- Are honest and consistent

4.1. being aware that honesty and integrity are indispensable elements of the high character required by the profession, they act in accordance with these traits in both their professional and social lives.
4.2. In line with their honesty, they seem as they are and be as they seem.
4.3. are sensitive in fulfilling their promises in order to protect their professional reputation. They act in a careful manner in order not to engage in any situation that may cast doubt on their honesty.
4.4. do not deviate from integrity in their words and behaviours, as well as in their work and acts, even if they foresee that this will result in unfavourable consequences for them.
4.5. act in such a manner to ensure that there is no doubt about their honesty during judicial procedures, including any doubt by parties against whom a judgment has been rendered.
4.6. perform their duties by considering consistency in their practices as required by the principle of legal certainty.
4.7. do not interpret consistency as rigidness, and they take social changes into consideration.

5- Represent trust in the judiciary

5.1. ensure and strengthen trust in the judiciary with all their acts, actions, and decisions, with the awareness that trust in them is directly and inseparably connected with trust in the judiciary.
5.2. ensure, through their dignified attitude, that they are trusted by everyone, particularly the Turkish Nation on behalf of which they make decisions.
5.3. consider with maximum care and attention whether they need to withdraw from duty when they notice that a perception, doubt, or concern that may harm trust in them has been formed.
5.4. carefully refrain, at any place and any time, from any attitude or behaviour that might undermine trust in the judiciary or make it questionable.
5.5. act sensitively in their private lives not to cast doubt on their professional reliability.
5.6. use their freedom of expression in such a manner that they do not harm trust in the judiciary or do not show political bias.

6- Consider confidentiality

6.1. consider confidentiality, not as a means of hiding information from the public but to provide justice by protecting the rights of those involved in judicial procedures.
6.2. protect the confidentiality of any state secrets, business secrets, or private information about individuals or institutions that they obtain in connection with their duty.
6.3. do not use any secret or information that should be kept confidential to their own benefit or to the benefit or the detriment of others. They do not violate the confidentiality of such information via social media or any other means.
6.4. ensure that those having access to confidential information as part of their duties, particularly the court staff, abide by confidentiality.
6.5. accurately identify the information that must be kept confidential. In cases where confidentiality interferes with the principles of openness and transparency, the right not to be labelled as criminal, the right to information, the right to defence, and freedoms of press, information, and expression, they act in consideration with keeping the sensitive balance between the honour and reputation of persons and public interest.

6.6. ensure confidence that the information and secrets entrusted to the judiciary are protected, and they respect the confidentiality of such information and secrets even after the end of their service.

7- Act with propriety as required by their profession

7.1. Being aware of the value added to their lives and the responsibility laid on them by their profession, they act with the sensitivity that their duty requires.
7.2. act within the framework of principles of respect and courtesy in their professional and social relationships, and they consider the influence of their words and behaviours on others.
7.3. are aware that the society expects them to be virtuous, in addition to providing a quality judicial service.
7.4. use a reconciling discourse and act prudently and cautiously in all circumstances.
7.5. create an efficient working environment by working with their colleagues in harmony, cooperation, and mutual respect while exercising their duties.
7.6. are willing to share their professional knowledge and experience with their colleagues.
7.7. act in accordance with the ethical principles of the profession while sharing their comments or explaining their opinions in print, audio-visual, or social media within the framework of their freedom of expression.
7.8. are constructive and considerate in their comments and evaluations regarding the functioning of the profession and the judicial decisions. They do not subject the competence of their colleagues to debate in a manner that might harm the reputation of and the trust in the judiciary.
7.9. do not accept any gift, donation, loan, aid, or favour which is, or may seem to be, in connection with the exercise of their duty. They do not take advantage of the power arising from their position and profession. They ensure that others who are close to them and the staff they work with also respect this rule.
7.10. ensure that public goods and services and human resources are used in the most effective and proper way and in compliance with their purposes, taking into consideration the requirements of the service.
7.11. pay due attention to their private lives to ensure protection of their professional reputation.
7.12. do not allow persons that they are in contact with in their private lives to influence their acts and decisions, and they refrain from any attitude or behaviour that might give an impression that these persons have the power to exert such an influence. Neither do they allow anyone to create such an impression.
7.13. protect their professional reputation by carefully selecting the environments and places where they will spend their social lives.

