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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 Italy

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?

The Prosecution Service is an independent institution. Each public prosecutor is also independent. Such an independence is guaranteed by the Italian Constitution.

In Italy public prosecutors are defined as *magistrati* (corresponding to the French term *magistrats*), as they belong – together with judges – to the judiciary.

Their independence is achieved through (and safeguarded by) the *Consiglio Superiore della Magistratura* (CSM – the High Council for the Judiciary). The latter has full authority appointments, transfers, careers and discipline of judges and public prosecutors. The High Council for the Judiciary is mostly composed of *magistrati* (judges and public prosecutors) who are appointed by all the judges and public prosecutors.

Their independence is further guaranteed by their “irremovability”. They can only be removed or suspended from their functions or transferred to another work place if the CSM decides so (in case they would not agree) and according to the guarantees of the law.

From an Italian perspective, the principle of mandatory criminal action (enshrined in the Constitution) is believed to contribute to safeguard public prosecutors’ independence. Since they must prosecute all crimes, they cannot be conditioned by other public powers.

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

The Minister of Justice does not govern Prosecution Offices’ activities. He is only charged with the organization and the functioning of services linked to justice activities (i.e. resources and personnel).

The judiciary is not organized in a hierarchy (it is said to be a “diffused” power). However, powers of control and impulse of the activities of public prosecutors lie within the authority of the Prosecutor General at the Supreme Court of Cassation -as the last resort- and of the Prosecutors General at the Courts of Appeal. They have a duty to control that a correct and uniform prosecution, a fair trial and an accurate organization of prosecution offices be implemented.

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

The Italian Parliament is responsible for it.

The number of members of the judiciary -judges and public prosecutors- is established by law. If new positions are created, their distribution is decided by the Minister of Justice, after hearing the CSM’s opinion.

An enabling act sets forth provisions concerning the elimination of smaller judicial offices. In accordance with this act, the Minister of Justice on the way to change Italian judicial districts. As a consequence, positions corresponding to the suppressed offices will be assigned to the resulting offices.

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.

Yes, there is. The organization and running of justice-related services lie within the authority of the Ministry of Justice.

As for human resources, public prosecutors, personnel and police work altogether in prosecution offices. All of them are civil servants. The Ministry of Justice assigns the decides administrative staff assigned to each prosecution office.

As for financial resources, information systems, etc., they are provided by the Ministry of Justice and more generally from the State. Prosecution offices, like Courts, are not independent with respect to accountant and financial matters. Receipts (coming from private people's fees having access to legal services and from seized or confiscated illegal proceeds) become part of State Budget, which is also burdened with any expenditure (staff salaries, infrastructure expenses, office expenses, investigation costs etc.)

Building and facilities expenses are advanced by Municipalities and then they are reimbursed by the State in a percentage equivalent to 75%. Office expenses (paper, equipment) are paid by funds which the Ministry allocates to Prosecutor General offices and handed down from them to different prosecution offices. Personnel and information technology expenses are directly paid by the State.

Criminal proceedings' expenses (investigations, phone or indoor tapping, experts' reports etc.) are advanced by the State although, in case of conviction, they will have to be paid by offenders.

The information system (software packages, registries of criminal offences, etc.) is managed by prosecution offices in cooperation with the Ministry of Justice and the CSM. All this prevents the Ministry from interfering with programs which might influence public prosecutors' investigations. Individual prosecution offices might sign conventions with local authorities (for example Regions) to improve services of the legal system. They might also have access to European funds.

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

No, it is not.

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?

No, there are no provisions concerning financial management. However, there are the responsibilities indicated in answer no. 4).

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

There is no real budget of the prosecution service, neither at a central nor at a local level.

The law prescribes that each prosecution office shall write a yearly program of the most relevant activities, considering human, financial and instrumental activities at their disposal. Such a document is jointly drawn up by the Chief Prosecutor and by the administrative Manager of the prosecution office.

Then, every prosecution office draws up a statement of accounts of yearly expenses. Some prosecution offices also draw up their own “social budget” with respect to their results, but it is not compulsory.

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

In every prosecution office the administrative Manager is responsible for the management of resources. If there is no administrative Manager (as it often happens in smaller offices), then the Chief Prosecutor is responsible for it.

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?

There is a national IT system to keep the accounts. This system depends on the Ministry of Finance. Systems monitoring expenses are starting to be developed, but their efficacy is not relevant yet. There are no really adequate mechanisms for increasing the efficiency of 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.

There are no national data summing up the situation.

With the aim of giving some reference data, we indicate here below data concerning prosecution offices within the District of Florence Court of Appeal (13 prosecution offices for a population of about 3.3 million people, amounting to 5.8% of the global Italian population).

Yearly expenses (excluding staff expenditure):

- 2008 = € 6.962.000 (among them for phone tapping €1.287.000)
- 2009 = € 6.736.000 (among them for phone tapping €1.987.000)
- 2010 = € 6.531.000 (among them for phone tapping €1.909.000)
- 2011 = € 10.117.000 (among them for phone tapping €3.736.000)

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.)?

There is a need for increasing financial resources and, above all, administrative staff. It would be convenient (they have already started to do so) to allocate all resources produced by the judicial system (fines, seized goods etc.) for the running of the judicial system itself. It would also be convenient to resort more to European Social Funds.

