



A Comparative Study on the Key Aspects of Self-Governance and Careers in the Prosecution Service in Selected Member States of the Council of Europe

Prepared by Volodymyr Petrakovskiy (Ukraine) based on the expertise of Anna Skrjabina (for Latvia), Răzvan Horațiu Radu (for Moldova), Milica Kolaković-Bojović (for Montenegro and Serbia), Gaja Štovičej (for Slovenia), and Lorena Bachmaier Winter (for Portugal)

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List of symbols and abbreviations

CCPE	Consultative Council of European Prosecutors
CJEU	Court of Justice of the European Union
CoE	Council of Europe
Charter	Charter of Fundamental Rights of the European Union
Convention	European Convention on Human Rights
Court	European Court of Human Rights
EU	European Union
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union

I. Context

1. In June 2024, an Intergovernmental Conference at the ministerial level officially opened negotiations for Ukraine's accession to the EU¹. Two years earlier, the European Council had granted Ukraine candidate status for EU membership and called upon the European Commission to provide a report on Ukraine's compliance with the accession criteria².
2. In its first and second annual reports on Ukraine, among other things, the European Commission has already emphasized that the candidate country should improve the quality of the mechanisms for selecting the leadership of the prosecution service and strengthen the institutional basis for disciplinary procedures against prosecutors³. Later, this emphasis was transformed into clear obligations⁴ for Ukraine within the framework of the Ukraine Facility⁵.
3. Overall, throughout all the relevant paragraphs of the European Commission's reports, a consistent warning is present: the institutional foundations of prosecutorial self-governing bodies still lack independence, and these bodies lack the necessary resources. Additionally, it is noted that the position of Prosecutor General remains politically dependent, as the procedures for appointing and dismissing the Prosecutor General are vulnerable to political and other improper interference, creating risks to independence and ultimately undermining public trust⁶. Therefore, in the opinion of the European Commission, these issues must be addressed in accordance with European standards.
4. In May of this year, the Cabinet of Ministers of Ukraine, among other actions, approved a Rule of Law Roadmap. This all-encompassing strategic document outlines a comprehensive set of reforms within the negotiation process for Ukraine's EU membership under Negotiation Chapter 23 "Judiciary and Fundamental Rights" and Chapter 24 "Justice, Freedom and Security"⁷. The Roadmap states that its implementation will demonstrate "*Ukraine's readiness to meet EU standards*". In developing the Roadmap, Ukraine was guided by the EU acquis, and in areas where it does not exist, by Council of Europe documents and standards, as well as best practices of EU member states.
5. The Rule of Law Roadmap includes a series of measures aimed at addressing the concerns raised by the European Commission, in particular:

¹ EU opens accession negotiations with Ukraine. Source: <https://www.consilium.europa.eu/en/press/press-releases/2024/06/25/eu-opens-accession-negotiations-with-ukraine/>

² European Council conclusions, 23-24 June 2022. Source: <https://www.consilium.europa.eu/en/meetings/european-council/2022/06/23-24/>

³ Ukraine 2023 Report, pp. 5, 23-25. Source: https://neighbourhood-enlargement.ec.europa.eu/ukraine-report-2023_en ; Ukraine 2024 Report, pp. 28-31. Source: https://neighbourhood-enlargement.ec.europa.eu/ukraine-report-2024_en

⁴ Plan for the implementation of the Ukraine Facility, pp. 74-75. Source: <https://www.ukrainefacility.me.gov.ua/en/>

⁵ Regulation (EU) 2024/792 of the European Parliament and of the Council of 29 February 2024 establishing the Ukraine Facility. Source: <https://eur-lex.europa.eu/eli/reg/2024/792/oj>

⁶ Ukraine 2023 Report, pp. 5, 23-25. Source: https://neighbourhood-enlargement.ec.europa.eu/ukraine-report-2023_en ; Ukraine 2024 Report, pp. 28-31. Source: https://neighbourhood-enlargement.ec.europa.eu/ukraine-report-2024_en

⁷ Roadmap for the Rule of Law. Source (in Ukrainian): https://eu-ua.kmu.gov.ua/wp-content/uploads/UA_Dorozhnya_karta_z_pytan_verhovenstva_prava_2.pdf

- Conducting a comprehensive review of the selection and dismissal procedure in the Prosecutor General's Office, to align it with European best practice, with the involvement of the Venice Commission⁸;
- Conducting an independent functional audit of the Council of Prosecutors of Ukraine and Qualification and Disciplinary Commission of Prosecutors and developing recommendations aimed at strengthening its members' selection procedure, independence, effectiveness, and efficiency⁹;
- Developing and adopting a law aimed at strengthening the institutional capacity, autonomy, independence and effectiveness of the Council of Prosecutors of Ukraine, following the consultation with the Venice Commission, through: - an independent and objective procedure for the preliminary selection of all candidates for membership, including a credible check of their integrity;- transforming into a separate legal entity and ensuring financial, human, and technological resources for its activities, as well as premises; - exercising powers on a permanent basis; - creating a division (secretariat) within the structure of the Council of Prosecutors of Ukraine to perform auxiliary functions (organizational support of its activities); - involving Council of Prosecutors of Ukraine in regular assessments of the quality of prosecutors' work; - enhancing powers of the Council of Prosecutors of Ukraine regarding the protection of prosecutorial independence¹⁰;
- Developing and adopting the law in line with European standards and after consultation with the Venice Commission to ensure a transparent and merit-based selection process for prosecutors to managerial (administrative) positions in the Prosecutor General's Office (head and deputy head of the unit), regional and district prosecutor's offices (head and deputy head of the prosecutor's office, unit within it), which includes: - clear criteria for assessing a candidate for a position, including professional competence and integrity; - transparent, competitive, and meritocratic selection procedure that includes an assessment of professional competence and integrity; - strengthening the institutional capacity and powers of the Prosecutor General's Office and authorities of the prosecutorial self-governance, particularly the Council of Prosecutors of Ukraine, regarding the selection of prosecutors for managerial (administrative) positions¹¹;
- Development and adoption of the law aimed at improving the disciplinary system of prosecutors and strengthening the institutional capacity of the Qualification and Disciplinary Commission of Prosecutors in line with GRECO Round IV recommendations by: - amending the provisions on the composition of the Commission to ensure that the majority of seats are held by prosecutors elected by their peers; [...] - conducting an independent and objective pre-selection procedure for all candidates to the Commission, including a credible verification of their professional competence and integrity; - ensuring that the Commission has an autonomous institutional resources independent from the Prosecutor General's Office, including an independent secretariat¹².

6. Prosecutorial self-governing bodies are relatively common in EU member states, therefore Ukraine should assess the policies and practices implemented by these countries, before implementing the

⁸ See line 3, item b) of subsection 1.1 of section I, page 5.

⁹ See line 2, item c) of subsection 1.1 of section I, page 7.

¹⁰ Ibid.

¹¹ See line 3, item b) of subsection 1.2 of section I, page 11.

¹² See line 2, item d) of subsection 1.2 of section I, page 12.

mentioned Rule of Law Roadmap measures. Furthermore, evaluating the experiences of EU candidate nations with similar institutions can offer additional valuable insights.

II. Methodology

A. Purpose of the Study

7. The purpose of the study was to develop a holistic view **on the practical aspects of functioning the prosecutorial self-governing bodies and their performance of functions related to the selection and promotion of prosecutors, including to managerial positions, as well as their participation in the selection of candidates for the position of Prosecutor General and their dismissal from this position** in selected member states of the Council of Europe and the European Union to help Ukraine in implementation of the European standards and best practice in this field.
8. The study provides information on the legal framework, addressing theoretical and legislative sources, as well as on the practical handling of such functions, taking into account internal procedural documents (including guidelines, methodologies, best practices), and also analytical materials on relevant procedures and practices.

B. Methodological Principles and Tools¹³

9. The study is based on reports provided by several international consultants from selected member states of the Council of Europe. These countries are represented from the perspective that —
 - a) like Ukraine has:
 - operational prosecutorial self-governing bodies with compatible functions, but not the mixed ones (for judges and prosecutors);
 - well-established or freshly (re)made provisions in law and/or procedures for compatible functions.
 - b) half of these countries are members of the European Union, and the other half have received the EU candidate status.
10. International consultants were expected to ensure the accuracy and reliability of the information provided, respect confidentiality requirements, and take every effort possible to present an impartial, objective, and evidence-based analysis, especially in cases of being in employment, service, or other business relationships with the body in focus of analysis, to confirm the absence of any actual or perceived conflict of interest.
11. Reports from international consultants provide general information about the foundations of the legal system or constitutional principles to the extent necessary for a better understanding of the scope, composition, functions, and procedures of prosecutorial self-governing bodies, as well as the prosecutors' careers and the role of the prosecutor general in the selected country. At the same time, theoretical and legislative information should, above all, complement the description of how all these aspects are exercised in practice.

¹³ This part is an adaptation of the research methodology prepared by Prof. Bachmaier, and used in "A comparative study on the disciplinary liability and proceedings against public prosecutors in selected Council of Europe member states", of April 2021, presented within the Council of Europe Project "Human Rights Compliant Justice System in Ukraine", and written by L. Bachmaier Winter, G. Štovičej, M. Visentin and I. Welch as country reporters.

12. The country reports primarily include:

- a) Information on the constitutional and legal framework for prosecutorial self-governing bodies and the prosecutors' careers, the prosecutor general in particular;
- b) Description of the procedures of composing the prosecutorial self-governing bodies and their internal operations;
- c) Analysis of the practical implementation of the prosecutorial self-governing bodies' functions. For the study of the practical implementation of the functions (best practices, advantages, shortcomings, problematic issues, effectiveness, etc), the foreign expert shall carry out interviews and consultations with members of prosecutorial self-governing bodies and their employees, prosecutors, and reliable researchers on practical aspects and efficiency of procedures;
- d) Reference to relevant case law shall be provided, if this is useful to clarify the practical application of the prosecutorial self-governing bodies' functions.

13. The country reports specify the sources of the information provided, i.e., whether it is based on a legislative provision, derives from constitutional principles, is established by judicial precedent, is a description of procedures and current practice, is stated in publications/or is their own assessment. The reports should highlight which aspects of the functioning of prosecutorial self-governing bodies and the performance of their functions are well established, which are new, debatable, or weak, and which are part of an intended reform.

14. Internal procedures that are not based on publicly available documents, as well as best practices that have yet to be formalised, are outlined as fully and in as much detail as possible (to the extent appropriate and permitted). The consultants were also encouraged to highlight shortcomings, including examples of legislation or practices that have been struck down or corrected by the courts, particularly the Supreme or Constitutional courts.

15. This study has been developed and consolidated by Volodymyr Petrakovskiy¹⁴. The country reports were prepared by international consultants of the Council of Europe Anna Skrjabina¹⁵ (for Latvia), Răzvan Horațiu Radu¹⁶ (for Moldova), Milica Kolaković-Bojović¹⁷ (for Montenegro and Serbia), Gaja Štovičej¹⁸ (for Slovenia), and Lorena Bachmaier Winter¹⁹ (for Portugal).

C. Structure of the country reports

General Overview of the Prosecution Service and its Self-Governance

- 1) Briefly describe the constitutional status of the prosecutor's office and its key elements (its place within the system of state authorities, its functions, the nature of the position and role of the

¹⁴ Senior lecturer, Faculty of Law, National University of Kyiv-Mohyla Academy, Kyiv, Ukraine.

¹⁵ Council Member at European Law Institute (ELI), co-chair of the ELI Baltic Hub, Riga, Latvia.

¹⁶ Prosecutor, Prosecutor's Office attached to High Court of Cassation and Justice, and Professor, University of Economic Studies, Bucharest, Romania.

¹⁷ PhD, Senior Research Fellow, Institute of Criminological and Sociological Research, Belgrade & President of the Advisory Committee for nominations of judges of the International Criminal Court, Belgrade, Serbia.

¹⁸ Secretary-General, Secretariat of the Ministry of Public Administration, Ljubljana, Slovenia.

¹⁹ Professor of Law, Complutense University, Madrid, Spain.

Prosecutor General, the role of prosecutorial self-governing bodies, etc.). If the constitutional provisions are limited, describe these aspects based on the key legislative acts.

- 2) List the prosecutorial self-governing bodies, their key areas of competence, and the periods of their establishment and reform.
- 3) Describe the reasons for the establishment and reform of the prosecutorial self-governing bodies, and how the results were assessed by international institutions, primarily the Council of Europe and the EU.

Prosecutors' Career

- 4) What are the stages in the procedure for first-time appointment as a prosecutor? Which entities are involved, and what is their role?
- 5) What are the eligibility criteria for first-time candidates for the position of prosecutor, and which legal act provides for them? Which entities involved in the selection procedure assess compliance with these criteria, and how?
- 6) How is gender equality ensured in the appointment process? Are any positive measures applied for female candidates (e.g., quotas or provisions ensuring selection in cases of equal merit)? If yes, how are they implemented?
- 7) Describe the mandatory training required for first-time candidates or newly appointed prosecutors.
- 8) How has the procedure for first-time appointment and the relevant criteria functioned over time? What weaknesses have been identified? How were they assessed by international institutions, primarily the Council of Europe and the EU?
- 9) What are the stages in the procedure for transferring a prosecutor to another office, particularly to a higher-level position? Which entities are involved, and what is their role?
- 10) What are the criteria for candidates being transferred to a higher-level position? Which entities assess compliance with these criteria, and how?
- 11) How has the procedure for transferring prosecutors and the relevant criteria functioned over time? What weaknesses have been identified? How were they assessed by international institutions, primarily the Council of Europe and the EU?
- 12) Do individuals have the right to appeal decisions denying them appointment or transfer (particularly to higher-level positions)? If yes, on what grounds and what are the outcomes of such appeals?
- 13) What are the grounds and sanctions for disciplinary liability of prosecutors? What are the stages of the disciplinary procedure? Which entities are involved, and what is their role?
- 14) How have the grounds and procedure for disciplinary liability of prosecutors functioned over time? What weaknesses have been identified? How were they assessed by international institutions, primarily the Council of Europe and the EU?
- 15) What are the stages of the appointment procedure for managerial positions in the prosecution (excluding the Prosecutor General)? Which offices at all levels does it apply to? Which entities are involved, and what is their role?
- 16) What are the eligibility criteria for managerial candidates (excluding the Prosecutor General)? Can non-prosecutors be appointed (e.g., lawyers, judges, other legal professionals)? Which entities assess compliance with the criteria, and how?