8- Are competent and act diligently in their profession

8.1. perform their duties on the basis of their conscience and in a manner befitting their moral maturity, competence, and merit.
8.2. are aware of the impact that their decisions and acts may have on the lives of those concerned and on the society. Therefore, they conduct all their professional activities with due care and diligence and attach due importance to them. They address every problem with the same sensitivity and solution-oriented approach.
8.3. take care to reach all sources of information required to render a fair decision and to support their acts with sufficient justification.
8.4. assume responsibility to receive the necessary training to update and improve their professional knowledge and to follow scholarly advances, domestic and international legal developments, and case laws in their field.

8.5. know that enhancing their professional competence contributes to their capability to decide independently from external influences.
8.6. perform their duties without delaying justice and within a reasonable time.
8.7. set a good example in terms of professional ethics through the attention they pay to their behaviour as well as their commitment to their duty, endeavour, and sedulity.
8.8. use their working hours efficiently and act with maximum care not to hinder the public duty. They know that time is important for everyone and act sensitively in this regard.
8.9. do not make any requests concerning appointments, changes in place of duty, and their rights related to employment that would be incompatible with the principle of fairness.

This declaration is a binding document that sets the ethical principles to be pursued by the judges and prosecutors of the Republic of Turkey. When judges and prosecutors encounter any situation that is not mentioned in this declaration, they act in compliance with the spirit of the above principles, which they have promised on their honour and conscience to observe.
Declaration of Ethics for Turkish Judiciary is a promise made by judges and prosecutors to the Great Turkish Nation on behalf of which they decide and to each individual in it.

Ukraine

1. What are the general official measures taken for reacting to and implementing the decisions of international courts and treaty monitoring bodies?
According to the Law of Ukraine “On the Execution of Judgments and the Application of the Case-law of the European Court of Human Rights”, the execution of the ECHR judgment may, in particular, involve additional individual and / or general measures (Article 1).
According to Article 5 of this Law, within 10 days from the date of receipt of the notification that the decision has acquired a status of a final one, the Representative Body shall send a summary of the decision, in particular, to the Ukrainian Parliament Commissioner for Human Rights, all public authorities, officials and other entities directly involved in the case, in which the decision has been rendered.
In order to ensure the restoration of the violated rights, additional individual measures shall be taken in addition to the payment of compensation, namely: restoration as far as possible of the previous legal status (including reconsideration of the case by a court or an administrative body) and other measures provided for in the judgment (Article 10 of this Law).
General measures are measures aimed at eliminating the systemic problem identified in the judgment and its root cause, in particular: amendments to the current legislation, practice of its application; training of prosecutors, lawyers, law enforcement officers, other categories of law enforcement professionals, and persons whose professional activity is related to the detention of people in conditions of imprisonment in the study of the European Convention on Human Rights and case-law of the ECHR; other measures aimed at ensuring the elimination of systemic deficiencies and stopping the violations of the Convention caused by such deficiencies, as well as to ensure maximum compensation for the consequences of such violations (Article 13 of this Law).

2. Based on your answer to the 1st question, what are the measures taken particularly for the practical independence of the prosecution services and individual prosecutors? Can you give examples?
3. Are these measures reflected in the law or in the prosecution policy or debate?
4. If yes, then were there any changes in the prosecution system as a consequence of such measures?

