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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**

**Romania**

## **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?**

1. The Public Ministry is part of the judicial authority. The prosecutors develop their activity according to the principle of legality, impartiality and hierarchical control, under the authority of Justice Ministry (exercising control of the prosecutor's activity, by prosecutor's specially appointed).

The prosecutor is independent in the proposed settlements, in the conditions provided by law. The adopted settlements may be legitimately invalidated by the hierarchically superior prosecutor, when they are appreciated as unlawfully, by default or as a consequence of the complaint expressed by the injured person in its legitimate interests. Also, the prosecutor's settlements may be appealed also at the court.

The Prosecutor's Offices are independent in the relationships with the courts, as well as with the other public authorities (article 62 paragraph (4), from Law no.304/2004).

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

2. The criminal activity developed by the prosecutors is not managed by the Ministry of Justice or by other authorities.

According to the provisions of article 69, paragraph 2, Law 304/2004, the control exercised by the Minister of Justice through prosecutors specially appointed by the General Prosecutor of POHIC CJ, of the special Directorates or by the Ministry of Justice cannot target the measures ordered by the prosecutor during the criminal investigation and the adopted settlements.

The Minister of Justice may offer written guidance regarding measures for the prevention and fight against criminality.

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

3. The establishment of new prosecutor's positions is made by Romanian Government decision, proposed by the Minister of justice.

### **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.**

4. The Public Ministry manages its own financial, human and IT resources.

In particular cases, the Ministry of Justice promotes within the strategies regarding the judiciary development requirements of the Public Ministry or, according to other agreements, there are developed common activities of the resources – RMS, IT applications ECRIS).

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

5. Yes. The activity of the prosecutor's offices is financed from the state budget.

According to Article 131, Paragraph, of Law 304/2004, the budget for the prosecutor's offices attached to the courts of appeal, tribunals, specialized tribunals and courts is managed by

the Prosecutor's Office attached to the High Court of Cassation and Justice, the General Prosecutor with the quality of main credit officer.

The budget of the military prosecutor's offices is managed by the Ministry of National Defence, the Minister of national defence has in its turn the quality of main credit officer.

## **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?**

6. Yes.

Law no.34/2004 on judicial organization provides that the Ministry of Justice is going to ensure the proper organization of justice as a public service. The Law also provides the economic, financial and administrative management of the prosecutor's offices.

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

7. The budget issuance is made according to Law no. 500/2002 regarding the public finances by the main credit officer through the analysis and centralization of the budget proposals drawn by the subordinate credit officers. Annually, by frame-letter, the Ministry of Public Finances sends the total amount where it has to fit the PM (Public Ministry) budget.

The centralized MP budget is handed to the Ministry of Public Finances to be approved, the last one being able to operate changes according to the existing resources at national level.

The distribution of the funds between budgetary lines is the following:

- Personnel expenses (salaries)
- goods and services (office, utilities, handing the judicial expenses for interpreters, expertise, printing, accommodation and transportation, fuel, communication etc.)
- interests (financial leasing contract)
- transfers between the units of public administration (handing the child care allowance up to the age of 1 year by the Public Ministry, that is recovered from the town halls),
- social care (allowances paid at the pension, in case of death),
- projects with external grants from European funds financing,
- non-financial actives (capital expenses: capital repairs, investments, equipments and goods exceeding a certain value – equivalent of 400 euro).

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

8. The Prosecutor's office attached to the High Court of Cassation and justice and the prosecutor's offices attached to the courts of appeal and tribunals have an economic, financial and administrative department, run by an economic manager. The economic manager is under the head of the public prosecutor's office where she/he works. The economic, financial and administrative department within the prosecutor's offices attached to tribunals also provide the economic, financial and administrative requirements of the prosecutor's offices attached to the courts of first court in their jurisdiction.

**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?**

9. There is a centralized IT system for managing, monitoring and evaluating the budget, IT system which has in its components an analysis module (mechanism) of management analysis allowing the assessment and increasing the efficiency of the resources' management at any time.

