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**CONSULTATIVE COUNCIL OF EUROPEAN PROSECUTORS
(CCPE)**

**Questionnaire with a view of the preparation of Opinion No. 7 on the
management of the means of the prosecution services**

Replies from Hungary

Questionnaire with a view of the preparation of Opinion No. 7 on the management of the means of the prosecution services

SECTION I: Status of the prosecution services in the state administration

1. Please specify the status of the prosecutor and the prosecution service in your state. Is it an autonomous institution? If yes, how is this autonomy guaranteed?

As a participant in criminal justice, the Prosecutor General and the prosecution service shall enforce the state's claim to punish crimes. Within its scope of activities the prosecution service shall prosecute crimes and other unlawful acts or omissions, and it shall also assist the prevention of unlawful acts.

The prosecution service is headed and directed by the Prosecutor General; public prosecutors are appointed by the Prosecutor General.

Upon the proposal of the President of the Republic, the Prosecutor General is elected by the National Assembly for a nine-year term. A two-thirds majority of the MPs is necessary for the election of the Prosecutor General.

The Prosecutor General submits an annual report to the National Assembly on the activity of the Prosecution Service.

The detailed regulations concerning the functioning of the Prosecution Service and the legal status of the Prosecutor General and that of the individual prosecutors, as well as their remuneration shall be stipulated by a two-thirds majority law. (Article 29 of the Basic Law of Hungary)

2. Does the ministry of justice or another authority govern the activity of the prosecution service? If so, how?

No.

3. Which authority is responsible for the creation of prosecutor positions?

Prosecutor positions are authorized at the highest level by the National Assembly by adopting the Act on the Central Budget.

Pursuant to Article 6 Paragraph (1) and (2) of Act CLXIII of 2011 on the Prosecution Service the Prosecution Service shall constitute an independent budgetary chapter in the Act on the Central Budget. The Prosecutor General composes his proposal for the budget of the Prosecution Service as well as his report on the budget implementation which is submitted by him as part of the bill on central budget and its implementation without any alterations to the National Assembly.

4. Please indicate if there is any connection between the prosecution service and the Ministry of Justice or another public authority in terms of financial and human resources, IT facilities etc. If so, please describe how this connection works.

In terms of human resources there is no connection between the prosecution service and the Ministry of Public Administration and Justice, or any other authorities.

The Prosecutor General may – with the consent of the prosecutor and the Minister of Justice – transfer individual public prosecutors to the Ministry of Justice headed by the Minister of Justice to take part in the preparation of statutory instruments or other tasks requiring prosecutorial experience.

The public prosecutor transferred to the Ministry of Justice headed by the Minister of Justice (hereinafter: the transferred public prosecutor) shall retain his/her prosecutorial position, however, shall not be entitled to exercise his/her prosecutorial powers. For the remuneration of the transferred public prosecutor regulations relating to public prosecutors shall be applicable. (Article 29 of Act CXIV of 2011)

Upon the initiation of the Minister of Public Administration and Justice, four prosecutors work presently at the Department of Criminal Law and Codification of the Ministry for a definite period of time.

5. Is the prosecution service independent from other institutions when implementing and managing its own budget?

Yes.

SECTION II: Financial rules and regulations of the prosecution service

6. Does the law governing the prosecution service include provisions on financial management and on the executive's obligation to provide it with the necessary infrastructure?

The law governing the prosecution service does not include provisions on financial management and on the executive's obligation to provide it with the necessary infrastructure. As the Prosecution Service of the Republic of Hungary forms an independent budgetary chapter, the totals of its income and expenses as well as for the amount of the budgetary subsidy that is aimed at covering expenses arising from tasks defined in Article 29 of the Basic Law are governed by the Act on the Central Budget of Hungary.

7. Please describe how and when the budget of the prosecution service is managed (preparation, distribution of funds between the budget lines).