According to the Law of Ukraine “On Public Prosecution Service” (hereinafter referred to as the “Law”), the activities of public prosecution service shall be based on the principles of independence of prosecutors, which implies existence of safeguards against illegal political, financial or other influence on a prosecutor in connection with his/her decision-making when performing official duties (subparagraph 5 of paragraph 1 of Article 3).
The guarantees of the independence of a prosecutor are defined in Article 16 of this Law. Thus the independence of a prosecutor shall be guaranteed by:
1) special procedures for his/her appointment to, and dismissal from, the position, and disciplinary sanctions;
2) procedures for the exercise of powers stipulated by the procedural and other laws;
3) prohibition of unlawful influence, pressure and interference with the exercise of the powers of a prosecutor;
4) statutory procedures for financing and organizational support for the activities of public prosecution service;
5) proper financial, social and pension support for prosecutors;

6) functioning of prosecutorial self-governance bodies;
7) statutory personal security arrangements for prosecutors, members of their families, their property, as well as other legal safeguards.
In addition, Articles 16-17 of this Law on guarantees of the independence of a prosecutor stipulate that:
- when performing prosecutorial functions, a prosecutor shall be independent of any unlawful influence, pressure, interference, and shall be guided in his/her activities exclusively by the Constitution and the laws of Ukraine;
- when exercising powers associated with performance of prosecutorial functions, prosecutors shall be independent and independently make decisions on the procedures for exercising such powers in compliance with the laws and shall follow only those instructions of a higher level prosecutor which are in compliance with the requirements of the Law;
- administrative subordination of prosecutors shall not serve as a ground for limiting or infringing on their independence in the exercise of their powers;
- public authorities, local self-government bodies, other public institutions, their officials and officers, as well as individuals and legal entities and their associations shall be obliged to respect independence of a prosecutor and refrain from exercising influence of any form on a prosecutor in order to prevent the fulfilment of his/her duties or in order that s/he takes an unlawful decision;
- the scope of fair criticism of the activities of a prosecutor shall be established according to the European Convention on Human Rights and the case-law of the European Court of Human Rights;
- the Prosecutor General shall be immediately notified about the institution of criminal proceedings against a prosecutor;
- a prosecutor shall have the right to submit a statement about a threat to his/her independence, including in connection with an order or instruction given (issued) by a higher-level prosecutor, to the Council of Prosecutors of Ukraine which shall be obliged to immediately check and consider such statement with his/her participation and, within its competence established by this Law, take the necessary measures to eliminate the threat.
Pursuant to Article 65 of this Law, the issue of strengthening the independence of prosecutors and protection against interference with their activities is one of the objectives of prosecutorial self-governance.
In particular, according to paragraph 9 of Article 71 of this Law, the Council of Prosecutors of Ukraine (as a body of prosecutorial self-governance) shall:
- organize implementation of measures to ensure the independence of prosecutors and improve organizational support to prosecutors;
- consider appeals of prosecutors and other notifications regarding any threat to the independence of prosecutors, as well as take follow-up actions (notify relevant authorities of the grounds for imposing criminal, disciplinary or other liability; initiate consideration of security arrangements for prosecutors; publish, on behalf of the prosecution service, of instances of violation of the independence of prosecutors; address international organizations with relevant notifications, etc.).

5. Are there also national decisions of the Supreme or Constitutional Courts, or any other highest judicial body at national level, dealing with the question of independence of prosecutors?
Adequate pension provision is one of the guarantees of the independence of prosecutors.
The Second Senate of the Constitutional Court of Ukraine rendered the Decision in the case upon the constitutional complaints of Stepan Ivanovych Danyliuk and Oleksii Ivanovych Lytvynenko regarding the conformity of the Constitution of Ukraine (constitutionality) with the provisions of paragraph twenty of Article 86 of the Law of Ukraine No. 1697-VII “On Public

Prosecution Service" dated 14 October 2014, which stipulates that "the terms and procedure for recalculating pensions awarded to public prosecution officers shall be determined by the Cabinet of Ministers of Ukraine".
In the Decision, the Constitutional Court of Ukraine restored the right of prosecutors to the recalculation of pension. In its decision, the Constitutional Court of Ukraine stated that, taking into account international standards of activity of prosecutorial bodies, the purpose of statutory regulation, in particular issues of social protection of public prosecution officers, is to avoid interference by other authorities in the activities of the public prosecution service in order to comply with the principle of separation of powers and secure pension provision for prosecutors exclusively under the law.

6. Does the prosecution system in your country belong to the judiciary?
Pursuant to the amendments to the Constitution of Ukraine (came into force on 30.09.2016), provisions governing the activities of public prosecution service are included in Section VIII "Justice" (Article 131-1).