**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.**

<b>INDICATORS</b>	<b>Budget 2008</b>	<b>Budget 2009</b>	<b>Budget 2010</b>	<b>Budget 2011</b>
<b>GRAND TOTAL</b>	<b>163.845.317</b>	<b>134.556.076</b>	<b>160.949.636</b>	<b>133.361.345</b>
Staff expenses	139.848.529	111.835.533	140.383.215	114.55.177
Goods and services	14.603.031	13.410.435	13.943.241	12.618.469
Interest	191.207	41.625	2.100	0
Transfers between the units of the public administration	0	0	0	0
Other transfers	187.193	169.339	0	0
Projects financed from external grants (FEN) post-accession	0	0	196.742	997.060
Social care	45.920	2.341.185	259.289	32.410
Non-financial assets	8.969.437	6.757.958	6.165.049	5.158.229
Recovery from financing the previous years	0	0	0	0
<b>TOTAL STATE BUDGET</b>	<b>159.232.750</b>	<b>132.506.977</b>	<b>159.213.732</b>	<b>132.446.929</b>
Staff expenses	138.180.357	110.889.267	139.486.557	114.535.963
Goods and services	12.644.535	12.591.174	13.191.047	12.596.477
Interest	191.207	41.625	2.100	
Transfers between the units of the public administration				
Other transfers	187.193	169.339		
Projects financed from external grants (FEN) post-accession			196.742	131.722
Social care	45.920	2.341.185	259.289	32.410
Non-financial assets	7.983.539	6.474.386	6.077.997	5.150.358
Recovery from financing the previous years				
<b>EXTERNAL GRANTS</b>	<b>4.612.566</b>	<b>2.049.099</b>	<b>1.735.904</b>	<b>914.415</b>

**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.)?**

11. The following activities require prioritization in terms of resources assignment:

- access in technical expertise and expert advice in specific fields, that in certain complex cases is required for a longer period of time;
- access in forensic services; in this respect, a proposal was issued regarding the subordination of the forensic services to the judiciary rather than to the Ministry of Health,

as it currently is. The proposal was not a success and for the improvement of this process, solutions are looked for.

- Access to basic office equipment such as fax, copy machines, printers. Thus kind of equipment usually has limited duration of life and their failure often hampers the development of current activities. A solution to rationalize the access to this equipment, as IT strategy for the judiciary sector so that continuity is provided.

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

12. The Public Ministry budget was and still is affected by the economic crisis from 2009 - 2011. There have been adopted temporary laws by which current expenses have been reduced (for example in the second semester of 2010, OUG no.55/23.06.2010 regarding some measures of reducing public expenses, have had as effect dropping of expenses of the Public Ministry by 20%). From 2009 the purchase of a category of assets like automobiles, copy machines, furniture has been restricted. Still this kind of assets are useful to the prosecutor's offices units be it for advanced wear of the owed equipment, be it for the occupation of new spaces, towards which the existing equipment are insufficient for the development of the activity.

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

13. In compliance with Law no.500/2002 of the public finances, for the proper development of the prosecutors offices and for the purpose of flexibility of resource use, according to the priorities, there are operated transfers and fund redistributions.

The legislation regarding the public acquisitions is also applicable to the prosecutor's offices. Thus, annually there are contained in the public acquisitions plan of necessary goods for the reference period. The volume of activity from the current year serves as an acceptable prognosis of the future activity.

The forecasts for the salary fund consider the promotions in positions and appointments, given from the human resources domain regarding the average of the experience in that position. As for the salaries matter, the budgetary execution was inferior to the approved budget and allowed redistributions to the funds for functional expenses.

The investments are periodically monitored, in order to allow withdrawals and increases of amounts from some objectives, reported to the execution rhythm, so that the budget credits are not blocked.

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

14. There is no connection between the budgets granted to the PM and to the other institutions of the judiciary or other authorities meant to watch over the enforcement of the law.

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

15. Human resources of the prosecutor's offices units within the Public Ministry are provided, predominantly, through the National Institute of Magistracy and the National School of Clerks, institutions coordinated by the Superior Council of Magistracy.

Acceptance in magistracy and initial training for the purpose of occupancy of the prosecutor position is achieved through the National Institute of Magistracy.

Recruitment of the law clerks is usually made through the National School of Clerks, and other categories of auxiliary professional personnel – IT law clerks, archive clerks, register clerks – are recruited by contest organized at the level of the Prosecutor Offices attached to the courts of appeal or as appropriate at the Prosecutor's Office attached to the High Court of Cassation and Justice or, according to the provisions of Law no.567/2004.

SCM (Superior Council of Magistracy) publishes annually the agenda of the contests, so that there are elements for the predicting of the financial measures accompanying the appointment/promotion of the personnel.

**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?**

16. At the level of PM there is an integrated Informational System, allowing the monitoring and permanent control of the resource use, fact ensuring the quick reaction according to the requirements.