- 17) How is gender equality ensured in the appointment of managerial positions (excluding the Prosecutor General)? Are any positive measures applied for female candidates (e.g., quotas or provisions ensuring selection in cases of equal merit)? If yes, how are they implemented?
- 18) How has the procedure for appointing prosecutors to managerial positions and the relevant criteria functioned over time? What weaknesses have been identified? How were they assessed by international institutions, primarily the Council of Europe and the EU?
- 19) Is a reserve list of candidates for managerial positions (excluding the Prosecutor General) maintained? If yes, what are the key elements and procedures? How effective is this practice? Have there been any appeals from those excluded, and what were the outcomes?
- 20) Describe the mandatory training for managerial candidates or newly appointed managers.
- 21) Do heads of prosecutor's offices (excluding the Prosecutor General) bear disciplinary liability for ineffective management (e.g., failure to achieve organizational goals, low performance of subordinates, or other organizational shortcomings)? If yes, what are the qualifying conditions and are there specific sanctions? If not, do they bear other forms of liability and under what procedures? Which entities assess compliance, and how?

Appointment and dismissal of the Prosecutor General

- 22) What are the stages in the appointment procedure for the Prosecutor General? Which entities are involved, and what is their role? Who holds de facto veto power over the selection?
- 23) What are the eligibility criteria for candidates for the Prosecutor General? Which entities assess compliance, and how?
- 24) How has the appointment procedure and the relevant criteria for the Prosecutor General functioned over time? What weaknesses have been identified? How were they assessed by international institutions, primarily the Council of Europe and the EU?
- 25) Are general grounds for disciplinary liability applicable to the Prosecutor General? If not, are there special grounds or procedures for holding the Prosecutor General accountable, including through dismissal?
- 26) What are the grounds for early dismissal of the Prosecutor General, and under which legal act are they defined?
- 27) What are the stages in the early dismissal procedure for the Prosecutor General? Which entities are involved, and what is their role? Who holds de facto veto power over dismissal?
- 28) How has the early dismissal procedure and relevant grounds for the Prosecutor General functioned over time? What weaknesses have been identified? How were they assessed by international institutions, primarily the Council of Europe and the EU?

Prosecutorial Self-Government Bodies

- 29) List the prosecutorial self-governing bodies, their legal status, and their relationship with each other and with the prosecution service.
- 30) Describe their composition, terms of office, and the procedures for selecting their members.
- 31) What are the eligibility criteria for candidates for self-governing bodies? Which entities assess compliance, and how?
- 32) How has the procedure for selecting members of self-governing bodies and the relevant criteria functioned over time? What weaknesses have been identified? How were they assessed by international institutions, primarily the Council of Europe and the EU?

- 33) Provide a comprehensive list of powers of self-governing bodies regarding:
- Initial selection of prosecutors,
 - Transfer of prosecutors (including to higher-level positions),
 - Selection of candidates for managerial positions (excluding the Prosecutor General),
 - Disciplinary functions,
 - Participation in selection of the Prosecutor General,
 - Participation in early dismissal of the Prosecutor General.
- 34) Do prosecutorial self-governing bodies have formal procedures (beyond legislation) and/or soft tools (guidelines, methodologies, best practices) that structure the execution of powers listed above in point 33? If yes, list and briefly describe them, indicating who adopted them and for what purpose.
- 35) Do other institutions assist the self-governing bodies in executing the powers listed in point 33? If yes, list them and explain their status, relationship with the self-governing bodies and prosecution, and their role.
- 36) Do the prosecutorial self-governing bodies have separate funding and a secretariat staffed with personnel outside the prosecution service?
- 37) Who approves the structure of the secretariat and selects its personnel? What units comprise the secretariat, and what are their functions?
- 38) Do self-governing bodies have a unit responsible for interaction with the parliament, government, or president? If yes, briefly describe its role and functions.

III. Comparative summary

16. For comparison, the project “Fostering Human Rights in the Criminal Justice System in Ukraine – Phase II” selected six countries that are members of the Council of Europe: Latvia, Moldova, Montenegro, Serbia, Slovenia, and Portugal.
17. Latvia, Slovenia, and Portugal are also EU members (since 2004 and 1986, respectively).
18. Moldova, Montenegro, and Serbia are also candidates for EU membership (since 2022, 2010, and 2012, respectively).
19. Latvia and Moldova, like Ukraine, were part of the USSR until 1991. Montenegro, Serbia and Slovenia were part of the Socialist Federal Republic of Yugoslavia, which operated under communist ideology and a one-party system (although Yugoslavia was not a member of the Warsaw Pact).

A. General Overview of the Prosecution Service and its Self-Governance

20. There is no single approach to organising prosecutorial services on the European continent, or even within the EU itself. However, despite differences in legal systems and political cultures across Europe, *“sufficient autonomy must be ensured to shield prosecutorial authorities from undue political influence”*²⁰.
21. In Slovenia and Portugal, the prosecution services are part of the executive branch, however, they enjoy significant autonomy from the government. In Latvia and Moldova, the prosecution service is part of the judicial branch, whereas in Montenegro and Serbia, it is not part of any branch of government.
22. Self-governing bodies provide an essential guarantee of the independence of prosecutorial services. This is especially evident in Moldova, Montenegro, Serbia, and Slovenia. Nevertheless, the Latvian and Portuguese models of prosecutorial self-governance also indicate that these countries have come close to implementing the recommendations initially given by the Venice Commission and later supplemented by the CCPE.
23. It is noteworthy that countries that have recently or relatively recently updated their constitutional provisions regarding prosecutorial services—Montenegro in 2007, Moldova in 2016, and Serbia in 2022—have included provisions in their constitutions concerning the status and powers of prosecutorial councils, as well as strengthened guarantees for the independence of prosecutors, especially the Prosecutor General.
24. Mainly, the organisation and operation of prosecution services are defined by comprehensive laws (or several laws, as in Serbia and Montenegro), which regulate in detail every aspect of the functioning of both the prosecution bodies and their self-governing bodies. Even in Portugal, whose prosecution service has a history spanning two centuries, the law on the prosecution service was

²⁰ The Rule of Law Checklist, para 91. Source: https://www.venice.coe.int/images/SITE%20IMAGES/Publications/Rule_of_Law_Check_List.pdf

adopted in 2019 and most recently updated in 2025. However, Moldova, Montenegro, and Serbia have fairly detailed provisions regarding prosecution services and their self-governing bodies at the constitutional level.

B. Prosecutors' Career

25. The initial selection of prosecutors is a fairly similar process across all reviewed countries conducted by self-governing bodies. The law specifies a clear list of requirements for candidates, and the procedure includes a background check, testing of professional knowledge and skills, and an interview. Afterward, candidates for the position of prosecutor must undergo mandatory training (ranging from several months in Montenegro to 18 months in Moldova; however, in Moldova and Slovenia, the mandatory training takes place before the competitive selection), as well as an internship (from several months in Latvia to 11 months in Portugal; in Serbia and Slovenia internships are not required). The results of the internship play a key role in the selection process in those countries where it is implemented. In Portugal, there is also a probationary period (18 months).
26. It is noteworthy that in Latvia and Slovenia, there are age requirements for candidates (25 and 30 years old, respectively).
27. Promotion in all reviewed countries takes place through a competitive process conducted by self-governing bodies. The procedures for these competitions are quite similar and include an assessment of the prosecutor's knowledge and experience, as well as their ability to meet the requirements of the new position. The results of regular performance evaluations play an important role in this process.
28. Appointments to managerial positions are made through a competitive process that includes an assessment of candidates based on both formal information accumulated in their dossiers during their service and structured or semi-structured interviews with the candidate. Notably, in Montenegro, Serbia, and Slovenia, candidates are required to submit a management program that they intend to follow in the position. The evaluation of these programs plays an important role in the competition process. Competitions are conducted by self-governing bodies, however, prosecution authorities and executive bodies also have the opportunity to express their opinion regarding the candidate (Latvia, Slovenia, Portugal). In Moldova, Montenegro, and Serbia, candidates who are not prosecutors are also eligible to apply for managerial positions in the prosecution service.
29. Only in Moldova and Portugal is there a reserve list of candidates for managerial positions.
30. The grounds, procedures for disciplinary liability, and disciplinary sanctions are also quite similar in all reviewed countries. At the same time, it is worth noting the exceptionally detailed description and categorisation of the grounds for disciplinary liability in Montenegro, Serbia, Slovenia, and Portugal.
31. In all countries, the heads of the prosecution service, including the Prosecutor General, bear the same disciplinary responsibility as other prosecutors. Although they may lose their managerial position due to poor performance, this aspect is not covered by disciplinary procedures but is instead part of the performance evaluation system for managers.

C. Appointment and dismissal of the Prosecutor General

32. Every country examined has implemented measures intended to reduce political influence in the role of Prosecutor General. This even applies to Latvia and Portugal, which have been EU members for more than 20 and almost 40 years, respectively.
33. First and foremost, this refers to the introduction of a competitive selection process for the position of Prosecutor General, which is carried out by prosecutorial self-governing bodies (Moldova, Montenegro, Serbia, Slovenia, and in Latvia by the High Council of Justice), or at least assigns some technical role in this process to prosecutorial self-governing bodies (Portugal).
34. In almost all countries (Latvia, Moldova, Montenegro, Serbia, and Slovenia), the self-governing bodies are fully responsible for selecting candidates, whose names (one or several) are then submitted to political bodies for appointment (usually to the parliament, less often to the president).
35. It is also essential that several countries (Latvia, Moldova, Montenegro, Serbia, Slovenia) have introduced reliable safeguards against the arbitrary early dismissal of the Prosecutor General: in Latvia, this can occur only after an official investigation conducted by the Chief Justice of the Supreme Court; in Moldova, Montenegro, Serbia, and Slovenia—only following an official investigation and a corresponding negative report from the prosecutorial council. As emphasized by the Court in the case of the prematurely dismissed Prosecutor General of Moldova, effective judicial review must be ensured for decisions concerning the suspension or dismissal from such a position²¹.
36. At the same time, in Portugal, it is still possible to dismiss the Prosecutor General for political reasons.

D. Prosecutorial Self-Government Bodies

37. In all the countries reviewed, some form of prosecutorial self-government has been in place for a while. In Latvia and Portugal, self-governing bodies are integral components of the Office of the Prosecutor General, whereas in Moldova, Montenegro, Serbia, and Slovenia, they are separate institutions. Additionally, in Moldova, Montenegro, Serbia, and Slovenia, the prosecutorial council has an independent budget from the prosecution service.
38. Self-governing bodies are composed either exclusively of prosecutors (Latvia) or have a mixed composition (Moldova, Montenegro, Serbia, Slovenia, Portugal), meaning that membership includes individuals who do not work in the prosecution service or even in the government.
39. In Latvia, Montenegro (partially), Serbia (partially), and Portugal (partially), the membership of prosecutors and/or other public officials (Moldova, Montenegro, Serbia, Slovenia—partially) in self-governing bodies is based on the *ex officio* principle. While in Moldova (partially), Montenegro (partially), Serbia (partially), Slovenia (partially), and Portugal (partially), prosecutors delegate members to their positions through internal elections. In Moldova, Montenegro, Serbia, Slovenia, and Portugal, lay members are delegated by political or governmental institutions (parliament, government, minister of justice, etc.). In all countries except Portugal, prosecutor members and lay

²¹ Case of Stoianoglo v. the Republic of Moldova, application 19371/22, Judgment of 24 October 2023. Source: <https://hudoc.echr.coe.int/eng?i=002-14224>

members have equal status. Only Moldova, Montenegro, and Serbia have specific requirements for membership. Moreover, in Moldova, candidates must undergo vetting, which is conducted by a specially created commission responsible for the integrity of members of the judicial and prosecutorial councils.

40. The powers of self-governing bodies are pretty extensive. Still, they are primarily focused on matters concerning the careers of prosecutors, including initial selection, promotion (including to managerial positions), performance evaluation, disciplinary action, and dismissal. Additionally, in Montenegro, Serbia, Slovenia, and Portugal, self-governing bodies play an essential role in determining the budget of the prosecution service, its organisational structure, and staffing levels. They also provide their opinions on legislative proposals related to the functioning of the prosecution services (Serbia, Slovenia, Portugal) and on broader aspects of the justice system's operation (Portugal).
41. It is essential that in each country, self-governing bodies carry out their functions, in part, based on the provisions, rules, and procedures that they have adopted for themselves. In Serbia and Slovenia, the prosecutorial council also approves the code of ethics for prosecutors.
42. In several of the countries, there are technical bodies established by self-governing bodies to carry out certain functions or to assist in their implementation: in Latvia, these are the attestation and qualification commissions; in Moldova—the attestation commission, inspectorate, and disciplinary board; in Montenegro—the disciplinary board and evaluation commission; in Slovenia—the ethics and integrity commission; and in Portugal—the inspectorate.
43. However, the key assistance in carrying out the functions assigned to self-governing bodies is provided either by the relevant unit of the prosecution service (Latvia, Portugal) or by a secretariat (Moldova, Montenegro, Serbia, Slovenia), which is built inside the self-governing bodies.

E. Conclusions

44. Each of the countries under review has valuable experience in operating self-governing bodies. At the same time, the knowledge of the EU candidate countries (Moldova, Montenegro, Serbia) is the most relevant. There are several reasons.
45. First, the European Commission will demonstrate a unified approach to assessing the progress of all EU candidates. Second, the European Commission's screening and the Rule of Law Roadmap approved by the Ukrainian government address precisely those aspects of the functioning of prosecutorial self-governing bodies that have already been implemented to some extent in the selected EU candidates (Moldova, Montenegro, Serbia): a strong institutional foundation, a broad set of powers, a developed system for selecting members, and the functioning of technical satellite bodies of the prosecutorial councils.
46. Finally, Ukraine, along with Moldova, Montenegro, and Serbia, shares a similar historical experience from the second half of the 20th century (particularly in the functioning of state institutions, especially those related to the justice system), the legacy of which they are now trying to overcome.

47. The experience of Slovenia is particularly noteworthy given its prosecutorial council model closely aligns with those of EU candidate countries, in addition to its longstanding operation and recent reforms. Furthermore, the selection procedures for the Prosecutor General post in Latvia and Portugal also deserve significant attention.