7. Are prosecutors and prosecution services independent or autonomous from the executive and legislative branches of state power?
According to Article 6 of the Constitution of Ukraine the governance of a state in Ukraine is exercised on the basis of separation of powers into legislative, executive and judicial. Legislative, executive and judicial bodies shall exercise their powers within the limits established by this Constitution and in accordance with the laws of Ukraine.
In accordance with the amendments to the Constitution of Ukraine (entered into force on 30.09.2016), the provisions that stipulate the activities of the prosecution services are included in section VIII "Justice" (Article 131-1).
Prosecutors and prosecution authorities are independent or autonomous from the executive and legislative branches of state power.
At the same time, in accordance with the provisions of Article 131-1 of the Constitution of Ukraine, the appointment and dismissal of the Prosecutor General shall be carried out by the President with the consent of the Verkhovna Rada of Ukraine.
According to Article 6 of the Law, the Prosecutor General personally reports to the Verkhovna Rada of Ukraine at least once a year at a plenary session on the activities of the prosecution services by providing generalized statistical and analytical data.
In accordance with the provisions of this Law, the Government also adopts a number of legal acts related to the activities of the prosecution services, in particular on issues of remuneration, social security and other security.

8. Is there a Council of Prosecutors or a similar equivalent body which can be considered as a mechanism to monitor and ensure prosecutorial independence, including in the way in which the prosecution services operate?
Pursuant to Article 65 of the Law, the issue of strengthening the independence of prosecutors and protecting them from interference with their activities are among the tasks of prosecutorial self-government.
In particular, according to paragraph 9 of Article 71 of the Law, the Council of Prosecutors of Ukraine (as a body of prosecutorial self-government):
- organizes implementation of measures to ensure the independence of prosecutors and to improve the organizational support of activities of prosecutors;
- considers appeals of prosecutors and other notifications regarding any threat to the independence of prosecutors, as well as take follow-up actions (notify relevant authorities of the

grounds for imposing criminal, disciplinary or other liability; initiate consideration of security arrangements for prosecutors; publish, on behalf of the prosecution service, of instances of violation of the independence of prosecutors; address international organizations with relevant notifications, etc.).

9. How many of its members are elected by their peers, and does the prosecution policy or the debate within the judiciary produce any impact on the election of the members of the Council of Prosecutors?
Pursuant to paragraph 2 of Article 71 of the Law, the Council of Prosecutors of Ukraine consists of 13 persons, of whom:
2 representatives (prosecutors) from the Prosecutor General's Office;
4 representatives (prosecutors) from regional prosecutor's offices;
5 representatives (prosecutors) from district prosecutor's offices;
2 representatives (scientists) appointed by the assembly of representatives of legal higher education institutions and scientific institutions.
That is, according to the above mentioned provisions, the Council of Prosecutors of Ukraine includes 13 persons, of which 11 are prosecutors and 2 are scientists.

10. Who has the initiative of disciplinary proceedings?
Everyone who is aware of such facts (paragraph 2 of Article 45 of the Law) has the right to apply to the appropriate body conducting disciplinary proceedings against prosecutors, with a disciplinary complaint about a prosecutor committing a disciplinary offense.
The recommended sample of the disciplinary complaint is available on the website of the Prosecutor General's Office. A relevant sample of the complaint is available at: https://www.gp.gov.ua/en/dvpr.