So when the situation requires it, the General prosecutor of Prosecutor's Office of the High Court of Cassation and Justice may order the redistribution of the financial resources, human and logistic between the subordinated units, for the insurance of the development in natural conditions of criminal investigation.

The law allows the initial budgets of the subordinate credit officers to be modified.

**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?**

17. The law provides the possibility of commissioning the prosecutors to another prosecutor's office or in leading positions, with the approval of the person. If, for example the prosecutors from a county do not agree with the commissioning from a unit in that district, the lack of human resources is totally substituted by the takeover of the files of the hierarchical superior prosecutor's units, so that it would not affect the research efficiency.

#### **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.**

18. The case prosecutor drafts a report on the resources required for the investigations which he then submits for approval to his hierarchically superior prosecutor (the head of the prosecutor's office). The required resources are allocated with celerity, depending also on their nature. As a rule, public institutions make the payments for the current month in the following month. If a payment is imminent and the amount can be forecast, the funds can be requested during the current month if the monthly expense limit is observed.

**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?**

19. No, as far as prosecutor's offices are concerned. There was a situation, in a most complex case, when the resources required to intercept communications were exhausted by the end of April. In compliance with the legal provisions, the funds were supplemented from the Government reserve funds.

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

20. The amounts advanced during the investigation must reflect the judicial costs calculated at the end of the investigation. If a non-prosecution decision is delivered, such amounts will be charged to the state. If prosecution and conviction decisions are delivered, the amounts will be charged to the defendant.

Article 160 of the Internal Regulations of prosecutor's offices stipulates that judicial costs should be calculated for each and every cause.

As regards hierarchical control, the chief prosecutor is the one who checks the compliance with the legal provisions when funds are advanced for certain activities.

By comparison with a case sample, the internal auditing checks the compliance with the law, from the financial point of view, of the payments for expert analyses and the correct calculation of judicial costs. Depending on the findings, the auditing may, for example, extend the control to all the cases disposed during a certain period of time.

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

21. Pursuant to the provisions of Article 218 (1) of the Criminal Procedure Code, the prosecutor directs and controls directly the criminal investigation activity carried out by the judicial police and other specialized investigation bodies, making sure that the criminal investigation acts are carried out in compliance with the legal provisions. The orders issued by the prosecutor are mandatory for the criminal investigation body and for the other bodies with legal responsibilities in establishing the commission of crimes (Article 219 (2) of the Criminal Procedure Code).

Considering that human, financial or logistic resources are required to fulfill the prosecutor's orders, the police has the obligation to allocate such resources. The same applies for other law enforcement agencies (collaboration protocols establishing such aspects have been signed between the Prosecutor's Office attached to the High Court of Cassation and Justice and the institutions I referred to).

**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?**

22. The Law on the organization of the judiciary refers to the specialization of prosecutors as one of the criteria based on which prosecutors are distributed to the sections/departments within prosecutor's offices.

Depending on the type of crime, the law also defines the jurisdiction of the National Anticorruption Directorate – prosecutors specialized in fighting high-level corruption crimes, that of the Directorate for the Investigation of Organized Crime and Terrorism – prosecutors specialized in fighting organized crime, and that of the Military Prosecutor's Offices Section – crimes committed by servicemen in connection with their official duty.

Based on internal orders, the prosecutors from prosecutor's offices attached to tribunals are specialized in fighting small and medium corruption, and criminalists are specialized in crimes against life.

Specialization has obvious benefic effects on the results of criminal prosecution, on focusing resources, and on the accumulation and improvement of good practices.

**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?**

23. A prioritization of cases in point of financial resources is required in case trial terms risk to be affected. The heads of prosecutor's offices responsible for the allocation of resources have the possibility to do this with priority to certain cases, after having analyzed the existence of certain cumulative conditions, namely the complexity of the case, a prompt resolution of the case, short trial terms.

**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?**

24. We have such a management system and the activity of each prosecutor's office is analyzed on a regular basis. These regular analyses are followed by complementary measures monitored for average periods of time. There is no specified volume to be achieved but prosecutors must focus on obtaining results in the areas set as priorities by the management.

In addition to that, pursuant to Article 79 of the Law No. 304/2004, the Prosecutor's Office attached to the High Court of Cassation and Justice prepares an annual report on the activity carried out and submits it to the Superior Council of the Magistracy and to the ministry of justice by February the following year. The minister of justice presents the conclusions concerning this activity report to the Parliament.

So far, this system has proved to be effective in practice.