On the basis of the Planning circular letter, issued by the Ministry for National Economy, containing budgetary planning, the elaboration of the budgetary proposal and the tasks of the compilation of the Budgetary Act the Prosecutor General prepares the budgetary proposals for the chapter of the Prosecution Service of the Republic of Hungary which is then submitted to the Parliament by the Government. Upon the adoption of the Prosecution Service budget proposal the organizational units of the Prosecution Service disposing of partial budgetary allocations –along the guidelines laid down in the circular letter of the Head of the General Directorate for Finances and Economy – shall prepare their own budgetary proposals. The chief prosecutor is responsible for the necessity of the expenditure of the allocated sums, the amount and extent of services retained, as well as for the reasonableness and austerity of the

proposal. Budgetary allocations handled in the centre are planned by the General Directorate for Finances and Economy. The proposed amounts are finalized in the course of budgetary negotiations. Next, the organizational units of the Prosecution Service disposing of partial budgetary allocations must re-plan the approved budgetary appropriation in accordance with the budgetary blank published by the Ministry for National Economy. The estimates of expenditures laid down in the course of the budgetary negotiations, as well as the targets, handled in the centre are to be approved by the Prosecutor General.

8. Is there a specific department within the prosecution service responsible for the management of resources?

Pursuant to Article 23 Paragraph (2) of 25/2003 (ÜK.12) LÜ General Instruction on the organization and functioning of the Prosecution Service of the Republic of Hungary the General Directorate for Finances and Economy and specifically the Head of the General Directorate for Finances and Economy is responsible for the implementing of bookkeeping relating to the annual budgetary appropriation and data disclosure. Employees of the Prosecution Service listed in Articles 5 and 6 of 6/2010 (ÜK. 6) LÜ General Instruction on certain management regulations of the Office of the Prosecutor General are qualified to commitment and these persons are entitled to dispose of the budgetary appropriation.

Pursuant to Article 22 Paragraph (1) of /2003 (ÜK.12) LÜ General Instruction on the organization and functioning of the Prosecution Service of the Republic of Hungary, the Department for Human Resources, Continuous Training and Administration contributes to provide human resources.

9. Is there a national and/or centralised IT system for managing, monitoring and evaluating the budget of the prosecution services? *Does this system include a mechanism for increasing the efficiency of the resource management?*

A national IT system has not been set up yet. If the centralized IT system is meant to be a central system within the Prosecution Service, there is a centralized IT system which only handles the budget of the Prosecution Service but does not control or evaluate it. This system does not include a mechanism for increasing the efficiency of the resource management.

SECTION III: Resources of the prosecution service

10. Please specify the amount of budget of the prosecution service for 2008, 2009, 2010 and 2011 (€ equivalent), indicating the distribution between staff expenditure and other types of expenditure.

Please be informed that the Act on the Central Budget of Hungary defines the totals of income and expenses, as well as the amount of the budgetary subsidy of the independent budgetary chapter, the Prosecution Service of the Republic of Hungary in forints. (HUF) Therefore, the data concerning the years 2008-2011 in the table below indicate million forints.

Types of expenditure	2008		2009		2010		2011	
	target	accomplishment	target	accomplishment	target	accomplishment	target	accomplishment

Personal allocation	19 264	20 896	19 191	19 345	19 189	19 168	21 082	20 418
Contributions of the employer	6 057	6 527	6 015	5 893	5 013	5 034	5 534	5 301
Material expenditure	2 974	2 776	3 045	2 974	3 090	3 775	3 573	3 665
Tradition of resources	932	69	187	85	89	74	92	158
Modernization	100	110	50	50	30	34	30	32
Other institutional investments	671	1 224	911	1 627	1 121	1 423	1 780	1 040
Total	29 998	31 602	29 399	29 974	28 532	29 508	32 091	30 614

11. *In your jurisdiction, what resources would you improve access to, and how would you do that (e.g. through partnership agreements, joint investigations, redistribution of resources etc.)?*

Since the expenses of the Prosecution Service are mainly financed by the central budgetary subsidy (in a four-year average the proportion of the budgetary subsidy within the income of the Prosecution Service was 99.5%), it seems expedient to finance the necessary resources from the budgetary subsidy.