11. Are prosecutors appointed for life or do they have to fulfil successive terms? Of how many years?
Pursuant to paragraph 3 of Article 16 of the Law, a prosecutor is appointed for a term with no time limitation and can be dismissed from the position, his/her powers in office may be terminated only on the grounds and in the manner prescribed by law.
At the same time, the Law stipulates the restrictions on the term of office in certain administrative positions in the bodies of the prosecutor's office.
Thus, in accordance with Article 131-1 of the Constitution of Ukraine, Article 40 of the Law, the position of Prosecutor General has a six-year term of office. The same person may not hold the position of Prosecutor General for two consecutive terms.
In addition, pursuant to the passage 6 of paragraph 4 of Article 39 of the Law, the appointment of a prosecutor to the administrative position of the Deputy Prosecutor General – the Head of the Specialized Anti-Corruption Prosecutor's Office shall be carried out for a term of five years.
Paragraph 4 of Article 39 of the Law stipulates that the appointment of a prosecutor to administrative positions of the head of the regional prosecutor's office and the head of the district prosecutor's office shall be for a term of five years. At the same time, the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on Priority Measures of the Reform of Prosecution Authorities" suspends the application of the paragraph 4 of Article 39 until 1 September 2021.
Paragraph 3 of Article 51 of the Law also states that the powers of the prosecutor shall be terminated, in particular, in connection with the attainment of age of sixty-five.

12. Are the rules regarding appointment, transfer, promotion and discipline of prosecutors similar to those of judges?

The issues of “appointment, transfer, promotion and discipline of prosecutors” are regulated by the Law of Ukraine “On the Pubic Prosecution Service”, whereas, similar issues regarding judges are defined by the Law of Ukraine “On Judicial System and Status of Judges”.
At the same time, from the analysis of the relevant provisions of these laws, one can conclude that certain procedures are identical and have differences that are also caused by various functions that prosecutors and judges perform in accordance with the Constitution of Ukraine and other legislative acts.
Also, some issues, in particular, regarding consideration of cases concerning violation of the requirements for incompatibility of positions of a judge or a prosecutor with the activity or status defined by the Constitution and laws of Ukraine, as well as the consideration of appeals against the decision on disciplinary liability of a judge and a prosecutor (except for appeal to court) is within the competences of the High Council of Justice (Chapters 3, 5 of the Law of Ukraine “On the High Council of Justice”). The same law establishes identical procedures for the consideration of these issues.

13. May the government instruct the prosecution services, for instance, to prosecute or not to prosecute? Are instructions general or specific in nature? Are they given in writing? Can the prosecution challenge them?
According to the Law of Ukraine “On the Pubic Prosecution Service”:
- public authorities, local self-government bodies, other state bodies, their officials and staff, as well as natural and legal persons and their associations are obliged to respect the independence of the prosecutor and to refrain from exercising any form of influence over the prosecutor for the purpose of obstructing the performance of official duties or making an illegal decision (paragraph 5 of Article 16);
- in carrying out the functions of the prosecution services, the prosecutor is independent from any unlawful influence, pressure, interference and is guided in his activity only by the Constitution and laws of Ukraine (paragraph 2 of Article 16);
- during the exercise of powers related to the execution of the functions of the prosecution services, prosecutors are self-reliant and independently decide on the procedure for exercising such powers, being guided by the provisions of the law, and are obliged to comply only with such instructions of the higher-level prosecutor that have been provided in compliance with the requirements of the law (paragraph 3 of Article 17).

14. Are the instructions of superior prosecutors given in writing to those under their supervision? Can these instructions be challenged or refused?
According to the provisions of Article 17 of the Law of Ukraine “On Public Prosecution Service”:
- prosecutors exercise their powers within the limits prescribed by the law and are subordinated to the supervisors only in terms of execution of written orders of an administrative nature related to organisational issues of the activities of prosecutors and prosecution authorities; administrative subordination of prosecutors cannot be the basis for limiting or violating independence of prosecutors when they exercise their powers;
- the Prosecutor General has the right to issue written orders of an administrative nature which are binding on all prosecutors;
- superior prosecutors have the right to give instructions to a lower prosecutor, approve the adoption of certain decisions by him and take other actions directly related to the implementation of the functions of the public prosecution service by this prosecutor, only within the limits and under the procedure prescribed by the law;
- during the exercise of powers related to the implementation of the functions of the public prosecution service, prosecutors are independent, decide on the procedure of exercising such powers at their discretion, being guided by the provisions of the law, and are obliged to execute

only the instructions of a superior prosecutor which were given in compliance with the requirements of this article;