IV. European Standards and Best Practices

48. The analysis presented below primarily focuses on the fact that, in 1995, Ukraine assured the Parliamentary Assembly of the Council of Europe that it was able and willing to fulfill the obligations of a Council member, in particular, to sincerely and effectively cooperate in achieving the Council's objectives. Among other things, Ukraine committed to transforming the prosecutor's office "*into a body which is in accordance with Council of Europe standards*"²². The 2012 Criminal Procedure Code, the 2014 Law on the Prosecutor's Office, and the 2016 Constitutional amendments regarding justice were adopted to fulfill these obligations.
49. European standards can primarily be found in the Convention, as well as in the case law of the Court, other Council of Europe conventions; EU treaties and acts, as well as the case law of the CJEU; the United Nations Guidelines on the Role of Prosecutors from 1990; the Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors of the International Association of Prosecutors from 1999; Recommendation Rec(2000)19 of the Committee of Ministers of the Council of Europe to member states on the role of public prosecution in the criminal justice system; Parliamentary Assembly of the Council of Europe Recommendation No. 1604 (2003) on the role of the public prosecutor's office in a democratic society governed by the rule of law; the European Guidelines on Ethics and Conduct for Public Prosecutors from 2005 (Budapest Guidelines); the report of the European Commission for Democracy through Law (Venice Commission) on European standards of judicial independence: Part II – the Prosecution Service; the "Bordeaux Declaration" of the Consultative Council of European Judges and the Consultative Council of European Prosecutors on "Judges and Prosecutors in a Democratic Society"; and the opinions of the CCPE.
50. In its annual EU Rule of Law Report, the European Commission also primarily refers to Council of Europe standards when assessing the functioning of prosecution services in EU member states.

A. Career of the Prosecutors

Appointment and tenure

51. According to the Rome Charter, the recruitment and career progression of prosecutors, including promotion, mobility, disciplinary action, and dismissal, should be regulated by law and governed by transparent and objective criteria, through impartial procedures that exclude any discrimination and allow for unbiased review. The highest level of professional skills and integrity is a prerequisite for an effective prosecution service and public trust in that service²³. Initially, this standard was established by the Venice Commission²⁴.

Qualification requirements

²² Opinion 190 (1995), Parliamentary Assembly, Application by Ukraine for membership of the Council of Europe, para 11.6. Source: <https://pace.coe.int/en/files/13929/html>

²³ Opinion №9 (2014) of the Consultative Council of European Prosecutors on European norms and principles concerning prosecutors, Articles XII, XIII. Source: <https://rm.coe.int/168074738b>

²⁴ Opinion on the Draft amendments to the Law on the Public Prosecution of Serbia, CDL-AD(2013)006-e, para 34. Source: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2013\)006-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2013)006-e) ;

52. In the Venice Commission's and the CCPE's opinions, the profession of prosecutor should be open to all those who have followed law studies satisfactorily, have passed the necessary prosecutor examinations, and have had the required training. Several requirements are appropriate and in line with European standards^{25,26}

- general requirements such as citizenship, a good medical record, professional competence, the bar exam, and the absence of any criminal proceedings;
- additional requirements, including subjective personality criteria such as personal integrity, a faultless reputation, and, to a certain degree, observance of the rules and standards of professional ethics, especially in a younger democracy, need to be ensured so that these subjective criteria contribute to efficiency and do not allow for bias and abuse.

53. However, it seems extraordinary that physical appearance should be a valid criterion for suitability for appointment as a prosecutor. In any case, the criteria should not be vague²⁷ or exclude anyone on any ground, such as gender, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, or other status.

Appointing body and procedure

54. As the CCPE stressed, the appointment of prosecutors should be regulated by law at the highest possible level and through clear and understandable processes and procedures. Recruitment bodies should be selected based on competence and skills, and they should discharge their functions impartially and based on objective criteria²⁸.

55. The Venice Commission concludes that²⁹:

²⁵ Opinion on the draft Law on the High Judicial and Prosecutorial Council of Bosnia and Herzegovina, CDL-AD(2014)008-e, para 73. Source: <https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD%282014%29008-e> ; Opinion on the Draft Organic Law of the Public Prosecutor's Office of Bolivia, CDL-AD(2011)007-e, para 26. Source: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2011\)007-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2011)007-e) ; Joint Opinion on the draft Law on the Prosecution Service of the Republic of Moldova, CDL-AD(2015)005-e, para 102. Source: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2015\)005-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2015)005-e)

²⁶ Opinion №9 (2014) of the Consultative Council of European Prosecutors on European norms and principles concerning prosecutors, Explanatory Note, para 51.

²⁷ Opinion on the Draft amendments to the Law on the Public Prosecution of Serbia, CDL-AD(2013)006-e, para 32. Source: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2013\)006-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2013)006-e)

²⁸ Opinion №9 (2014) of the Consultative Council of European Prosecutors on European norms and principles concerning prosecutors, Explanatory Note, paras 51-52.

²⁹ Opinion on the Constitution of Montenegro, CDL-AD(2007)047-e, para 104. Source: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2007\)047-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2007)047-e) ; Opinion on the Draft Amendments to the Law on the State Prosecutor of Montenegro, CDL-AD(2008)005-e, paras 12, 32. Source: <https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD%282008%29005-e> ; Interim Opinion on the Draft Law on the State Prosecution Office of Montenegro, CDL-AD(2014)042-e, paras 74, 78. Source: <https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD%282014%29042-e> ; Report on European Standards as regards the Independence of the Judicial System: Part II — the Prosecution Service, CDL-AD(2010)040, para 48. Source: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2010\)040-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2010)040-e) ; Opinion on the draft Law on the High Judicial and Prosecutorial Council of Bosnia and Herzegovina, CDL-AD(2014)008-e, para 76. Source: <https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD%282014%29008-e> ; Opinion on the Draft amendments to the

- appointments and dismissals by parliament with no qualified majority are not in conformity with European standards;
- as much competence as possible in relation to appointment and removal issues should rest with the Prosecutorial Council rather than the Parliament;
- it is welcome that state prosecutors and heads of state prosecution offices will be appointed (for five years, as stipulated by the Constitution) by the Prosecutorial Council;
- the appointment process starts with a public announcement of vacancies that must be well-publicised;
- publishing the list of candidates is to be welcomed;
- background checks on candidate public prosecutors who have passed the proficiency test and are, in principle, appropriate;
- assessment of candidates' performance at examinations and interviews is a necessary part of any system in which appointments based on merit are made;
- to guarantee impartiality and fairness in the procedure for electing state prosecutors, some outside input would be desirable;
- the decisions should be reasoned in a way that shows that decisions were based on objective criteria and upon considering all reasons for the proper decision, while preserving the discretion right of the appointing bodies on the merit of the evaluation of candidates and the choice to appoint a particular candidate;
- an appeal to a court of law should be guaranteed to the candidates.

Promotions, transfers, secondments

56. As in the case of recruitments, promotion and the transfer of prosecutors are carried out according to fair and impartial procedures and excluding discrimination on any ground such as gender, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, or other status, and need to be governed by transparent and objective criteria, such as competence and experience. The mobility of prosecutors is also governed by the needs of the service, but the ability to transfer a prosecutor without his/her consent should be governed by law and limited to exceptional circumstances such as the strong need of the service (equalising workloads, etc.) or disciplinary actions in cases of particular gravity, but should also take into account the views, aspirations and specialisations of the prosecutor and his/her family situation³⁰.

Law on the Public Prosecution of Serbia, CDL-AD(2013)006-e, para 31. Source: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2013\)006-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2013)006-e) ; Joint Opinion on the Draft Law on the Public Prosecutor's Office of Ukraine, CDL-AD(2013)025-e, para 110. Source: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2013\)025-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2013)025-e) ; Opinion on the draft Law on the High Judicial and Prosecutorial Council of Bosnia and Herzegovina, CDL-AD(2014)008-e, para 78. Source: <https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD%282014%29008-e> ; Bosnia and Herzegovina — Opinion on the draft Law on amendments to the Law on the High Judicial and Prosecutorial Council, CDL-AD(2021)015-e, para 69. Source: <https://venice.coe.int/webforms/documents/?pdf=CDL-AD%282021%29015-e>

³⁰ Opinion №9 (2014) of the Consultative Council of European Prosecutors on European norms and principles concerning prosecutors, Explanatory Note, paras 51, 70.

57. The Venice Commission concludes that³¹:

- the procedure for promotion is no less important than the first appointment to ensure the independence of prosecutors, so the competition is required;
- the reserve lists could be established;
- forced secondment or transfers can endanger the prosecutor's independence, the potential risks should be balanced by safeguards provided by law such as the right to appeal to the self-government body.

Equality between men and women

58. As heads of state and government, gathered in May of 2023 to stand united against Russia's war of aggression against Ukraine, put in the Reykjavík Declaration: *"gender equality and the full, equal and effective participation of women in public and private decision-making processes are essential to the rule of law, democracy and sustainable development"*³². So, they commit to the Reykjavík Principles and will *"ensure full, equal and meaningful participation in political and public life for all, in particular for women and girls"*³³.

CoE standards

59. The CoE has *"[a]n impressive range of conventions, recommendations and resolutions"* which *"aimed at achieving the advancement and empowerment of women and the effective realisation of gender equality in member States and beyond"*³⁴.

60. According to Article 1 of the Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms, the enjoyment of any right set forth by law shall be secured without discrimination on any ground, including sex. This reaffirms the principle of non-discrimination of the Convention (Article 14). It also reiterates that it does not prevent States Parties from taking measures to promote full and effective equality, if there is an objective and reasonable justification for those measures³⁵.

³¹ Poland — Opinion on the Act on the Public Prosecutor's office, as amended, CDL-AD(2017)028, paras 85-86. Source: [https://venice.coe.int/webforms/documents/?pdf=CDL-AD\(2017\)028-e](https://venice.coe.int/webforms/documents/?pdf=CDL-AD(2017)028-e) ; Opinion on the Draft Amendments to the Law on the State Prosecutor of Montenegro, CDL-AD(2008)005, paras 45, 48. Source: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2008\)005-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2008)005-e) ; Interim Opinion on the Draft Law on the State Prosecution Office of Montenegro, CDL-AD(2014)042, para 80. Source: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2014\)042-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2014)042-e) ; Opinion on the Draft Law on Judges and Prosecutors of Turkey, CDL-AD(2011)004, paras 48-49. Source: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2014\)042-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2014)042-e)

³² Reykjavík Declaration, p. 7. Source: <https://rm.coe.int/4th-summit-of-heads-of-state-and-government-of-the-council-of-europe/1680ab40c1> ; Opinion on the Draft Law on the Public Prosecutors Office and the Draft Law on the Council of Public Prosecutors of "the former Yugoslav Republic of Macedonia", CDL-AD(2007)011, para 47. Source: <https://www.coe.int/en/web/venice-commission/-/cdl-pi-2022-023-e>

³³ Ibid, Appendix III (Reykjavík Principles for Democracy), p. 16.

³⁴ Council of Europe Gender Equality Strategy 2024-2029, p. 11. Source: <https://rm.coe.int/prems-073024-gbr-2573-gender-equality-strategy-2024-29-txt-web-a5-2756/1680afc66a>

³⁵ Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms. Source: <https://rm.coe.int/1680080622>

61. The Court has “stressed on many occasions that the advancement of the equality of the sexes is a major goal in the member States of the Council of Europe. This means that, outside the context of transitional measures designed to correct historic inequalities ..., very weighty reasons would have to be advanced before a difference in treatment on the grounds of sex could be regarded as being compatible with the Convention ... Consequently, where a difference in treatment is based on sex, the margin of appreciation afforded to the State is narrow, and in such situations the principle of proportionality does not merely require that the measure chosen should in general be suited to the fulfilment of the aim pursued, but it must also be shown that it was necessary in the circumstances...” (case references omitted)³⁶.

62. Accordingly, “very weighty reasons have to be put forward before a difference in treatment on grounds of sex can be regarded as compatible with the Convention” and “[r]eferences to traditions, general assumptions, prevailing social attitudes or financial interests in a particular country are insufficient justification for a difference in treatment on grounds of sex”³⁷.

63. Meanwhile, the Court holds that

“Article 14 does not prohibit a member State from treating groups differently in order to correct “factual inequalities” between them; indeed, in certain circumstances a failure to attempt to correct inequality through different treatment may in itself give rise to a breach of the Article [14] ... A difference of treatment is, however, discriminatory if it has no objective and reasonable justification; in other words, if it does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be realised. The Contracting State enjoys a margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a different treatment ...

The scope of this margin will vary according to the circumstances, the subject matter, and the background ... As a general rule, very weighty reasons would have to be put forward before the Court could regard a difference in treatment based exclusively on the ground of sex as compatible with the Convention ... On the other hand, a wide margin is usually allowed to the State under the Convention when it comes to general measures of economic or social strategy ... Because of their direct knowledge of their society and its needs, the national authorities are in principle better placed than the international judge to appreciate what is in the public interest on social or economic grounds, and the Court will generally respect the legislature’s policy choice unless it is “manifestly without reasonable foundation”” (case references omitted)^{38,39}

64. The Committee of Ministers of the CoE in Recommendation Rec(2003)3 calls on the Member States to consider the following measures:

“A. Legislative and administrative measures

³⁶ Case of Jurčić v. Croatia, application №54711/15, Judgment of 4 February 2021, para 65. Source: <https://hudoc.echr.coe.int/eng?i=001-207633>

³⁷ Key Theme – Article 14 Gender equality, ECHR-KS, p.1. Source: <https://ks.echr.coe.int/documents/d/echr-ks/gender-equality>

³⁸ Case of Stec and Others v. the United Kingdom, applications №№ 65731/01 and 65900/01, [GC], Judgment of 12 April 2006, paras 51-52. Source: <https://hudoc.echr.coe.int/eng?i=001-73198>

³⁹ Case of Andrlle v. the Czech Republic, application №6268/08, Judgment of 17 February 2011. Source: <https://hudoc.echr.coe.int/eng?i=001-103548>

...

9. consider adopting appropriate legislative and/or administrative measures to ensure that there is gender-balanced representation in all appointments made by a minister or government to public committees;

10. ensure that there is a gender-balanced representation in posts or functions whose holders are nominated by government and other public authorities;

11. ensure that the selection, recruitment and appointment processes for leading positions in public decision making are gender sensitive and transparent;

12. make the public administration exemplary both in terms of a gender-balanced distribution of decision-making positions and in equal career development for women and men;

...