12. Are the current or future budgets of the prosecution service affected by the 2009-2011 economic crisis?

Current budget: see the table above

The budgetary target of the Prosecution Service for 2011 was considerably increased (by 3.6 milliard forints) by the resource needs of the new tasks, emerging in 2011.

Future budget: no information available

13. *What instruments are used to allocate resources needed for the good functioning of the prosecution service?*

The compound of resources of the expenditure of the Prosecution Service does not allow for the use of further instruments.

14. Is there any connection between the budgets allocated to the prosecution service and to the judiciary or to law enforcement bodies?

There is no connection between the budgets allocated to the prosecution service, the judiciary or to law enforcement bodies.

15. Do human resources of the prosecution service depend on other institutions of the judiciary (e.g. Judicial Council, National Schools of Clerks)?

The human resources of the prosecution service do not depend on other institutions of the judiciary.

16. In your jurisdiction, is there any mechanism of rapid reaction which could allow a quick redistribution of means (financial or human resources, logistics) between prosecution services, according to the needs of the system?

The central accountant record system of the Prosecution Service (MegaOra system) allows the redistribution of means, according to the needs of the system.

17. Does the General Prosecutor (or equivalent institution) have a specific budget for taking interim/temporary measures in situations when, within a certain prosecution service, human resources are insufficient?

No specific budget is available for taking interim/temporary measures. Article 12 and 12/A of 3/1998. (ÜK.11.) LÜ General Instruction on the management of human resources and specific personal allowances within the prosecution service stipulate that in cases of insufficient human resources, vacant positions or prolonged absence what regulations should serve as basis for forming a fee limit payable for overtime work.

SECTION IV: Budget for investigations

18. What steps are required in order to obtain direct access to the resources needed for investigations? Please assess the period of time that elapses between submitting a request for resources and the moment when they are actually obtained.

The Hungarian State Treasury manages the financing of the operational budgetary subsidy on a monthly basis which makes resources continuously available. Pre-financing has not occurred in the past five years.

In justified cases further financing is also ensured. Therefore, it is not necessary to submit a request for extra resources in relation to individual investigations.

Pursuant to Paragraph (1) of Article 1 of the Common Instruction 21/2003 (VI. 24) IM-PM-BM on the advanced cost of a criminal procedure – unless otherwise provided by a statutory instrument – the cost of criminal procedure is covered up to the budgetary limit available by the investigating authority in the investigative phase of the procedure, by the public prosecutor in the procedure of the investigative judge and the public prosecutor.

Pursuant to Paragraph (1) of Article 169 of Act on Criminal Procedure the prosecutor or the investigating authority shall adopt a decision on the establishment of the costs of the criminal procedure, the assignment of an expert or an interpreter and the establishment of their fee.

Authorities proceeding in criminal matters pay the emerging criminal costs of obtaining evidence from their budget allocated to them on the basis of their yearly estimate. The order of allocation: the obligee presents the invoice, the list of costs; a decision is adopted on the authorization of the invoice and finally follows remittance.

In practice, the period between the presentation of the invoice and the actual payment is not longer than 2-3 weeks, and there is also no precedent for exceeding the time limit set for the decision establishing the remuneration of the expert.

As regards the investigating authority, however, a delay exceeding half a year has also occurred.

19. Have you ever faced the risk that special investigative techniques (e.g. communication interceptions, legal-genetic expertise, computer search) could not be applied in due time because of insufficient resources? Have insufficient resources in general affected the performance of criminal investigation in normal cases?

We have not faced the risk that the application of special investigative techniques/procedures would have failed due to insufficient resources in the past five years.

Sporadically, there have been cases where costly proceedings of gathering evidence, such as obtaining expertise on DNA and homogenetics, have been disregarded during the course of criminal investigation.

This mostly occurs in cases where it is possible to clarify questions by using other means of evidence, or when with regard to criminal liability expert witnessing would not lead to an undisputable result.

The fulfillment of the duty of inquiry as to the facts of the case, falling into the competence of the investigating authority and the prosecution service, specified by Section 164 (2) of the Act on Criminal Procedure, is thus not violated in most cases.