- orders of an administrative nature, as well as instructions directly related to the implementation of the functions of the public prosecution service by the prosecutor, issued (given) in writing within the powers specified by the law, are binding on the respective prosecutor;
- the prosecutor, who has been given an order or instruction orally, shall be provided with written confirmation of such order or instruction;
- the prosecutor is not obliged to execute orders and instructions of a superior prosecutor that raise doubts in him about their legality if he has not received them in writing, as well as clearly criminal orders or instructions. The prosecutor has the right to address the Council of Prosecutors of Ukraine with a notification about the threat to his independence in connection with the granting (giving) of an order or instruction by a superior prosecutor;
- the granting (giving) of an illegal order or instruction or its execution, as well as the granting (giving) or execution of a clearly criminal order or instruction, entail the responsibility provided for by the law.

15. Which are, if any, the main initiatives in terms of training to strengthen the awareness about the de facto dimension of the prosecutorial independence?

According to Article 19 of the Law of Ukraine “On Public Prosecution Service”, the prosecutor is obliged to improve his professional level and, for this purpose, to improve his qualification, as well as has the right to take part in prosecutorial self-governance to solve issues concerning internal activities of the public prosecution service according to the procedure provided for by the law. The prosecutor undergoes training on a periodic basis at the National Academy of Prosecutors of Ukraine (its reformatting into the Training Centre of Prosecutors of Ukraine is ongoing), which shall include studying the rules of prosecutorial ethics.

In addition, according to Article 65 of this Law, the issue of strengthening independence of prosecutors, protecting against interference with their activities belongs to the tasks of prosecutorial self-governance.

In particular, according to paragraph 9 of Article 71 of the mentioned Law, the Council of Prosecutors of Ukraine (as prosecutorial self-governance body) organises implementation of the measures to ensure independence of prosecutors.

16. To what extent the media cover the decisions of international courts and treaty bodies as regards the practical independence of prosecutors?

17. To what extent the prosecutor offices interact with the broad public as regards the decisions of international courts and treaty bodies related to the practical independence of prosecutors?

The prosecution authorities ensure the proper implementation of the principle of publicity as one of the important means of strengthening the legality and forming society’s objective opinion about the activities of the prosecution authorities, increasing the level of trust in them by making public the socially important information on the activities of the public prosecution service, especially about the results of work that really contributed to the restoration or reinforcement of law and order, commenting on the events of significant social importance or resonance of the established circumstances, current legislation, measures taken by the prosecution authorities, etc.

If needed, the decisions of international courts concerning practical independence of prosecutors can be published on the official website of the Prosecutor General’s Office, on the official Facebook page of the Office, etc.

Do you know about any judgments or decisions of the European Court of Human Rights or of the Court of Justice of the European Union, or of any other international court which refer to or in any way touch upon the independence (and preferably went on to highlight its elements):
a) of prosecutors;
b) of the judiciary or the justice system as a whole;
c) of judges.
If you know about any such judgments or decisions, then, please, indicate their titles and also, if possible, the numbers of paragraphs or sections in these judgments and decisions where such references or indications are made. These judgments and decisions may concern any country.