B. Supportive measures

...

19. consider the setting up of a data bank of women willing to serve in political and public decision-making positions;

...

21. develop and support mentoring/work-shadowing programmes, confidence building, leadership and media training for women considering entering political and public decision making;

...

28. support programmes initiated by the social partners (employers' and workers' organisations) to promote balanced participation of women and men in positions of responsibility and decision-making, within their own ranks and in the context of collective bargaining;

...

36. promote research on the obstacles which prevent women's access to political and public decision-making at the different levels and publish the results"⁴⁰.

65. It should be noted that for Recommendation Rec(2003)3, 'balanced participation of women and men' is understood to mean that the representation of either women or men in any decision-making body in political or public life should not fall below 40%.

66. The provisions of Recommendation Rec(2003)3 were further strengthened by Recommendations CM/Rec(2007)17⁴¹ and CM/Rec(2010)10⁴², which also strongly emphasize the critical role of women and men in conflict prevention, resolution, and peacebuilding.

67. Finally, the CCPE in Opinion No. 20 (2025) on diversity and inclusivity within prosecution services reminds that the recruitment and career progression of prosecutors should be implemented on the basis of the candidates' skills, merit, integrity, ethical values, and other objective criteria, as well as being free from any kind of discrimination. Consequently, the promotion of diversity and inclusivity

⁴⁰ Appendix to Recommendation Rec(2003)3 on balanced participation of women and men in political and public decision making. Source: <https://search.coe.int/cm?i=09000016805e0848>

⁴¹ Recommendation CM/Rec(2007)17 on gender equality standards and mechanisms. Source: <https://search.coe.int/cm?i=09000016805d4aa3>

⁴² Recommendation CM/Rec (2010)10 on the role of women and men in conflict prevention and resolution and in peace building. Source: <https://search.coe.int/cm?i=09000016805cea74>

should be complementary to and not compromise the importance of the professional skills of prosecutors⁴³.

68. Meanwhile, the CCPE in that Opinion also calls for the deployment of legislation and regulations, as well as policy instruments and initiatives (practical actions and measures), to promote and encourage diversity and inclusivity within prosecution services. Policy instruments and initiatives include, in particular, policy strategies that have a specific focus on individual protected grounds, personnel recruitment and management policies or guidelines, creation and operation of an organisational infrastructure, in relation to gender equality and mainstreaming related arrangements including those for work-life balance, for the right to disconnect, for family friendly approaches to work organisation such as leave arrangements, job sharing, remote working, reduced hours, breast-feeding facilities, menopause policy, time off without loss of pay for medical visits, childcare support and other measures⁴⁴.

EU law

69. Like the CoE, the EU has a robust system of instruments, encompassing primary and secondary law, dedicated to eliminating inequalities and promoting equality between men and women.
70. According to Article 23 of the Charter, equality between women and men must be ensured in all areas, including employment, work, and pay. The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex.
71. In addition, TFEU tasks the EU with eliminating inequalities and promoting equality between men and women in all of its activities (Article 8); provides for the adoption of legislation to combat all forms of discrimination, including based on sex (Article 19); allows the EU to act in the wider area of equal opportunities and equal treatment in employment matters (Article 153), and within this framework, authorises positive action to empower women (Article 157).
72. As a general rule, prescribed by the Directive 2006/54/EC, there shall be no direct or indirect discrimination on grounds of sex in the public or private sectors, including public bodies, in relation to conditions for access to employment, to self-employment or to occupation, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, including promotion, employment and working conditions, including dismissals, as well as pay (Article 14(1)(a),c)⁴⁵. Additionally, Directive (EU) 2023/970 reinforces the application of the principle of equal pay for equal work or work of equal value between men and women through enhanced pay transparency and strengthened enforcement mechanisms⁴⁶.

⁴³ Opinion No. 20 (2025) on diversity and inclusivity within prosecution services, para 10. Source: <https://rm.coe.int/opinion-no-20-2025-of-the-ccpe/488028f8f9>

⁴⁴ Ibid, paras 30, 34, 36, 41.

⁴⁵ Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast). Source: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32006L0054>

⁴⁶ Directive (EU) 2023/970 of the European Parliament and of the Council of 10 May 2023 to strengthen the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanisms (Text with EEA relevance). Source: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32023L0970>

73. But, as the European Parliamentary Research Service reminds, “EU law allows positive discrimination ... only as an exception to the principle of non-discrimination, and therefore in a quite restrictive manner. Even with these limitations, 'positive action, with the best of intentions, may end up disproportionately disadvantaging men'. To avoid this situation, CJEU has ruled on several cases of positive action, clarifying a series of principles and criteria that rigorously circumscribe Member States' action in the area”⁴⁷.

74. In its judgments, the CJEU declared that EU law

*“precludes national rules such as those in the present case which, where candidates of different sexes shortlisted for promotion are equally qualified, automatically give priority to women in sectors where they are underrepresented, under-representation being deemed to exist when women do not make up at least half of the staff in the individual pay brackets in the relevant personnel group or in the function levels provided for in the organization chart”*⁴⁸;

*“1. ... preclude national legislation under which a candidate for a public post who belongs to the under-represented sex and possesses sufficient qualifications for that post must be chosen in preference to a candidate of the opposite sex who would otherwise have been appointed, where this is necessary to secure the appointment of a candidate of the under-represented sex and the difference between the respective merits of the candidates is not so great as to give rise to a breach of the requirement of objectivity in making appointments”*⁴⁹.

75. Meanwhile, the CJEU states that EU law

*“3. ... does not preclude a rule of national case-law under which a candidate belonging to the under-represented sex may be granted preference over a competitor of the opposite sex, provided that the candidates possess equivalent or substantially equivalent merits, where the candidatures are subjected to an objective assessment which takes account of the specific personal situations of all the candidates”*⁵⁰;

“a national rule which, in a case where there are fewer women than men at the level of the relevant post in a sector of the public service and both female and male candidates for the post are equally qualified in terms of their suitability, competence and professional performance, requires that priority be given to the promotion of female candidates unless reasons specific to an individual male candidate tilt the balance in his favour is not precluded by [EU law], provided that:

⁴⁷ EU gender equality policy: Beneficial for both women and men / European Parliamentary Research Service, Ionel Zamfir (Members' Research Service), PE 766.269 – November 2024, p. 4. Source: [https://www.europarl.europa.eu/RegData/etudes/BRIE/2024/766269/EPRS_BRI\(2024\)766269_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2024/766269/EPRS_BRI(2024)766269_EN.pdf)

⁴⁸ Case C-450/93, Judgment of the Court of 17 October 1995. Source: <https://curia.europa.eu/juris/showPdf.jsf?text=&docid=99475&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=5454330>

⁴⁹ Case C-407/98, Judgment of the Court of 6 July 2000. Source: <https://curia.europa.eu/juris/document/document.jsf?text=&docid=45065&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=5778631>

⁵⁰ Ibid.

- *in each individual case the rule provides for male candidates who are equally as qualified as the female candidates a guarantee that the candidatures will be the subject of an objective assessment which will take account of all criteria specific to the candidates and will override the priority accorded to female candidates where one or more of those criteria tilts the balance in favour of the male candidate, and*
- *such criteria are not such as to discriminate against the female candidates*⁵¹.

“[EU law] does not preclude a national rule which

- *in sectors of the public service where women are under-represented, gives priority, where male and female candidates have equal qualifications, to female candidates where that proves necessary for ensuring compliance with the objectives of the women's advancement plan, if no reasons of greater legal weight are opposed, provided that that rule guarantees that candidatures are the subject of an objective assessment which takes account of the specific personal situations of all candidates,*
- *prescribes that the binding targets of the women's advancement plan for temporary posts in the academic service and for academic assistants must provide for a minimum percentage of women which is at least equal to the percentage of women among graduates, holders of higher degrees and students in each discipline,*
- *in so far as its objective is to eliminate under-representation of women, in trained occupations in which women are under-represented and for which the State does not have a monopoly of training, allocates at least half the training places to women, unless despite appropriate measures for drawing the attention of women to the training places available there are not enough applications from women,*
- *where male and female candidates have equal qualifications, guarantees that qualified women who satisfy all the conditions required or laid down are called to interview, in sectors in which they are under-represented,*
- *relating to the composition of employees' representative bodies and administrative and supervisory bodies, recommends that the legislative provisions adopted for its implementation take into account the objective that at least half the members of those bodies must be women*⁵².

76. It should be borne in mind that “[w]hile EU legislation permits positive action under the conditions described above, it does not oblige Member States to undertake it. Member States, therefore, have the freedom to adopt positive action measures or not, and this is reflected in the diversity of approaches they implement in practice. According to a 2019 study carried out for the European Commission, ‘in a significant majority of states, tie-break policies are legally permitted, although there is a significant minority of states in which such a policy appears not to be permitted’. The same study

⁵¹ Case C-409/95, Judgment of the Court of 11 November 1997. Source: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61995CJ0409>

⁵² Case C-158/97, Judgment of the Court of 28 March 2000. Source: <https://eur-lex.europa.eu/legal-content/ET/TXT/?uri=CELEX:61997CJ0158#DI>

notes that there are considerable difficulties with the application of the tie-break principle in practice, as it is not easy to find two perfectly equally qualified candidates”⁵³.

77. The EU itself adopted the specific positive action in the recruitment of women as early as the adoption of the Directive (EU) 2022/2381⁵⁴. This Directive aims to achieve a more balanced representation of women and men among the directors of listed companies. Despite the provision of specific target quotas, the Directive stipulates that, as regards the selection of candidates for appointment or election to director positions, Member States shall ensure that, when choosing between candidates who are equally qualified in terms of suitability, competence and professional performance, priority is given to the candidate of the underrepresented sex unless, in exceptional cases, reasons of greater legal weight, such as the pursuit of other diversity policies, invoked within the context of an objective assessment which takes into account the specific situation of a candidate of the other sex and which is based on non-discriminatory criteria, tilt the balance in favour of the candidate of the other sex (Article 6(2)).

Disciplinary liability

78. As the CCPE stressed⁵⁵, standards and principles of human rights establish that prosecutors are responsible for the performance of their duties and may be subject to disciplinary procedures. States should take measures to ensure that disciplinary proceedings against prosecutors are governed by law and should guarantee a fair and objective evaluation and decision, which should be subject to independent and impartial review. Given their essential role and function, the dismissal of prosecutors should be subject to strict requirements that do not undermine their independent and impartial performance of their activities. In a democratic system under the rule of law, an acquittal of an individual should not result in disciplinary proceedings against the prosecutor responsible for the case (unless the charges were brought due to gross negligence or maliciousness⁵⁶). All guarantees attached to the disciplinary procedures should be applied.

79. The CCPE constantly reminds these notions through its most comprehensive opinions⁵⁷.

Grounds and penalty

80. The Venice Commission concludes that the laws imposing an obligation, the breach of which may result in a penalty, must be drafted clearly and unambiguously, and the following actions —

⁵³ See supra note 40, p. 5-6.

⁵⁴ Directive (EU) 2022/2381 of the European Parliament and of the Council of 23 November 2022 on improving the gender balance among directors of listed companies and related measures (Text with EEA relevance). Source: <https://eur-lex.europa.eu/eli/dir/2022/2381/oj>

⁵⁵ Opinion №9 (2014) of the Consultative Council of European Prosecutors on European norms and principles concerning prosecutors, Explanatory Note, paras 72, 85-87.

⁵⁶ Joint Opinion on the Draft Law on the Public Prosecutor’s Office of Ukraine, CDL-AD(2013)025, para 128. Source: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2013\)025-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2013)025-e)

⁵⁷ Opinion № 13(2018) “Independence, accountability and ethics of prosecutors”, paras 24-25, 47. Source: <https://rm.coe.int/opinion-13-ccpe-2018-2e-independence-accountability-and-ethics-of-pros/1680907e9d> ; Opinion № 9 (2014) on European norms and principles concerning prosecutors, paras 53, 69, 70, 72, 85-89. Source: <https://rm.coe.int/168074738b>

*should lead to disciplinary sanctions*⁵⁸

- abuses and breaches of the provisions of the law;
- severe violations of the duties, gross and inexcusable misbehaviour;
- breaches of the duty of impartiality, acting with bias and prejudice;
- actions in bad faith or in some very improper manner, such, for example, as taking decisions while under the influence of alcohol or drugs;
- long-term absence from work without permission and good reasons;

*should not lead*⁵⁹

- unequal interpretation or application of legislation;
- incorrect application of the law, bona fide mistakes, or contestable procedural moves;
- causing a perception of wrongdoing rather than actually doing it;
- situations which are outside of their control, and which may be reasonably explained by the malfunctioning of the judicial system as a whole;
- excessive backlog and mismanagement of cases and even under-performance should not be automatically equated with a disciplinary violation.

81. It is essential to clarify that the final conviction for a criminal offence does not constitute a disciplinary offence, because *“it is not clear what exactly must be done during the disciplinary procedure, and on which issues the disciplinary body will deliberate. The Commission recalls, as clarified in the past, that there should be a clear separation between criminal and disciplinary liability”*⁶⁰.

82. The penalty must be necessary, adequate, and proportionate to the severity or gravity of the offence committed, and dismissal is reserved only for exceptionally serious cases⁶¹.