Should the budget allocation for procedural expenses not enable any further, rather costly evidence gathering, it may be the case that the investigation should be planned in a way that allows the involvement of experts only to the extent of the resources available in the subsequent year.

It is also possible to request bids from several experts prior to their assignment when questions requiring special expertise arise and thus mitigating the amount of the procedural expenses.

It shall also be noted that the lack of resources causes difficulties not only when decisions are made whether to use an expert, namely the Criminal Expert and Research Institute can mostly carry out costly examinations only with significant delays due to the obstacles already mentioned, and reviewing the necessity of their assignment has already been initiated several times before the authorities.

20. Is the resource management performed by the prosecution services during their investigations controlled? Please specify.

While implementing the budget and using budget allocations, – and in this way during the course of prosecutorial investigation as well – payment obligations may be undertaken under conditions specified by law.

To the debit of the expenditure targets of the fiscal year, payment obligations may only be undertaken to the amount of those original or modified expenditures (unrestricted expenditure targets) the amount of which is reduced by previous payment obligations still effecting the expenditure targets of the fiscal year or by other payment obligations.

On behalf of the budgetary organ payment obligations may be undertaken in writing by the head of the organ undertaking such an obligation (Prosecutor General), or upon his authorization, a person employed by the organ undertaking the payment obligation.

Heads of the organs (appellate chief prosecutors, chief prosecutors, the director of the National Institute of Criminology) defined by Section 8, Paragraph (1) Subparagraph b) and c) and Section 10 of Act CLXIII of 2011 on the Prosecution Service shall be deemed as heads of the organ undertaking payment obligations with regard to the obligations undertaken to the debit of the expenditure targets allocated to them.

Payment obligations may only be undertaken following a financial countersignature, prior to the due date of financial performance, and in writing. The party providing a financial countersignature shall check whether the unrestricted expenditure targets are available, the financial coverings are provided at the planned dates of payment, and that the payment obligations undertaken do not violate the financial regulations.

Prior to the financial countersignature the party providing a financial countersignature shall make sure that the free expenditure targets needed are available, the inflowing or the targeted and inflowing incomes expected provide sufficient covering, the financial coverings are provided at the planned dates of payment, and the payment obligations undertaken do not violate the financial regulations.

In case of a payment obligation undertaken to the debit of the expenditure targets of the budgetary organ, the financial executive (head of the General Directorate for Finances and Economy), or, by his written designation, a person employed by the budgetary organ shall be entitled to provide a financial countersignature to the obligation.

Ordering a payment to the debit of the expenditure targets (remittance) may only be ordered following the confirmation of performance and the validation in compliance with it.

In accordance with the documents verifiable during the confirmation of performance, it is necessary to examine and justify that payments have been duly performed, to verify their total amount, and to justify performance of payment in case of a payment obligation incorporating consideration if payment or part of the payment is due after the performance of consideration. Persons authorized to certify payment shall be designated by the entity undertaking payment obligations (obligor) in writing with reference to the specific obligation or the predetermined groups of obligations.

When payments are effected, it shall be the validating entity who is obliged to check the total amount, the availability of the financial covering and the compliance with the laws in internal regulations during the preceding procedure. Validation shall take place before the document is remitted.

The obligor and the entity providing the financial countersignature may not be the same person concerning the same financial event. In relation with the event of the same financial event, the validating entity shall not coincide with the entity entitled to undertake payment obligations, to remittance, and to certify performance of payment.

Tasks of undertaking payment obligations, providing financial countersignature, validation, remittance and confirming performance shall not be done by a person who would pursue the aforesaid activities for himself or close relatives defined by the Hungarian Civil Code.

Auditing shall be the competence of the State Audit Office and is done while auditing the implementation of the budget.

21. What is the resource management procedure when various agencies are involved in the investigation procedure (e.g. the police)?

Pursuant to Section 1. of Decree 21/2003. (VI.24.) IM-PM-BM – referred to in Point 18. – the expenses arising during the course of investigation conducted by the investigation authority shall be advanced to the debit of the available budget cover by the investigation authority itself.