Ukraine enforces the decisions of international courts and treaty monitoring bodies in accordance with the national legislation.
Article 9 of the Constitution of Ukraine envisages that the international treaties that are in force and agreed to be binding by the Verkhovna Rada of Ukraine, are part of the national legislation of Ukraine.
Article 2 of the Law of Ukraine “On the Enforcement of Judgments and the Application of the Case-Law of the European Court of Human Rights” provides for that the judgments of this Court shall be binding and subject to enforcement throughout the whole territory of Ukraine pursuant to Article 46 of the Convention for the Protection of Human Rights and Fundamental Freedoms.
Moreover, Article 17 envisages that while adjudicating cases, the Ukrainian courts shall apply the Convention and the case-law of the Court as a source of law.
The case-law of the European Court of Human Rights contains the judgments, which refer to or in any way touch upon the independence of mostly the judiciary and the judges.
In this regard, the ECHR judgment in Salov v. Ukraine should be mentioned, as well as the references made in that judgment with regard to previous decisions of this Court regarding other States:
“80. The Court reiterates that in order to establish whether a tribunal can be considered “independent” for the purposes of Article 6 § 1, regard must be had, inter alia, to the manner of appointment of its members and their term of office, the existence of safeguards against outside pressures and the question whether it presents an appearance of independence (see Findlay v. the United Kingdom, judgment of 25 February 1997, Reports 1997-I, p. 281, § 73).
82. In the present case it appears difficult to dissociate the question of impartiality from that of independence, as the arguments advanced by the applicant to contest both the independence and impartiality of the court are based on the same factual considerations. The Court will accordingly consider both issues together (see Langborger v. Sweden, judgment of 22 June 1989, § 32). It notes that the applicant's submissions that Judge T. of the Kuybyshevsky District Court of Donetsk was influenced by political motives and instructed by the Head of the Regional State Administration are of little assistance in assessing his complaints as to the lack of independence and impartiality of the courts dealing with the case”.
Moreover, the ECHR case-law on the a/m issue also contains judgments in the cases as follows:
- L.E. v. Greece judgment of 21 January 2016 (obligation to investigate doesn’t depend on who is the plaintiff; once the case has been opened, the state authorities will have to act. In order to be efficient, the investigation has to be independent from those whom the facts are concerned);
- De Clerck v. Belgium of 25 September 2007 (in this case, plaintiffs asked the court to immediately terminate the proceedings against them.., the court rejected the application by pointing to the fact that no one can order that an independent judicial authority terminates criminal proceedings that was lawfully instituted...) and other judgments.

6bis. Are there any parallels between the independence of judges and independence of prosecutors, or the latter is considered separately, if considered at all?

Independence of prosecutor's office is an obligatory element of independence of the judiciary. Recommendation (94) 12 of the Committee of Ministers on the independence, efficiency and role of judges, adopted by the Council of Europe, recognizes the presence of relation between judges and public prosecutors, at least, in the countries where the latter have judicial powers.
Article 6 of the Constitution of Ukraine stipulates that the state power in Ukraine is exercised on the principles of its division into legislative, executive and judicial power. The Law of Ukraine "On amendments to the Constitution of Ukraine (regarding the judiciary)" dated 02.06.2016 No. 1401-VIII amended the Constitution of Ukraine in the field of functioning of the prosecutor's office within the general justice system of Ukraine, notably, Chapter VIII "Justice" of the Constitution of Ukraine has been complemented by Article 131-1.
Therefore, prosecutor's office should be considered as the element of the general justice system of Ukraine.
According to the amendments to the Constitution of Ukraine (which took effect on 30.09.2016), provisions regulating the activities of prosecutor's office have been included into Chapter VIII "Justice" (Article 131-1). The status of public prosecutor is regulated by the Law of Ukraine "On Public Prosecutor's Office", while the similar issues as regards the judges are stipulated in the Law of Ukraine "On the Judicial System and the Status of Judges". Following the analysis of provisions of these laws, a conclusion may be made on certain identity and at the same time, the difference of some procedures, which is reasoned, inter alia, by different functions performed by public prosecutors and judges in accordance with the Constitution of Ukraine and other legislative acts.
There are different aspects of institutional and functional independence (Bordeaux Declaration, paragraph 3). Independence of public prosecutors shall be an integral part of their tasks performance. This enhances their role in the law-governed State and society, and guarantees that the justice system is functioning on the principles of fairness and efficiency and that all the advantages of independent judicial proceedings are implemented (Bordeaux Declarations, paragraphs 3 and 8).
Independence of public prosecution bodies and public prosecutors is determined by the law. Thus, Article 3 of the Law of Ukraine "On Public Prosecutor's Office" provides for that the activity of the prosecutor's office shall be based on the principles of independence of public prosecutors, which implies existence of safeguards against illegal political, financial or other influence on a public prosecutor in connection with his/her decisionmaking when performing official duties.
Moreover, in its decision dated 03.10.2001 No. 12- рп/2001, the Constitutional Court of Ukraine underlines that stable functioning of courts and creation of appropriate conditions for functioning and activities of the courts, and also, among others, the public prosecution bodies whose activity is closely connected with the court activity, is one of the constitutional guarantees of the enforcement of citizens' rights and freedoms and judicial remedy (motivational part, paragraph 4 subparagraph 5).
Articles 16 and 17 of the Law of Ukraine "On Public Prosecutor's Office" pertaining to the guarantees of independence of public prosecutor provide for that public authorities, local self-government bodies, other state bodies, their officials and officers, as well as individuals and legal entities, and the association thereof shall have to respect the independence of public prosecutor and refrain from influencing in any form a public prosecutor in order to prevent him/her from discharging his/her official duties or taking an illegal decision.