⁵⁸ Poland — Opinion on the Act on the Public Prosecutor's office, as amended, CDL-AD(2017)028, para 89. Source: [https://venice.coe.int/webforms/documents/?pdf=CDL-AD\(2017\)028-e](https://venice.coe.int/webforms/documents/?pdf=CDL-AD(2017)028-e); Montenegro — Opinion on the draft amendments to the Law on the State Prosecution Service and the draft law on the Prosecutor's Office for organised crime and corruption, CDL-AD(2021)012, para 54. Source: [https://venice.coe.int/webforms/documents/?pdf=CDL-AD\(2021\)012-e](https://venice.coe.int/webforms/documents/?pdf=CDL-AD(2021)012-e); Opinion on the Draft Law on Judges and Prosecutors of Turkey, CDL-AD(2011)004, paras 48, 63. Source: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2011\)004-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2011)004-e); Bosnia and Herzegovina — Opinion on the draft Law on amendments to the Law on the High Judicial and Prosecutorial Council, CDL-AD(2021)015, paras 55-56. Source: [https://venice.coe.int/webforms/documents/?pdf=CDL-AD\(2021\)015-e](https://venice.coe.int/webforms/documents/?pdf=CDL-AD(2021)015-e)

⁵⁹ Opinion on the draft law on the Public Prosecutors' service of Moldova, CDL-AD(2008)019, para 52. Source: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2008\)019-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2008)019-e); Montenegro — Opinion on the draft amendments to the Law on the State Prosecution Service and the draft law on the Prosecutor's Office for organised crime and corruption, CDL-AD(2021)012, para 54. Source: [https://venice.coe.int/webforms/documents/?pdf=CDL-AD\(2021\)012-e](https://venice.coe.int/webforms/documents/?pdf=CDL-AD(2021)012-e); Opinion on the Draft Law on Judges and Prosecutors of Turkey, CDL-AD(2011)004, para 71. Source: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2011\)004-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2011)004-e); Bosnia and Herzegovina — Opinion on the draft Law on amendments to the Law on the High Judicial and Prosecutorial Council, CDL-AD(2021)015, paras 55, 62. Source: [https://venice.coe.int/webforms/documents/?pdf=CDL-AD\(2021\)015-e](https://venice.coe.int/webforms/documents/?pdf=CDL-AD(2021)015-e)

⁶⁰ Bosnia and Herzegovina — Opinion on the draft Law on amendments to the Law on the High Judicial and Prosecutorial Council, CDL-AD(2021)015, para 59. Source: [https://venice.coe.int/webforms/documents/?pdf=CDL-AD\(2021\)015-e](https://venice.coe.int/webforms/documents/?pdf=CDL-AD(2021)015-e)

⁶¹ Joint Opinion on the Draft Law on the Public Prosecutor's Office of Ukraine, CDL-AD(2013)025, para 137. Source: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2013\)025-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2013)025-e); Interim Opinion on the Draft Law on the State Prosecution Office of Montenegro, CDL-AD(2014)042, para 95. Source: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2014\)042-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2014)042-e); Joint Opinion on the draft Law on the Prosecution

Disciplinary body and procedure

83. For many years, the Venice Commission has reminded that, in disciplinary cases, including the removal of prosecutors, the prosecutor concerned should have a right to be heard in adversarial proceedings. In systems where a Prosecutorial Council exists, this council, or a disciplinary committee within it, could handle disciplinary cases. An appeal to a court against disciplinary sanctions should be available⁶².

84. The Venice Commission also concludes that⁶³:

- since a disciplinary complaint may be initiated by a person who is a member of the Council or represented on the Council, there should be a provision excluding such a person from participating in the ensuing proceedings;
- creation within the self-government bodies' technical committees is permissible to the extent that they do not usurp the constitutionally defined role of the self-government bodies themselves. Thus, the composition of such technical committees is not that important if they stick to an advisory role, and if the findings of the technical ones do not bind the self-government bodies, but may come to a different conclusion;
- a power to suspend a prosecutor pending the outcome of disciplinary proceedings could be introduced;
- temporary suspension of the prosecutor's powers should not be accompanied by suspension of the salary or material or social support;
- the prosecutor needs to be informed in a way that includes separately and clearly the actions attributed to him or her, the subject matter of the investigation, and the place, time, and aspects of the actions which are alleged to have occurred, prosecutor has the right to require the testimony of the witness and the collection of evidence in his or her favour, they have the right to examine the files in person or through their legal representatives and to receive copies and may also defend themselves orally or in writing before the respective body or via lawyer, and right to challenge the member of the disciplinary body and his or her recusal in cases when there are reasons for doubts concerning his or her impartiality;

Service of the Republic of Moldova, CDL-AD(2015)005, paras 117, 118 and 120. Source: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2015\)005-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2015)005-e) ; Bosnia and Herzegovina — Opinion on the draft Law on amendments to the Law on the High Judicial and Prosecutorial Council, CDL-AD(2021)015, para 55. Source: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2021\)015-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2021)015-e) ; Opinion № 13(2018) "Independence, accountability and ethics of prosecutors", para 47. Source: <https://rm.coe.int/opinion-13-ccpe-2018-2e-independence-accountability-and-ethics-of-pros/1680907e9d>

⁶² Report on European Standards as regards the Independence of the Judicial System: Part II - the Prosecution Service, CDL-AD(2010)040-e, para 52. Source: <https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD%282010%29040-e>

⁶³ Joint Opinion on the Draft Law on the Public Prosecutor's Office of Ukraine, CDL-AD(2013)025, paras 135-136, 153, 171. Source: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2013\)025-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2013)025-e) ; Republic of Moldova — Opinion on the amendments of 24 August 2021 to the law on the prosecution service, CDL-AD(2021)047, paras 76-77. Source: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2021\)047-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2021)047-e) ; Interim Opinion on the Draft Law on the State Prosecution Office of Montenegro, CDL-AD(2014)042, para 96. Source: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2014\)042-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2014)042-e) ; Opinion on the draft law on the Public Prosecutors' service of Moldova, CDL-AD(2008)019, para 66. Source: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2008\)019-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2008)019-e) ; Opinion on the Draft Law on Judges and Prosecutors of Turkey, CDL-AD(2011)004, para 75. Source: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2011\)004-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2011)004-e)

- the privilege against self-incrimination needs to be extended to any interrogation conducted by a disciplinary body or its agents.

B. Career of the Prosecutor General

85. Prosecutors general occupy a pivotal position in overseeing prosecution services and serve as primary guarantors of their independence and autonomy. The impartiality and independence of prosecution services are fundamentally influenced by the independence and impartiality demonstrated by their leadership, as well as the responsibilities they hold concerning individual prosecutors.

Appointment and tenure

86. Despite the significant importance of the position of Prosecutor General, “[n]o single, categorical principle can be formulated as to who – the president or Parliament – should appoint the Prosecutor General in a situation when they are not subordinated to the Government”⁶⁴. However, the Venice Commission is promptly aware of the fact that “[i]n countries where the prosecutor general is elected by Parliament, the obvious danger of a politicisation of the appointment process”⁶⁵.

87. Given this, for years, the Venice Commission has reminded that “professional, non-political expertise should be involved in the selection process”⁶⁶.

88. In the Venice Commission’s and the CCPE’s opinions, the method of appointment of the prosecutor general should be such as to gain the confidence of the public and the respect of the judiciary and the legal profession, and a variety of ways of reducing the risks of politicisation, either real or perceived, should be taken^{67,68}.

- minimise the role of the executive in the appointment/election of the Prosecutor General, or to accompany it by essential safeguards;
- involve the prosecutorial self-governance bodies, such as councils of prosecutors, where they exist;

⁶⁴ Report on European Standards as regards the Independence of the Judicial System: Part II - the Prosecution Service, CDL-AD(2010)040-e, para 35. Source: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2010\)040-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2010)040-e)

⁶⁵ Ibid, para 36.

⁶⁶ Opinion on the regulatory concept of the Constitution of the Republic of Hungary, CDL(1995)073rev., chapter 11. Source: [https://www.venice.coe.int/webforms/documents/?pdf=CDL\(1995\)073rev-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL(1995)073rev-e)

⁶⁷ Poland — Opinion on the Act on the Public Prosecutor's office, CDL-AD(2017)028-e, para 33. Source: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2017\)028-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2017)028-e) ; Joint Opinion of the Venice Commission, the Consultative Council of European Prosecutors (CCPE) and OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR), on the draft Amendments to the Law on the Prosecutor's Office of Georgia, CDL-AD(2015)039-e, paras 19-20, 27. Source: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2015\)039-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2015)039-e) ; Serbia — Urgent opinion on the revised draft constitutional amendments on the judiciary, CDL-AD(2021)048-e, para 26. Source: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2021\)048-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2021)048-e) ; Final Opinion on the revised draft Law on special public Prosecutor's office of Montenegro, CDL-AD(2015)002-e, para 34. Source: <https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD%282015%29002-e> ; Romania — Opinion on draft amendments to Law No. 303/2004 on the Statute of Judges and Prosecutors, Law No. 304/2004 on Judicial Organisation, and Law No. 317/2004 on the Superior Council for Magistracy, CDL-AD(2018)017-e, paras 52-54. Source: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2018\)017-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2018)017-e)

⁶⁸ Opinion №19 (2024) on managing prosecution services to ensure their independence and impartiality, paras 30-31. Source: <https://rm.coe.int/opinion-no-19-2024-of-the-ccpe/1680b25297>

- establish eligibility criteria for the candidates for the position of prosecutor general that are objective, transparent and merit based (*"it is important that eligibility criteria are predetermined, by being either explicitly provided for by law or established by an institution entrusted by law to do so, so that they are not adjusted to eliminate or support certain candidates based on political considerations or any other unlawful interests"*⁶⁹);

89. Additionally, the CCPE considers that *"[n]otwithstanding the type of legal system, ... it should always be checked that the candidates for the position of prosecutor general have the necessary legal expertise and determination, having fully accepted the need to protect and promote prosecutorial independence, for instance, by preventing any possible conflict of interest. Furthermore, an appropriate legal and professional background should be a primary requirement, in order to ensure the candidates' capacity to lead the prosecution service efficiently. Additionally, the merits of the candidates, including experience, proven management and other skills should also be considered as important. The combination of the aforementioned criteria is relevant to assess the capacity of a candidate to safeguard the independence and impartiality of the prosecution services. If possible in accordance with the legal system of the state, the process of selection and establishment of the list of candidates may be subject to judicial review"*⁷⁰.

90. Lastly, the Venice Commission reminds that, *"[a] Prosecutor General should be appointed ... for a relatively long period ... without the possibility of renewal at the end of that period"*, and this period *"should not coincide with Parliament's term in office"*⁷¹. The CCPE reinforces this notion⁷².

91. The duration of the term in office should be more than 5 years⁷³, and 7 years is welcome⁷⁴.

Qualified majority and anti-deadlock mechanisms

92. As the Venice Commission recommends a qualified majority in parliament for the election of the prosecutor general⁷⁵, there is an additional key aspect that should also be emphasized.

93. The Venice Commission has stressed that

"Institutions that cannot function do not fulfil their constitutional purpose and give bad name to democracy. So it is crucial to have anti-deadlock mechanisms."

⁶⁹ Ibid, para 32.

⁷⁰ Ibid, para 33.

⁷¹ See supra note 55, para 37.

⁷² Opinion №9 (2014) on European norms and principles concerning prosecutors, Explanatory Note, paras 55-56. Source: <https://rm.coe.int/168074738b> ; Opinion №19 (2024) on managing prosecution services to ensure their independence and impartiality, para 34.

⁷³ Joint Opinion on the Draft Law on the Public Prosecutor's Office of Ukraine, CDL-AD(2013)025-e, para 117. Source: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2013\)025-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2013)025-e)

⁷⁴ Joint Opinion on the draft Law on the Prosecution Service of the Republic of Moldova, CDL-AD(2015)005-e, para 89. Source: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2015\)005-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2015)005-e)

⁷⁵ Georgia — Opinion on the draft revised Constitution, CDL-AD(2017)013-e, para 83. Source: <https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD%282017%29013-e>

Thus, the Commission stressed the importance of providing for qualified majorities, but warned about the risk of stalemates and recommended to devise effective and solid antideadlock mechanisms, giving some examples of possible options.

The Commission has previously underlined that qualified majorities strengthen the position of the parliamentary minority, by giving them the negative power to block decisions: “Parliamentary rules on qualified majority [...] constitute an instrument that may effectively and legitimately protect opposition and minority interests, both when it comes to procedural participation, powers of supervision and certain particularly important decisions. At the same time, this is an instrument that restricts the power of the democratically elected majority, and which should therefore be used with care, and tailored specifically to the national constitutional and political context.”

The Commission also found that “the more formal rights and competences the opposition (minority) is given within a constitutional and parliamentary system, the greater the responsibility of the same opposition not to misuse these powers, but to conduct their opposition in a way loyal to the basic system and the idea of legitimate and efficient democratic majority rule. This, however, is not an issue that can be legally regulated, or perceived as any form of formal “responsibility”, but is rather to be seen as a political and moral obligation.”

Anti-deadlock mechanisms have to discourage the opposition from behaving irresponsibly but should not create opportunities for the majority by impossible proposals to lead to the necessity for the application of such mechanisms. This is why they should be limited in time and, while avoiding permanent blockages they should not aim at avoiding any blockage at all, which can be an expression of the need for political change.

...

“It is true that boycott of parliament by the opposition may frustrate the very intention to provide protection to the opposition itself and lead to the paralysis or dysfunction of the state institutions. The Venice Commission has previously expressed the view that “In principle, the opposition should express its views in the parliament and a boycott is justified only exceptionally.” The Commission nevertheless considered that for processes such as the amendment of the Constitution which require the broadest political support, “even if the ruling coalition has the necessary number of votes in the Parliament to pass the amendments, it does not absolve the Government from conducting a genuine all-inclusive debate”.

One thing is ruling the country in government – which is the job of the majority elected by the people – another thing is changing the fundamental principles of the Constitution which requires the broadest support of a wide number of social and political actors from the majority and the opposition alike. The same can be said in relation to all safeguards procedures and institutions, included the Judicial Council. In a Constitutional state, democracy cannot be reduced to the rule of the majority, but encompasses as well guarantee measures for the opposition.

The Venice Commission is of the view that difficulty of reaching a qualified majority and the ensuing risk of paralysis or dysfunction of an institution – in particular “safeguard institutions” - should not lead to abandon the requirement of a qualified majority but rather to devise tailor-made, effective deadlock-breaking mechanisms. A balance needs to be found between the superior state interest of the preservation of the functioning of the institutions and the democratic exigency that these

institutions should be balanced and should not be merely dominated by the ruling majority. In other words, the supreme state interest lies in the preservation of the institutions of the democratic state”⁷⁶.

94. Considering this, the Venice Commission reiterates that constitutions should “*contain an anti-deadlock mechanism which would motivate parliament to reach the qualified majority for the appointment of the Prosecutor General*”⁷⁷. In addition, it is worth introducing a rule that “*the outgoing PG will continue to exercise his functions ad interim. Once the antideadlock mechanism is introduced, the law may provide that an interim prosecutor be appointed, with the duration of his/her interim functions limited to the operation of the antideadlock mechanism*”⁷⁸.