As far as human resources are concerned, the situation is serious, since no new administrative staff has been engaged for many years. Agreements with public authorities, such as Regions, Provinces and Municipalities (as well as with Universities and Bar Councils), should be enhanced.

Joint investigations would surely be very useful to maximize resources allocation. However, since there is no national centralised office leading public prosecutors' activities, the only tool to this purpose is a coordination among different prosecution offices. Anyhow, the system should be organized in a more rational way, whereas today it includes too many categories of expenditure and budget items.

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

Yes they are, although there are no precise data.

In the last few years we have been mostly affected by the veto on hiring new administrative staff.

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

State Finance and Budget laws are the instruments which are used to allocate resources to the Ministry of Justice and, consequently, to prosecution offices. Other resources can be found through conventions and the European Social Funds, as indicated in answer no. 11.

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 direct link between funds allocated for prosecution offices and funds allocated for courts, neither is there a link with respect to the budgets of police forces. In general terms, allocations for prosecution offices amount to one third of allocations for courts.

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

Yes, they do. As already said here above, the administrative staff is employed by the Ministry of Justice and the police working at prosecution offices are employed by the Executive.

As for judges and prosecutors, see answer no. 4.

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?

Yes, there is, as far as human resources are concerned. Judges and prosecutors can be temporarily "seconded" from their office to another court/prosecution office that has vacancies or investigation-related needs. In these cases it is up to the Prosecutor General at the Court of Appeal to decide when a public prosecutor is seconded within the same district, otherwise it is up to the CSM to decide.

Administrative staff can also be temporarily seconded from its permanent office to a different office.

We are not dealing here with very quick mechanisms, neither are we speaking of mechanisms permitting a distribution of financial resources. The problem is less serious if we consider that

investigation expenses can be advanced even though they overcome the budget at that moment.

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?

There is no specific budget to this purpose. In case of need, the instruments devised are those indicated in answer no. 16.

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.**

Expenses needed for investigation purposes are always advanced by the Treasury.

Therefore, special measures are not needed.

If special equipment is required for an investigation (for example equipment for indoor tapping), it can be provided by the police (the prosecution office has no expenses in this case) or it can be hired from private people (in this case expenses are still advanced by the Treasury). If a prosecution office decides to buy some special equipment and the cost overcomes available funds, it has to request a permit to the Ministry of Justice. In such a case, it is common to wait some months for the answer.

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?**

No, we have not. No, insufficient resources have never raised problems in this respect.

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

No, it is not. A public prosecutor decides in such a case. In some prosecution offices, the Prosecutor General can later control some special expenses (for example for some legal-genetic expertise) by putting an “approval sign” on the payment order.

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

There is no procedure differing from the above mentioned ordinary procedure.

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

Yes, it is. In all prosecution offices (except very small prosecution offices, that is with less than 5 prosecutors) there are special groups of public prosecutors specialized in investigating certain types of crimes. Here listed are some of the most widespread criminal offences they specialize in: offences concerning the government (corruption, bribery, etc.), economic and fiscal offences (usury, false accounting, tax evasion, etc.); offences against the weakest layers of society (domestic violence, sexual abuse of children, exploitation of prostitution, breach of immigration law, etc.). For organized crime offences (*mafia*-related and similar offences), a specialization is established by the law: there is a special District Anti-mafia Prosecution Office in each prosecution office located in the District regional capital.

This specialization gives positive results with respect to the number of cases dealt with and the quickness of their settlement.

This specialization is balanced by the prohibition for a public prosecutor to stay on the same work group for more than ten years. All this prevents this specialized knowledge from becoming stiffen for public prosecutors.

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, there are not.

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, we do not.

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?

We have general objectives, starting from the mandatory action of prosecution. It compels prosecutors to investigate all crimes and prosecute all offenders.

The Chief Public Prosecutor can underline some priorities in the organization of his prosecution office. As far as financial resources are concerned, some hints can be given in the yearly program drawn up by the Chief Public Prosecutor and the administrative Manager (considering the general hints contained in the performance directive adopted by the Ministry of Justice).

Benchmarks for the obtained results are not used.

We have to underline that objectives cannot be examined in an exclusively economic perspective, since we are speaking -for instance- of pursuing results such as the decrease in the backlog of cases.

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

See answer no. 25.

27. What role does the prosecution service play in setting these objectives?
See answer no. 25.

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?

Judges and public prosecution are -strictly speaking- the only authorities having jurisdiction in criminal procedure matters. From this perspective, there is no relevant coordination to reach the mentioned targets.

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.

At present there are no rules determining the optimal workload correlated to the allocation of resources. Some studies are under way in this matter.

30. Is the setting of objectives based on a negotiation system?
No, it is not.

31. Who are parties of the negotiations?

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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.

There are no national strategies.

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

No, it is not, except for a limited control of the prosecution office administrative Manager over the attainment of objectives which are fixed in the above mentioned program of yearly activities. Some elements are verified by the Prosecutor General's control, as mentioned above in the answer no. 2.

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

No system reforms have been implemented. There were only increases in litigant parties' fees, especially in civil cases.

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

It is only included in government strategies with respect to IT instruments (telematic services of process, certificates, digitalization of deeds, etc.)

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

We would assess them in a positive way. However, we also need to use safeguards to prevent the control from becoming a way of conditioning certain investigations.

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

No, it is not.