7bis. Is the interaction of prosecutor offices with courts, police, investigation authorities and other actors in criminal procedure based on the principle of prosecutorial independence and how?

The interaction of prosecutor offices with courts, police, investigation authorities and other actors in criminal procedure is based on the principal of prosecutorial independence. Thus, Article 4 of the Code of Professional Ethics and Conduct of Prosecutors (hereinafter referred to as the Code of Ethics) also stipulates, apart from the principle of prosecutorial independence, the principle of respect for independence of judges. Public prosecutor shall be obliged to respect the independence of judges, which provides for the ban of public expression of doubts as regards the legality of judgments, outside the appeal proceedings on those judgments conducted in accordance with the procedure set forth in the law.

14bis. What is the system of allocation, re-allocation and management of cases and is it based on objective and transparent criteria respecting the independence of prosecutors?

It should be noted that we cannot understand from the content of the question, what is meant under the “system of allocation, re-allocation and management of cases”. At the moment, the Integrated Register of Pre-trial Investigations is functioning in Ukraine, which has been established and is managed under the provisions of the Criminal Procedure Code of Ukraine, in order to ensure that criminal offences (proceedings), decisions taken during the pre-trial investigation, as well as perpetrators and the outcome of criminal proceedings are registered.
At the same time, “allocation, re-allocation and management of cases” is regulated by Article 37 of the Criminal Procedure Code of Ukraine, which establishes the rules of appointment and replacement of prosecutor in criminal proceedings. Thus, the provisions of this Article provide for the guarantees of prosecutorial independence, specifically, an appointment of a prosecutor in a specific criminal proceedings, and where necessary, a team of prosecutors and the leader of such team by the chief of prosecutorial body, and also, determining the cases, where replacement of prosecutor by the chief of prosecutorial body should take place.
Where the issue pertains to the system of allocation, re-location and management of cases between prosecutors, this issue is being processed at the moment.

15bis. Is the concept of prosecutorial independence reflected in the code of ethics and professional conduct of prosecutors? If such code exists in your country, could you please inform how it was prepared and adopted, and provide its copy in English or French if available
In accordance with Article 67 of the Law of Ukraine “On Public Prosecutor’s Office” dated 14.10.2014, the Code of Professional Ethics and Conduct of Prosecutors shall be adopted by the all-Ukrainian conference of prosecutors.
Following the provisions of this Law, the Code of Professional Ethics and Conduct of Prosecutors was adopted by the all-Ukrainian conference of prosecutors on 27.04.2017.
Article 4 of this Code provides for that the professional prosecutorial activity shall be based, inter alia, on the principle of independence and self-reliance, which is described in Article 7 of this Code: “At discharging his/her official duties, prosecutor should be independent from any influence, pressure or interference with his/her professional activity, including on behalf of public authorities and self-government bodies, their officials and officers, and is obliged to counteract actively and in a way prescribed by law, to any attempts of encroachment on his/her independence. At taking specific decisions, he/she has to be independent and follow the provisions of the law, moral and ethical principles of his/her profession, dissociate himself/herself from any mercenary and private interests, political influence, pressure on behalf of the public and the mass media”.
Moreover, the Code of Ethics provides for the possibility to refrain from execution of any illegal orders and instructions as the guarantee of prosecutorial independence. Thus, where any doubt arises about the lawfulness of order or instruction given by prosecutor of the higher rank, he/she is entitled to apply to the Council of Prosecutors of Ukraine, notifying them about infringement to his/her independence.