Practices across the CoE and EU

95. For the preparation of its Opinion №19 (2024) on managing prosecution services to ensure their independence and impartiality, the CCPE collected information regarding the key aspects for appointing Prosecutor Generals across several members of the Council of Europe⁷⁹.

96. The responses from the countries indicated that there are currently many approaches to appointing a Prosecutor General. Even the terms for which they are appointed vary significantly. More or less familiar are the requirements for candidates and the general list of criteria by which they are evaluated.

97. Generally, the following requirements are imposed on candidates for the position of Prosecutor General: citizenship, proficiency in the state language, a comprehensive legal education, and extensive experience in the field of law. The list of criteria generally includes those related to integrity and ethical standards, professional level, leadership skills, and management experience.

98. In terms of appointing bodies of the prosecutors general, there are huge differences across the countries:

- by the King on the recommendation of the high civil service commission (Denmark);
- by the King on the proposal of the government after consultations with a self-governing body and the relevant parliamentary committee (Spain);
- by Parliament based on the proposal of a parliamentary committee or faction (Armenia, Switzerland);

⁷⁶ Montenegro — Opinion on the draft law on amendments to the law on the Judicial Council and Judges, CDL-AD(2018)015-e, paras 11-15, 17-19. Source: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2018\)015-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2018)015-e)

⁷⁷ Montenegro — Urgent Opinion on the revised draft amendments to the Law on the State Prosecution Service, CDL-AD(2021)030-e, para 55. Source: [https://venice.coe.int/webforms/documents/?pdf=CDL-AD\(2021\)030-e](https://venice.coe.int/webforms/documents/?pdf=CDL-AD(2021)030-e)

⁷⁸ Montenegro — Opinion on the draft amendments to the Law on the State Prosecution Service and the draft law on the Prosecutor’s Office for organised crime and corruption, CDL-AD(2021)012-e, para 53. Source: [https://venice.coe.int/webforms/documents/?pdf=CDL-AD\(2021\)012-e](https://venice.coe.int/webforms/documents/?pdf=CDL-AD(2021)012-e)

⁷⁹ Responses were provided by the following countries: Albania, Andorra, Armenia, Austria, Bosnia and Herzegovina, Bulgaria, Czechia, Denmark, Estonia, Finland, France, Georgia, Greece, Hungary, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Montenegro, Netherlands, North Macedonia, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Türkiye, Ukraine. Compilation of responses to the questionnaire for the preparation of the CCPE Opinion №19 (2024) on managing prosecution services to ensure their independence and impartiality. Source: <https://rm.coe.int/compilation-of-responses-for-opinion-no-19-2024-/1680af5b17>

- by Parliament based on recommendations from a self-governing body of prosecutors or judges and prosecutors who select candidates for the position (Albania, Georgia, Latvia);
- by Parliament based on the proposal of the government after consultations with a self-governing body or based on the proposal of a self-governing body after consultations with the government (North Macedonia, Slovenia);
- by Parliament based on the proposal of the president or by the president with parliamentary consent (Hungary, Lithuania, Poland, Slovakia, Ukraine);
- by the President on recommendations from a self-governing body of prosecutors or judges and prosecutors who select candidates for the position (Bulgaria, Moldova);
- by the President on the proposal of the government or the Prime Minister (Finland, Portugal)
- by the President on the proposal of the Minister of Justice (Malta);
- by the President on the proposal of the Minister of Justice after consultations with a self-governing body (France);
- by the Government based on the proposal of a relevant parliamentary committee (Greece);
- by the Government (Sweden);
- by the Government on the proposal of the Minister of Justice (Czechia, Estonia, and the opinion of the relevant parliamentary committee is also requested);
- by the Government on the recommendation of a special committee (Ireland, Liechtenstein);
- by a self-governing body of prosecutors or prosecutors and judges on the proposal of the government (Andorra, Bosnia and Herzegovina);
- by a self-governing body of prosecutors or prosecutors and judges (Italy, Luxembourg, Montenegro, Türkiye).

99. Accordingly, the involvement of self-government bodies in the selection and/or nomination process occurs in Albania, Andorra, Bosnia and Herzegovina, Bulgaria, Greece, Georgia, Spain, Italy, Latvia, Luxembourg, Moldova, Slovenia, Türkiye, France, and Montenegro.

100. The qualified majority of the parliament is involved in only Albania, Armenia, and Hungary, despite the Venice Commission's notion that appointments and dismissals by parliament without a qualified majority are not in conformity with European standards⁸⁰.

101. The duration of tenure of the Prosecutor General also varies a lot:

- 9 years with the option for extension (Hungary);
- 7 years without the option for extension (Albania, France, Moldova);
- 7 years with the option for extension (Czechia, Slovakia);
- 6 years without the option for extension (Georgia);
- 6 years with the option for extension (Andorra, Armenia, Bosnia and Herzegovina, North Macedonia, Portugal, Slovenia, Ukraine);
- 5 years without the option for extension (Bulgaria);

⁸⁰ Opinion on the Constitution of Montenegro, CDL-AD(2007)047-e, para 104. Source: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2007\)047-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2007)047-e) ; Opinion on the Draft Amendments to the Law on the State Prosecutor of Montenegro, CDL-AD(2008)005-e, para 12. Source: <https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD%282008%29005-e>

- 5 years with the option for extension (Denmark, but for an additional 3 years, Estonia, Latvia, Lithuania, Montenegro);
- 4 years without the option for extension (Spain);
- 4 years with the option for extension (Greece, Italy);
- 3 years with the option for extension (Netherlands).

Early removal or suspension

102. As the CCPE highlighted that *“the independence of prosecutors implies their protection from any arbitrary or politically motivated removal. This is relevant for all prosecutors but even more so as regards prosecutors general”*⁸¹.

103. In the Venice Commission’s and the CCPE’s opinions, *“[t]he pre-term removal of prosecutors general from office should thus be ultima ratio and it should take into consideration the severity of the reasons”*^{82,83}.

- if pre-term removal is possible according to the national legal system, the applicable conditions should be clearly defined, and it should only be based on transparent and objective grounds, and Parliament should not have the right to express a motion of no confidence (which is a purely political instrument);
- the grounds for pre-term removal should not be broadly or vaguely formulated to prevent excessive discretion in the decision-making process and arbitrary interpretations;
- there must be express reference to the prohibition of any removal that occurs outside the pre-defined procedure and based on objective pre-determined criteria;
- pre-term removal should, similarly to grounds for it, be free from political interference and be transparent, well-founded and also made public;
- in any case, the Prosecutor General should benefit from a fair hearing in dismissal proceedings, including before Parliament;

⁸¹ See supra note 55, para 35.

⁸² Ibid, paras 36-38.

⁸³ See supra note 55, paras 40, 42; Poland — Opinion on the Act on the Public Prosecutor’s office, CDL-AD(2017)028-e, paras 35, 37. Source: [https://venice.coe.int/webforms/documents/?pdf=CDL-AD\(2017\)028-e](https://venice.coe.int/webforms/documents/?pdf=CDL-AD(2017)028-e) ; Montenegro — Opinion on the draft amendments to the Law on the State Prosecution Service and the draft law on the Prosecutor’s Office for organised crime and corruption, CDL-AD(2021)012-e, para 26. Source: [https://venice.coe.int/webforms/documents/?pdf=CDL-AD\(2021\)012-e](https://venice.coe.int/webforms/documents/?pdf=CDL-AD(2021)012-e) ; Opinion on the Amendments to the Constitution of Ukraine regarding the Judiciary as proposed by the Working Group of the Constitutional Commission, CDL-AD(2015)026-e, para 12. Source: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2015\)026-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2015)026-e) ; Opinion on the Draft Law on the Public Prosecutors Office and the Draft Law on the Council of Public Prosecutors of “the former Yugoslav Republic of Macedonia”, CDL-AD(2007)011-e, para 52. Source: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2007\)011-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2007)011-e) ; Republic of Moldova — Opinion on the amendments of 24 August 2021 to the law on the prosecution service, CDL-AD(2021)047-e, paras 63, 66-69, 83-84, 93-96. Source: [https://venice.coe.int/webforms/documents/?pdf=CDL-AD\(2021\)047-e](https://venice.coe.int/webforms/documents/?pdf=CDL-AD(2021)047-e) ; Joint Opinion on the Draft Law on the Public Prosecutor’s Office of Ukraine, CDL-AD(2013)025-e, paras 120-122. Source: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2013\)025-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2013)025-e) ; Georgia — Opinion on the provisions on the Prosecutorial Council in the draft Organic Law on the Prosecutor’s Office and on the provisions on the High Council of Justice in the existing Organic Law on General Courts, CDL-AD(2018)029-e, para 31. Source: [https://venice.coe.int/webforms/documents/?pdf=CDL-AD\(2018\)029-e](https://venice.coe.int/webforms/documents/?pdf=CDL-AD(2018)029-e) ; Romania — Opinion on Emergency Ordinances GEO No. 7 and GEO No. 12 amending the Laws of Justice, CDL-AD(2019)014-e, para 32. Source: <https://venice.coe.int/webforms/documents/?pdf=CDL-AD%282019%29014-e>

- the executive branch cannot remove chief prosecutors without independent judicial review (and the CCPE “welcomes a possibility for independent judicial review of any decision by any decision-making body concerning the pre-term removal of the prosecutor general”).

104. Lastly, the CCPE states that “any possible disciplinary proceedings against prosecutors general for potential misconduct should, similarly to the possibility of pre-term removal where they exist”⁸⁴:

- be based on clear, objective, and transparent grounds;
- the criteria and procedures should be unambiguously and clearly defined by domestic law;
- be conducted by an independent, impartial body, guaranteeing that they benefit from a fair hearing and due process;
- independence and impartiality may be secured through various means, such as proceedings conducted by a separate body outside the prosecution system, special guarantees for independent decision-making despite a hierarchical structure, public scrutiny, judicial oversight, or other measures.

Practices across the CoE and EU members

105. For the preparation of its Opinion №19 (2024) on managing prosecution services to ensure their independence and impartiality, the CCPE also collected information regarding the pre-term removal of Prosecutor Generals across several members of the Council of Europe.⁸⁵

106. As a rule across the mentioned countries, Prosecutor Generals may lose their position either for general reasons (loss of citizenship, serious illness, etc.) or for misconduct (criminal or disciplinary offenses). In the vast majority of countries, Prosecutor Generals are held accountable for disciplinary offences, just like other prosecutors or public officials.

107. In most cases, the grounds of disciplinary liability encompass categories such as serious breaches of duty, conflicts of interest, and violations of restrictions and requirements.

108. In terms of the bodies that could dismiss the prosecutor general, there are significant differences across the countries:

- Parliament (Armenia, Poland, Ukraine);
- Parliament initiates impeachment proceedings, which must be supported by the Constitutional Court (Georgia) or the Supreme Court (Latvia);
- the President with the consent of Parliament (Lithuania, Malta, Ukraine);
- the Council of Prosecutors submits a proposal to the President (Bulgaria, Moldova) or the Minister of Justice (Spain);
- the High Council of Justice (Andorra, France, Greece, Italy, Latvia, Türkiye) or the Council of Prosecutors (Montenegro, Slovenia);
- the High Council of Justice raises the issue before a special committee (Luxembourg);

⁸⁴ See supra note 55, paras 47-48.

⁸⁵ Responses were provided by the following countries: Albania, Andorra, Armenia, Austria, Bosnia and Herzegovina, Bulgaria, Czechia, Denmark, Estonia, Finland, France, Georgia, Greece, Hungary, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Montenegro, Netherlands, North Macedonia, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Türkiye, Ukraine.

- Constitutional (Albania) or the Supreme Court (Netherlands);
- the Government initiates impeachment proceedings, which must be supported by the Supreme Court (Liechtenstein);
- the Government or President begins impeachment proceedings, receiving consent from the Council of Prosecutors, before Parliament (North Macedonia, Slovakia);
- the Minister of Justice raises the issue before the Government (Czechia, Estonia, Finland), the King (Denmark), the President (Portugal), or Parliament (Switzerland).
- the Government (Sweden);
- a special committee raises the issue before the Government (Ireland).

109. The procedure for dismissing resembles a disciplinary proceeding when it is carried out by a self-governing body or a court (Albania, Andorra, Bulgaria, France, Italy, Luxembourg, Moldova, Montenegro, Netherlands, Slovakia, Slovenia, Türkiye).

110. Although in Denmark, Estonia, Ireland, Spain, and Sweden, the dismissal process occurs within the government, it is more akin to a formal disciplinary review. In other instances — when conducted by the parliament and/or government — it tends to be more of a political process (Armenia, Czechia, Finland, Hungary, Lithuania, Malta, Poland, Portugal, Switzerland, Ukraine).

111. The qualified majority of the parliament is involved only in Armenia, Hungary, and Malta, despite the Venice Commission's notion that appointments and dismissals by parliament without a qualified majority are not in conformity with European standards⁸⁶.

112. In its annual Rule of Law Reports, the European Commission highlights that the issue of prosecutorial independence remains problematic in several EU member states. Primarily, this is due to the strong dependence of prosecution services on the government (Austria, Cyprus, Denmark, Germany, Malta), as well as insufficient guarantees of independence for the Prosecutor General (Czechia, Hungary, Poland, Spain).

113. In Czechia, there are no safeguards for the dismissal of the Prosecutor General by the Ministry of Justice⁸⁷. In Hungary, the Prosecutor General remains an option to stay in office even after their official term has ended⁸⁸. Poland has long been criticized for the problem of the dual role in which the Minister of Justice also serves as the Prosecutor General⁸⁹. In Spain, the mandate of the Prosecutor General coincides with that of the Government⁹⁰. In Bulgaria, the election procedure for the Parliament-elected members of the Supreme Prosecutorial Council was criticized due to the lack

⁸⁶ Opinion on the Constitution of Montenegro, CDL-AD(2007)047-e, para 104. Source: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2007\)047-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2007)047-e) ; Opinion on the Draft Amendments to the Law on the State Prosecutor of Montenegro, CDL-AD(2008)005-e, para 12. Source: <https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD%282008%29005-e>

⁸⁷ 2020 Rule of Law Report – Country Chapter Czechia. Source: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020SC0302>

⁸⁸ 2022 Rule of Law Report – Country Chapter Hungary. Source: https://commission.europa.eu/document/download/5ca0f861-b4d4-412d-bd7d-dbe3582af1c1_en?filename=40_1_193993_coun_chap_hungary_en.pdf

⁸⁹ 2020 Rule of Law Report – Country Chapter Poland. Source: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020SC0320>

⁹⁰ 2020 Rule of Law Report – Country Chapter Spain. Source: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020SC0308#footnoteref19>

of an anti-deadlock mechanism, particularly in view of the Council's role in the appointment and dismissal of the Prosecutor General⁹¹.