In these cases prosecutors are entitled to review or influence decisions resulting in expenses only by setting aside, reversing the decisions made by the investigation authority – also referred to in the previous paragraph – pursuant to Section 28 Paragraph (4) Subparagraph c) of the Code on Criminal Procedure, subsequently and indirectly, by determining the limitations of evidence gathering.

22. Is it possible for prosecutors to specialize in certain type of crimes? If so, what kind of effect it has had on the results of the prosecution service?

Pursuant to Section 30 Paragraph (1) of the Code on Criminal Procedure, the competence and territorial jurisdiction of the prosecution service is determined by the competence and territorial jurisdiction of the court where it functions.

Section 17 Paragraph (5) and (6) of the Code on Criminal Procedure stipulates that instead of the court having general territorial jurisdiction and located at the place where the crime was committed, the local court administering justice at the headquarter of the county court, whereas in the territory of the Metropolitan Court the Central District Court of Pest shall proceed as courts with special jurisdiction exclusively the in criminal cases of public endangerment, interference with works of public concern, misuse of radioactive substance, illegal operation of nuclear facilities, misuse of nuclear energy, and with the exception of violation of accounting regulations in criminal cases of economic as well as financial crimes.

Finally, pursuant to Section 17, Paragraph 10 of the Code on Criminal Procedure the Metropolitan Court shall adjudicate in criminal cases of communist crimes specified by the Act on the Punishability and Exemption from the Statute of Limitations of Crimes Against Humanity, as well as on the Prosecution of Specific Crimes Committed during the Communist Dictatorship, whereas this court shall also have jurisdiction in criminal procedures initiated for crimes where the statute of limitations does not apply according to international law.

Within the framework prescribed by law the local and territorial prosecution service offices have the right to organize their structure in compliance with an internal division adjusting to the various types of criminal offences.

Owing to the lack of relevant examinations, indicators of efficiency deriving from the structuring and specialization of the organization cannot be reported.

23. Are there areas of investigation that have priority access to financial or material resources? If so, how and by whom is this priority established?

No investigation has priority access to financial or material resources as such a lack of resources does not prevent any procedure. Consequently, it is not necessary to establish priorities from financial aspects.

SECTION V: Description of the system of management by results

24. Do you have a system of management by results? (Please specify.) If yes, is there any problem with this system ?

No.

25. What kind of objectives are set for the prosecution service, if such a system of objectives exists? Does your system use benchmarks of achieved results?

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26. Which authority/authorities is/are competent to set these objectives?

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27. What role does the prosecution service play in setting these objectives?

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28. Are the objectives coordinated between all authorities of the criminal procedure? If such coordination exists, how does it influence the activities of the prosecution service?

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29. Are there regulations in your system as regards the optimal workload within prosecution offices? if yes, is the allocation of resources correlated with the workload? Please provide examples.

When new positions become available, the Office of the Prosecutor General carries out a periodical and repeated evaluation with regard to workload prior to the allocation of positions.

30. Is the setting of objectives based on a negotiation system?

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31. Who are parties of the negotiations?

SECTION VI: Follow-up of results and reporting

32. Please indicate if there are any national strategies implemented in your state regarding the resources allocated to the judicial system, including the prosecution service. If so, in what areas were these strategies developed? Please comment on the results of these strategies.

Combating crimes such as corruption, other criminal offences against public justice as well as malfeasance, the essential part of which falls into the exclusive competence of the prosecution, is supported.

Supporting surplus duties deriving from the mandatory participation of prosecutors in trials.

33. Is the attainment of objectives followed up yearly? How?

Specifying and controlling strategies is the competence of the political decision-making.

34. Have any reforms been implemented during the last 5 years aimed at increasing the budget of justice?

Yes, the same reply is provided to this question as the one included in point 32.

35. Is the prosecution service included in the government strategies for enhancing the efficiency of public institutions (e.g. e-governance, external financial audit)?

Yes, the prosecution service is included in the government strategy for enhancing the efficiency of the public institutions.

36. How would you assess internal audit recommendations within the prosecution service?

37. Is the social impact of the prosecutors' activities evaluated? If yes, by whom?

Various poll companies may deal with this question.