**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?**

25. The standing objective of the criminal prosecution structures is to identify and hold criminally responsible the individuals who have committed crimes.

The medium-term objectives are established based on the activity results and other factors. The medium-term objectives for prosecutor's offices established in 2010 are the following:

- Increased efficiency in fighting corruption
- Increased efficiency in fighting smuggling and tax evasion
- Increased firmness (pretrial arrest in serious cases)
- Increased efficiency of inquiries
- Balancing the workload
- Higher quality of the criminal investigation acts.
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These priorities are needed to adapt managerial measures so as to ensure sustainable results, to adjust assessment standards to the range of results by districts/areas.

While analyzing the results of each territorial office, it became obvious that some performed better than others in terms of achieved results, and that such results could become benchmarks for their future activity or for that of similar offices facing the same problem.

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



26. The competence for establishing these objectives corresponds to the management of the Prosecutor's Office attached to the High Court of Cassation and Justice (see also Point 24) and it is done on an annual basis. The objectives are taken over accordingly by the judicial police.

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

27. The Prosecutor's Office attached to the High Court of Cassation and Justice establishes the objectives, sets forth the methods to achieve them, collaborates with other law enforcement institutions in order to clarify common problems and measure/assess the results obtained.

At territorial level, each office has to adapt its general strategies and define its specific objectives.

**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?**

28. The objectives of the Public Ministry are correlated with those of other law enforcement agencies, and they take into consideration the priority fields established through the Government policies. Such coordination and identity of objectives with the law enforcement agencies is meant to speed-up procedures relating to the celerity of the act of justice.

**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.**

29. As a rule, the Superior Council of the Magistracy determines the optimum workload throughout the judicial system. In reality, the CSM has created optimum workload standards only for courts.

Under the circumstances, the Prosecutor's Office attached to the High Court of Cassation and Justice has created, starting 2008, its own average workload determination method taking into account the posts provided and the occupied posts, in order to establish the right job redistribution measures.

Based on the average workload and other criteria, certain courts and prosecutor's offices with a small workload were dissolved. (Law No. 148/2011)

The general prosecutor bases his evaluation of the required legal conditions for seconding (see Point 17) on this report on the average workload and the level of occupancy.

In compliance with Article 95 of the Law No. 304/2004 on the Judicial Organization, chief prosecutors in prosecutor's offices try to achieve a proper balance of the workload of prosecutors (number of files, complexity, specialization).

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

30. No.

**31. Who are parties of the negotiations?**

31. –

## 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.**

32. The Public Ministry contributes to the preparation by the Ministry of Justice and/or the Superior Council of the Magistracy of the national strategies on the judicial system and their implementation

The fields targeted by these strategies are:

- Human resources
- Integrated management of resources
- Computerization of the judicial system
- Increasing the magistrates' specialization in fighting corruption and economic and financial crime
- Amending judicial statistics
- Adapting the curriculum for the initial training of future magistrates.

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

33. Yes. The established medium-term and standing objectives are accompanied by performance indicators, a monitoring process and the assessment of the results. Depending on the progress of the indicators, a detailed analysis of the results as against the objectives is performed when significant variances are discovered (usually over 20%).

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

34. The budget restrictions caused by the financial crisis of 2009 also had an impact on the possibilities of increasing the budget of the institution. Yet, the current national strategy for the development of justice provides for measures to safeguard the proper financing of the judiciary.

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

35. Yes. The strategies having the Public Ministry as beneficiary are generally targeting the judiciary. The Public Ministry has been a beneficiary of the judicial system computerization strategy and of the government strategy on enrolling Microsoft operating licenses. However, as regards e-governance measures, the applications for criminal case records are meant to increase transparency and the access to information on the judicial system. As regards prosecutor's offices, their case records are generally not meant for the use of other institutions until the moment the cases go to court/are disposed.

The Public Ministry must also implement the internal control and create the auditing framework established at government level.

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

36. The internal auditing has checked the compliant use of material resources (see Point 20). The findings and the recommendations of the internal auditing are the basis for specific measures in the judicial system, considering the hierarchical organization and the legality principle. The internal auditing is meant to formalize the duties of each employee belonging to other categories than that of prosecutor, and the existence of procedures for the auxiliary and support activities.

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

37. The social assessment is not formalized. The surveys conducted on a regular basis are meant to reveal the public confidence in the justice system. Sometimes, the surveys reveal a mix-up as regards the functions of prosecutor's offices.