114. Accordingly, the European Commission recommends⁹²:

- separate the function of the Minister of Justice from that of the Prosecutor-General (Poland),
- separate the terms of office of the Prosecutor General from those of the Government (Spain),
- introduce safeguards for the dismissal of the Prosecutor General (Czechia),
- adopt a mechanism for introducing safeguards in the appointment procedure of the Parliament-elected members of the Supreme Prosecutorial Council, particularly in view of the Council's role in the appointment and dismissal of the Prosecutor General (Bulgaria).

C. Prosecutorial self-governing bodies

115. The CCPE declares the councils of prosecutors to be key bodies of prosecutorial self-governance and calls for their establishment in accordance with domestic legislation, legal traditions, and local cultures. Since it possesses such an institutional value for securing the effective and impartial functioning of the prosecution services and individual prosecutors through their independent decision-making⁹³.

116. The CCPE summarises that councils of prosecutors are very well placed to:

- secure effective and impartial prosecution services and individual prosecutors through their independent decision-making in accordance with the rule of law principles;
- create in this way a favourable framework for prosecution services to be able to guarantee the lawfulness of proceedings and the right to a fair trial in line with rule of law principles; and
- ensure compliance of prosecutors' work with international, legally binding instruments, in particular the European Convention for the Protection of Human Rights and Fundamental Freedoms, as well as with soft law instruments.

117. These notions were initially introduced by the Venice Commission in its Report on European Standards regarding the Independence of the Judicial System: Part II — the Prosecution Service⁹⁴, and they have since taken deep root in the Commission's work.

Competence and powers

⁹¹ 2024 Rule of Law Report – Country Chapter Bulgaria. Source: https://commission.europa.eu/document/download/fd6bb85d-4aaa-4c79-88a2-8709edfb2002_en?filename=10_1_58051_coun_chap_bulgaria_en.pdf

⁹² 2022 Rule of Law Report – Recommendations. Source: https://commission.europa.eu/document/download/031018b9-6db6-4d20-8f89-37cf73dc0b24_en?filename=4_1_194542_comm_recomm_en.pdf ; 2023 Rule of Law Report – Recommendations. Source: https://commission.europa.eu/document/download/2b63674d-bdb3-47b7-bda4-e13d6a085033_en?filename=4_1_52673_comm_recomm_en.pdf ; 2024 Rule of Law Report – Recommendations. Source: https://commission.europa.eu/document/download/40d0f293-3047-4242-8c08-5101b8c09ff7_en?filename=4_1_58125_comm_recomm_en.pdf ; 2025 Rule of Law Report – Recommendations. Source: https://commission.europa.eu/document/download/e6c2b6b4-192e-4576-9e0c-c3503a2c764f_en?filename=2_1_63931_recommendation_en.pdf

⁹³ Opinion №18 (2023) on Councils of Prosecutors as key bodies of prosecutorial self-governance, Recommendations. Source: <https://rm.coe.int/opinion-no-18-2023-final/1680ad1b36>

⁹⁴ Paras 41, 48, 52, 59, 60, 64-68, 70, 85.

118. According to the Venice Commission and the CCPE, councils of prosecutors should have a wide range of competences to better protect and promote prosecutorial independence and the efficient administration of justice. Competence and powers of the councils should be provided for by law, these in particular^{95,96}

- ensuring the independence of prosecutorial service and prosecutors, notably by issuing compulsory decisions;
- overseeing that prosecutorial activity is performed according to the principle of legality;
- as much competence as possible in relation to appointment and removal issues, handling of disciplinary matters, evaluations, promotions, and transfers;
- separate budgetary arrangements and management of other types of proper resources.

119. The CCPE insists that councils of prosecutors should have a role in regulating or developing the organisation of the prosecution system and offices. These competencies in the governing of the prosecution service cover the issues of: a) training of prosecutors; b) control and/or management of the budget of the prosecution system to effectively manage it; c) providing for the transparency of the prosecution system and relations with media, including the protection, where needed, of the image of prosecutors; d) co-operation with other relevant bodies at national, European and international level; e) promoting the efficiency and quality of justice; f) providing opinions on legislative proposals regarding the organisation and functioning of the prosecution service, as well as for the justice system as a whole⁹⁷.

120. However, as the Venice Commission rightly stresses, it is essential to clarify in the law the respective spheres of competency of the Prosecutor General and the prosecutors' council to prevent overlapping functions in the management of the prosecution system and eliminate any tensions between the two⁹⁸.

121. Also, it is worth mentioning that the variety of organisational models of prosecution services in CoE member states results in a diversity of types of other bodies dealing with prosecutorial self-governance. The key is that they should be composed and function in such a way as to exclude political interference and act to reinforce the independence and impartiality of prosecution

⁹⁵ Ibid; Opinion on the Constitution of Montenegro, CDL-AD(2007)047, para 110 . Source: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2007\)047-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2007)047-e) ; Opinion on the Draft Amendments to the Law on the State Prosecutor of Montenegro, CDL-AD(2008)005, para 32. Source: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2008\)005-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2008)005-e) ; Joint Opinion on the Draft Law on the Public Prosecutor's Office of Ukraine, CDL-AD(2013)025, para 161. Source: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2013\)025-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2013)025-e) ; Poland — Opinion on the Act on the Public Prosecutor's office, as amended, CDL-AD(2017)028, paras 102-103, 107. Source: [https://venice.coe.int/webforms/documents/?pdf=CDL-AD\(2017\)028-e](https://venice.coe.int/webforms/documents/?pdf=CDL-AD(2017)028-e)

⁹⁶ Opinion №18 (2023) on Councils of Prosecutors as key bodies of prosecutorial self-governance, paras 70-76. Source: <https://rm.coe.int/opinion-no-18-2023-final/1680ad1b36>

⁹⁷ Ibid, paras 73-74.

⁹⁸ Kosovo — Opinion on the draft amendments to the Law on the prosecutorial Council of Kosovo, CDL-AD(2021)051, para 39. Source: [https://venice.coe.int/webforms/documents/?pdf=CDL-AD\(2021\)051-e](https://venice.coe.int/webforms/documents/?pdf=CDL-AD(2021)051-e) ; Georgia — Opinion on the provisions on the Prosecutorial Council in the draft Organic Law on the Prosecutor's Office and on the provisions on the High Council of Justice in the existing Organic Law on General Courts, CDL-AD(2018)029, para 38. Source: [https://venice.coe.int/webforms/documents/?pdf=CDL-AD\(2018\)029-e](https://venice.coe.int/webforms/documents/?pdf=CDL-AD(2018)029-e)

services⁹⁹. And, as previously mentioned, if an external body has an advisory role or, for example, has carried out screening of candidates based on their professional qualifications to ensure the transparency and integrity of the recruitment process, it should not substantially interfere with the mandate of the prosecutors' council¹⁰⁰. This last notion applied to the prosecution service's inspectorates (integrity units) as well, because the inspectorates (integrity units) must operate "under" the council, so their reviews or evaluations should not have a determinative effect on the prosecutors' careers, and the council should establish the criteria for the assessment¹⁰¹. Regardless of whether the inspectorate (integrity unit) is incorporated within the prosecution service itself or the prosecutorial council, it is essential to set safeguards to protect it from potential interference¹⁰².

Composition and membership

122. The CCPE concludes that there is no one-size-fits-all model for council of prosecutors. The structure and composition of prosecutors' councils vary. Their roots and development are closely tied to the evolution of each legal system and its historical, cultural, and social context. The main principle should be the establishment of a structure with an appropriate composition, proportionate to the size of the prosecution service, to optimise the fulfilment of its tasks¹⁰³.

123. Worth noting that the Venice Commission has recommended that the composition and core competences of the Prosecutorial Council be entrenched in the Constitution¹⁰⁴.

124. Both the CCPE and Venice Commission underlined that:

*regarding the composition and membership*¹⁰⁵

⁹⁹ Opinion №18 (2023) on Councils of Prosecutors as key bodies of prosecutorial self-governance, paras 86, 88. Source: <https://rm.coe.int/opinion-no-18-2023-final/1680ad1b36>

¹⁰⁰ Republic of Moldova — Amicus Curiae Brief for the Constitutional Court of the Republic of Moldova on the amendments to the Law on the Prosecutor's Office, CDL-AD(2019)034, paras 26-28. Source: [https://venice.coe.int/webforms/documents/?pdf=CDL-AD\(2019\)034-e](https://venice.coe.int/webforms/documents/?pdf=CDL-AD(2019)034-e)

¹⁰¹ Bulgaria — Urgent Interim Opinion on the draft new Constitution, CDL-AD(2020)035, para 78. Source: [https://venice.coe.int/webforms/documents/?pdf=CDL-AD\(2020\)035-e](https://venice.coe.int/webforms/documents/?pdf=CDL-AD(2020)035-e)

¹⁰² Bosnia and Herzegovina — Opinion on the draft Law on amendments to the Law on the High Judicial and Prosecutorial Council, CDL-AD(2021)015, para 49-50. Source: [https://venice.coe.int/webforms/documents/?pdf=CDL-AD\(2021\)015-e](https://venice.coe.int/webforms/documents/?pdf=CDL-AD(2021)015-e)

¹⁰³ Opinion №18 (2023) on Councils of Prosecutors as key bodies of prosecutorial self-governance, paras 39, 41. Source: <https://rm.coe.int/opinion-no-18-2023-final/1680ad1b36>

¹⁰⁴ Montenegro — Opinion on the draft amendments to the Law on the State Prosecution Service and the draft law on the Prosecutor's Office for organised crime and corruption, CDL-AD(2021)012, para 43. Source: [https://venice.coe.int/webforms/documents/?pdf=CDL-AD\(2021\)012-e](https://venice.coe.int/webforms/documents/?pdf=CDL-AD(2021)012-e)

¹⁰⁵ Opinion №18 (2023) on Councils of Prosecutors as key bodies of prosecutorial self-governance, paras 43-44, 46, 48, 51-53, 65-68. Source: <https://rm.coe.int/opinion-no-18-2023-final/1680ad1b36> ; Kosovo — Opinion on the draft amendments to the Law on the prosecutorial Council of Kosovo, CDL-AD(2021)051, paras 25-26, 32, 34, 50, 54, 57-58. Source: [https://venice.coe.int/webforms/documents/?pdf=CDL-AD\(2021\)051-e](https://venice.coe.int/webforms/documents/?pdf=CDL-AD(2021)051-e) ; Kosovo — Opinion on the revised draft amendments to the Law on the Prosecutorial Council, CDL-AD(2022)006, para 11. Source: [https://venice.coe.int/webforms/documents/?pdf=CDL-AD\(2022\)006-e](https://venice.coe.int/webforms/documents/?pdf=CDL-AD(2022)006-e) ; Republic of Moldova — Opinion on the amendments of 24 August 2021 to the law on the prosecution service, CDL-AD(2021)047, para 39. Source: [https://venice.coe.int/webforms/documents/?pdf=CDL-AD\(2021\)047-e](https://venice.coe.int/webforms/documents/?pdf=CDL-AD(2021)047-e) ; Joint Opinion of the Venice Commission, the Consultative Council of European Prosecutors (CCPE) and OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR), on the draft Amendments to the Law on the Prosecutor's Office of Georgia, CDL-AD(2015)039, paras 38, 53-54. Source: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2015\)039-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2015)039-e) ; Opinion on the Draft amendments to the Law on the State Prosecutorial Council of Serbia, CDL-AD(2014)029, paras 27-28, 38, 43, 44, 52-54, 56. Source:

- very important that the council is conceived as a pluralistic body. Councils that are composed in a balanced way, e.g., by prosecutors, lawyers, and civil society, and when they are independent of other state bodies, have the advantage of being able to provide valuable expert input in the appointment and disciplinary process and thus to shield prosecutors from political and significant business influence. But members of the council should not be active politicians, members of the Parliament, or executive officials, nor should they be involved in politics for a reasonable period of time before and after their mandate in the council;
- in councils with mixed composition, it would be preferable that prosecutor members constitute the majority or at least “substantial part”, elected by their peers, according to rules previously adopted and a transparent procedure and by a method guaranteeing the widest representation at all levels, gender-balanced, and as appropriate with a regional and national level representation, in all the panels of the council. All the prosecutorial members must act as representatives of the entire prosecution service;
- all prosecutors who are entitled to exercise prosecutorial functions should also be entitled to stand for the elections to the council (though the law might provide for additional criteria related to seniority or an impeccable professional record), but lay members of the council should not have any present or future hierarchical (or de facto) subordination links to the prosecutor general and represent other legal professions;
- a certain number of seats in a council could be reserved for representatives of external independent institutions (such as the Bar, the conference of the law faculties, the Ombudsperson, etc.) or for civil society;
- whether prosecutors or not, are to be selected based on predetermined, fair, and clear criteria through a transparent procedure. A set of rules considering the eligibility criteria should be established in advance. The candidates’ competence, experience, integrity, independence, impartiality, and other relevant factors should be outlined and taken into consideration;
- the mandate of all members of the council should be of the same duration, they should be selected for a fixed term of office and should enjoy adequate protection for their impartiality and independence. A member’s term of office should only end after the election of their successor;

