



Strasbourg, 7 February 2012

CCPE(2011)7

**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**

**Spain**

## 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 Spanish Prosecution Service is regulated in article 124 of the Constitution, under Title VI (On the Judicial Power). According to this article, prosecutors promote the action of Justice by defending legality, the rights of citizens and the public interest; defends the independence of Courts; and acts before courts in defence of the social interest. The actions of prosecutors are bound by the principles of legality, impartiality, unity of action and hierarchy.**

**The Act on Prosecutors (dating from 1981 and amended in 2007) defines the Prosecution Service as an Entity of Constitutional relevance, integrated within the Judicial Power with functional autonomy.**

**Apart from the previously stated principles, autonomy is guaranteed by articles 8 and 55 of the Act on Prosecutors. Article 8 determines the Government is entitled to forward issues to the PG for his consideration (but not send orders or instructions) and article 55 indicates prosecutors can only receive orders from their superiors. The hierarchical pyramid of the Prosecution Service ends with the position of the Prosecutor General. According to the Constitution, the Prosecutor General is appointed by HM the King of Spain at the proposal of the Government. However, the dismissal of the Prosecutor General can only be decided according to one of the motives specifically stated in article 31.1 of the Act on Prosecutors.**

**The budgetary needs of the Institution are covered by the Spanish Government through the budget of the Ministry of Justice, although a process has started to singularise the funds allocated to the Prosecution Service.**

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

**No, apart from the fact that budgetary needs of the Prosecution service depend currently on the Ministry of Justice**

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

**The Ministry 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.

**As indicated above, the Prosecution Service fully depends on the budget of the Ministry of Justice for financial, IT and human resources policies. It must be stated that in certain regions, the Autonomous Communities regional Governments are the ones playing this role, in the place of the Ministry of Justice. However, according to article 13 of the Act of Prosecutors, the General Prosecution Office as the Management Board of the Prosecution Service is responsible for leading the IT and HR strategy along with the Ministry of Justice and the Regional Governments.**

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

No, but the General Prosecution Office as the Management Board of the Prosecution Service manages its own budget for general and administrative expenses that amounted to 666.410€ in year 2011.

**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?

**Yes, articles 71 and 72 of the Act of Prosecutors lay down that the prosecution service must be provided an adequate number of trained staff and appropriate facilities.**

**According to article 72 of the Act of Prosecutors the PG takes part in the elaboration of the Justice budget by making a proposal to the Ministry of Justice and the Regional Governments on a yearly basis including the needs of the Prosecution Service.**

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

**The budget of the prosecution service is elaborated and managed by the Ministry of Justice and the Regional Governments annually. The preparation starts in June and the only role that the PG plays is the proposal described above. The Prosecution Service doesn't have its own budget lines but for HR and training expenses.**

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

**Yes. The Support Unit to the Prosecutor General, currently served by three prosecutors and directed by a Senior Head Prosecutor that are supported by a skilled administrative team.**

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?* **No, there is not.**

**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.

**As mentioned above the Prosecution Service doesn't have its own budget lines but for HR and training, being that a recent achievement only in the budget of the Ministry of Justice (it doesn't apply to the budget of Regional Governments where Prosecution Service doesn't have its own budget lines yet).**

Year 2010	}	HR- Prosecution Service-Ministry of Justice Budget.....	220.025.010€
		Training-Prosecution Service-Ministry of Justice Budget.....	N.A.
Year 2011	}	HR- Prosecution Service-Ministry of Justice Budget.....	215.321.180€
		Training-Prosecution Service-Ministry of Justice Budget.....	4.934.360€

**The General Prosecution Office policy is to try to achieve own budget lines in every Public Budget, including the ones of the Regional Governments.**

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.)?*

**Spanish Prosecution Service is at a previous stage. As mentioned above we are trying to get own budget lines.**

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

**Yes they are. HR and training budget cuttings amount to 10%. IT budget suffered also important cuttings but it cannot be assessed because the Prosecution Service has no specific IT budget lines. Salaries of prosecutors, as public officials, were diminished in May 2010.**

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

**For the moment the Prosecution Service is not responsible for that and the only role it plays is the one described above.**

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

**Generally speaking and apart from HR and training budget, Judiciary and Prosecution Service share the budget lines without any further distinction.**

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

**No. HR of the prosecution service depends exclusively on the General Prosecution Office as the Management Board of the Prosecution Service.**

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?

**It doesn't apply to the Spanish Prosecution Service because it doesn't even have own Budget.**

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, the Ministry of Justice and the Regional Governments have specific budgets for that.**

#### **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.

**Please note these set of questions is not particularly relevant for the Spanish case, given that our systems is based on the Investigating judge. The cases in which the prosecution service carries out autonomous investigations are not so numerous and do not require specific budgetary provisions**

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?

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

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

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?

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?

#### **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 ?

**Yes, there is an incentive of salaries connected to the productivity of each prosecutor. There are problems arising from the indicators attended in performance evaluation and from the informatic applications that monitorizes the process.**

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?

**Quantitative and qualitative indicators of activity of the prosecutors, such as hearings attended and indictments presented.**

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

**The General Prosecution Office as the Management Board of the Prosecution Service, along with the Ministry of Justice.**

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

**The Prosecution Service sets the objectives but the total amount available for the performance evaluation program is decided by the Ministry of Justice.**

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?

**Such coordination doesn't exist.**

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.

**There are internal guidelines that are applied by the General Prosecution Service when it presents the proposal to the Ministry of Justice and the Regional Government in the process of the elaboration of the Annual Budget.**

**The indicators attended to allocate resources are correlated with the criteria applied in the performance evaluation along with the workload.**

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

**No, although the professional associations of prosecutors were heard in the process of setting the indicators.**

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.

**Strategies are being developed in the HR and IT areas. The Ministry of Justice and the Regional Governments are responsible for that.**

**Results in HR: organizational changes in the staff of the judges and prosecutors.  
Results in IT: Advances in E-Justice.**

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

**The Ministry of Justice has a three-year strategic plan where indicators to evaluate the fulfillment of objectives are defined.**

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

**Yes, the Strategic IT Plan.**

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, within the strategies of the Justice Department.**

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

**They must be adapted to the IT and organizational changes.**

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

**Yes, it is evaluated by the General Prosecution Office in its annual activity report that the General Prosecutor presents in the Parliament at the beginning of every judicial year.**