[https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2014\)029-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2014)029-e) ; Interim Opinion on the Draft Law on the State Prosecution Office of Montenegro, CDL-AD(2014)042, paras 38, 54. Source: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2014\)042-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2014)042-e) ; Opinion on the draft Law on the High Judicial and Prosecutorial Council of Bosnia and Herzegovina, CDL-AD(2014)008, paras 32, 35-36, 44-45, 51-53, 55. Source: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2014\)008-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2014)008-e) ; Montenegro — Opinion on the draft amendments to the Law on the State Prosecution Service and the draft law on the Prosecutor’s Office for organised crime and corruption, CDL-AD(2021)012, paras 36- 43. Source: [https://venice.coe.int/webforms/documents/?pdf=CDL-AD\(2021\)012-e](https://venice.coe.int/webforms/documents/?pdf=CDL-AD(2021)012-e) ; Georgia — Opinion on the provisions on the Prosecutorial Council in the draft Organic Law on the Prosecutor’s Office and on the provisions on the High Council of Justice in the existing Organic Law on General Courts, CDL-AD(2018)029, para 33. Source: [https://venice.coe.int/webforms/documents/?pdf=CDL-AD\(2018\)029-e](https://venice.coe.int/webforms/documents/?pdf=CDL-AD(2018)029-e) ; Poland — Opinion on the Act on the Public Prosecutor’s office, as amended, CDL-AD(2017)028, paras 105, 107. Source: [https://venice.coe.int/webforms/documents/?pdf=CDL-AD\(2017\)028-e](https://venice.coe.int/webforms/documents/?pdf=CDL-AD(2017)028-e) ; Montenegro — Urgent Opinion on the revised draft amendments to the Law on the State Prosecution Service, CDL-AD(2021)030, para 28-31. Source: [https://venice.coe.int/webforms/documents/?pdf=CDL-AD\(2021\)030-e](https://venice.coe.int/webforms/documents/?pdf=CDL-AD(2021)030-e) ; Bulgaria — Urgent Interim Opinion on the draft new Constitution, CDL-AD(2020)035, para 52-53. Source: [https://venice.coe.int/webforms/documents/?pdf=CDL-AD\(2020\)035-e](https://venice.coe.int/webforms/documents/?pdf=CDL-AD(2020)035-e) ; Joint Opinion on the draft Law on the Prosecution Service of the Republic of Moldova, CDL-AD(2015)005, para 134. Source: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2015\)005-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2015)005-e) ; Bosnia and Herzegovina — Opinion on the draft Law on amendments to the Law on the High Judicial and Prosecutorial Council, CDL-AD(2021)015, para 53. Source: [https://venice.coe.int/webforms/documents/?pdf=CDL-AD\(2021\)015-e](https://venice.coe.int/webforms/documents/?pdf=CDL-AD(2021)015-e)

- it is recommended to consider limiting membership to a single term or providing for some gap before re-election (two terms being the maximum suitable);
- it should not be easy to remove a member of the council from its position, while early removal should always be possible in cases of gross misconduct or incompatibility, such decisions should at all times be based on specific grounds enumerated in the law, and should be confirmed by the majority of the members of the council itself and in a procedure in which his/her rights to a fair trial and to appeal are guaranteed;
- the possibility to revoke a member of the council for having been the subject of one of the disciplinary sanctions provided by law is questionable, as it allows the dismissal of the person even for the lightest disciplinary sanctions, also the decisions on suspension of a member should take into account the gravity of the accusations and the existence of at least a probable cause that a serious disciplinary offence has been committed;
- revocation of elected members of such councils by a withdrawal of confidence, i.e., by vote of the general meetings of prosecutor's offices, is not welcome;

regarding members' appointment/election¹⁰⁶

- the members of a council must be selected in a way that supports the independence and effective functioning of the council, the prosecution service, and, as a direct effect, the judiciary, removing or circumventing any perception of political influence or conflict of interest;
- predetermined rules should govern the selection of members, which should be disseminated in advance. These rules should apply to whatever selection method is concerned: election, appointment, or other;
- the selection process should be transparent and ensure that the candidates' qualifications, especially their impartiality and integrity, are thoroughly assessed. Vacancies should be advertised publicly, and equal opportunities guaranteed to support a diverse group of independent candidates;
- rules should be in place to ensure that the prosecutorial members are selected by their peers, representing all levels of the prosecution service and not only senior officials of prosecutorial bodies. Associations of prosecutors may be entitled to present candidates;
- an election or nomination of lay members by institutions such as the Bar or other professional associations, non-governmental organisations (NGOs), when in line with member States' legal traditions, may be appropriate;
- the nomination of members of civil society and academia should be done transparently, with the selection process following clear rules and criteria, which should be set out in the law, a range of options could be considered here — one possibility (the simplest option) is for certain office holders to gain membership of the council automatically, e.g. the head of a law faculty, or the President of the Bar Association may become ex officio members of the council without being elected by Parliament. Additionally, a possible option would be to appoint one or more members

¹⁰⁶ Opinion №18 (2023) on Councils of Prosecutors as key bodies of prosecutorial self-governance, paras 54-60. Source: <https://rm.coe.int/opinion-no-18-2023-final/1680ad1b36> ; Joint Opinion of the Venice Commission, the Consultative Council of European Prosecutors (CCPE) and OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR), on the draft Amendments to the Law on the Prosecutor's Office of Georgia, CDL-AD(2015)039, paras 46-48. Source: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2015\)039-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2015)039-e) ; Bulgaria — Urgent Interim Opinion on the draft new Constitution, CDL-AD(2020)035, para 55. Source: [https://venice.coe.int/webforms/documents/?pdf=CDL-AD\(2020\)035-e](https://venice.coe.int/webforms/documents/?pdf=CDL-AD(2020)035-e) ; Kosovo — Opinion on the revised draft amendments to the Law on the Prosecutorial Council, CDL-AD(2022)006, paras 25, 27. Source: [https://venice.coe.int/webforms/documents/?pdf=CDL-AD\(2022\)006-e](https://venice.coe.int/webforms/documents/?pdf=CDL-AD(2022)006-e)

of the judiciary to the prosecutorial council. Judges could bring their own practical expertise in the criminal justice system to the council's work, and would also help enhance the independence of this body, thereby increasing the public's trust in the council's work. A range of possible judges could be considered for this position, including chairpersons of certain courts (e.g., the Supreme Court, the capital city court, and/or regional courts). An alternative solution would be to give the nominating power to one or several independent bodies, such as the High Council of Justice, the Bar Association, or a body representing law universities and academic institutions. The nominating power may also be given to certain well-established NGOs, which will increase transparency of the council and public trust in its autonomy. In cases where the power to nominate a candidate would belong to external actors, the Parliament should still retain the power to approve or not approve them;

- consideration should be given to the need to achieve proper gender balance amongst the candidates;
- it is essential to provide a system of pre-selection or nomination of candidates which ensures that the lay component of both councils consists of experienced persons who have no personal interest in the outcome of the decisions they make and who are not susceptible to political influence;
- some form of shortlisting of candidates to the positions of lay members may exist. However, the candidates should not be rejected because of their "vision" – i.e., ideas, because that may politicise the pre-selection process. As to other criteria used (managerial experience, competency, and integrity), the interview process should be as objective as possible. Thus, it would be helpful if the choosing authority would rely on the opinion of acknowledged experts in this field, that the interviews are open, and the decision of the ranking of candidates is reasoned;
- alternative voting procedures could be considered, for example a preferential system, with a single ballot paper where candidates are numbered in order of preference, with successive counts in each of which the lowest candidate is eliminated and the vote transferred to the next-highest preference until one candidate has a majority or with consecutive rounds of voting where the bottom candidate is excluded each time until a result is reached;

*regarding the council's chair*¹⁰⁷

- the chair can play a key role in the functioning and its external and internal image;
- the chair should be elected/appointed in a manner that ensures their impartiality and independence from the legislative and executive powers, and ensures the absence of undue influence from within the hierarchy of the prosecution service, clear rules to that end should be adopted;
- the election of the chair by its members is welcome; they should be one of the prosecutorial members elected by all members, both prosecutorial and lay, by a qualified majority.

Functioning and decision-making process

¹⁰⁷ Opinion №18 (2023) on Councils of Prosecutors as key bodies of prosecutorial self-governance, paras 61-64. Source: <https://rm.coe.int/opinion-no-18-2023-final/1680ad1b36> ; Opinion on the draft law on the Public Prosecutors' service of Moldova, CDL-AD(2008)019, para 62. Source: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2008\)019-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2008)019-e) ; Opinion on the Draft amendments to the Law on the State Prosecutorial Council of Serbia, CDL-AD(2014)029, paras 31-32. Source: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2014\)029-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2014)029-e)

125. According to the CCPE opinion, the councils of prosecutors¹⁰⁸:

- benefit from full-time membership, which can assist councils in operating as a professional and effective organisation (with enough working time and adequate financial and administrative resources), by strengthening their independence, avoiding conflicts of interest, improving their image, and assisting in fulfilling their mission;
- must work transparently, giving reasons for its decisions and procedures, and be accountable in this way;
- functioning and decision-making process should be governed by written and transparent rules adopted by law, such rules should provide, in particular, for the quorum, voting procedure, majority to adopt a decision, and if needed, detailed regulations of the council should be adopted by itself;
- decisions with an impact on the career of prosecutors should be reasoned, and those having binding force can be subject to a judicial review on the initiative of the prosecutor concerned. In case of the reversal of a decision concerning the career of prosecutors, including transfers and disciplinary breaches, remedies should be available to them;
- relations between councils and other powers of the state, i.e., the executive and legislative powers, must be based on a culture of respect for the rule of law and understanding of their respective roles in a democratic state;
- should actively engage in open, respectful dialogue with other powers of the state, associations of judges and civil society, including bar associations, NGOs, and the media;
- should act transparently and be accountable for their activities, through periodical reports or other appropriate means (in such reports, measures already taken or to be taken could be highlighted to improve the functioning of the justice system).

126. The Venice Commission also concludes that¹⁰⁹:

¹⁰⁸ Opinion №18 (2023) on Councils of Prosecutors as key bodies of prosecutorial self-governance, paras 77-84. Source: <https://rm.coe.int/opinion-no-18-2023-final/1680ad1b36>

¹⁰⁹ Opinion on the draft law on the Public Prosecutors' service of Moldova, CDL-AD(2008)019, paras 62, 64. Source: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2008\)019-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2008)019-e) ; Joint Opinion of the Venice Commission, the Consultative Council of European Prosecutors (CCPE) and OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR), on the draft Amendments to the Law on the Prosecutor's Office of Georgia, CDL-AD(2015)039, paras 40, 60-64. Source: <https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD%282015%29039-e> ; Poland — Opinion on the Act on the Public Prosecutor's office, as amended, para 101. Source: <https://venice.coe.int/webforms/documents/?pdf=CDL-AD%282017%29028-e> ; Opinion on the Draft amendments to the Law on the State Prosecutorial Council of Serbia, CDL-AD(2014)029, paras 39-40. Source: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2014\)029-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2014)029-e) ; Opinion on the draft Law on the High Judicial and Prosecutorial Council of Bosnia and Herzegovina, CDL-AD(2014)008, para 57. Source: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2014\)008-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2014)008-e) ; Interim Opinion on the Draft Law on the State Prosecution Office of Montenegro, CDL-AD(2014)042, paras 52, 65-67. Source: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2014\)042-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2014)042-e) ; Opinion on the Draft Amendments to the Law on the State Prosecutor of Montenegro, CDL-AD(2008)005, para 37. Source: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2008\)005-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2008)005-e) ; Joint Opinion on the draft Law on the Prosecution Service of the Republic of Moldova, CDL-AD(2015)005, para 138. Source: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2015\)005-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2015)005-e) ; Bulgaria — Opinion on draft amendments to the Criminal Procedure Code and the Judicial System Act, concerning criminal investigations against top magistrates, CDL-AD(2019)031, para 30. Source: [https://venice.coe.int/webforms/documents/?pdf=CDL-AD\(2019\)031-e](https://venice.coe.int/webforms/documents/?pdf=CDL-AD(2019)031-e) ; Kosovo — Opinion on the revised draft amendments to the Law on the Prosecutorial Council, CDL-AD(2022)006, para 15. Source: [https://venice.coe.int/webforms/documents/?pdf=CDL-AD\(2022\)006-e](https://venice.coe.int/webforms/documents/?pdf=CDL-AD(2022)006-e) ; Final Opinion on the revised draft Law on the public

- the law should include provisions that describe the status of the members of the council, the nature of their work, and provide guarantees of independence in the exercise of their functions;
- no member should be entitled, while serving on the council, to be promoted within the prosecution service;
- in general, sessions of the council should be public, but security or other reasons related to the protection of personal data might require closed sessions;
- members of the council should not hear cases brought against themselves, cases they themselves have initiated, and on matters where doubts about their objectivity exist;
- if the council is empowered to set up commissions that can make decisions and perform tasks on its behalf, decisions on appointments cannot be delegated to such commissions;
- a lower majority decision could be a more proper measure for a temporary suspension than for a more serious action, such as dismissal;
- the anti-deadlock mechanism could be established for scenarios when members of the council cannot find a compromise, but the legislator should identify the specific parameters of such an anti-deadlock mechanism in dialogue with the international partners and main stakeholders;
- many decisions of the council need to be appealable to the court of law on the merits.

Practices across the CoE and EU

127. During the preparation of its Opinion №18 (2023) on Councils of Prosecutors as key bodies of prosecutorial self-governance, the CCPE also collected information regarding the functioning of the key bodies of prosecutorial self-governance across several members of the Council of Europe.¹¹⁰
128. Prosecutorial councils, in one form or another, operate in Belgium, Bulgaria, Georgia, Latvia, Moldova, Montenegro, the Netherlands, North Macedonia, Portugal, Serbia, Slovakia, Slovenia, and Ukraine. However, in Latvia, the High Council of Justice (i.e., the judicial council) also has additional authority over the selection of the Prosecutor General.
129. Mixed councils (for judges and prosecutors) function in Bosnia and Herzegovina, France, and Romania.
130. Prosecutorial or mixed councils are absent in Andorra, Armenia, Austria, Azerbaijan, Denmark, Iceland, Hungary, the Czech Republic, Finland, Sweden, Türkiye, and Lithuania.
131. Prosecutorial councils have the following areas of authority:
- strategy development or participation in such development (Belgium, Georgia, Moldova, Montenegro, the Netherlands, Portugal, Slovakia, Slovenia);
 - participation in the development of criminal policy (Belgium, the Netherlands, North Macedonia, Portugal, Serbia, and Slovenia);

Prosecution Office of Montenegro, CDL-AD(2015)003, para 24. Source: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2015\)003-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2015)003-e) ; Bosnia and Herzegovina — Opinion on the draft Law on amendments to the Law on the High Judicial and Prosecutorial Council, CDL-AD(2021)015, para 32. Source: [https://venice.coe.int/webforms/documents/?pdf=CDL-AD\(2021\)015-e](https://venice.coe.int/webforms/documents/?pdf=CDL-AD(2021)015-e)

¹¹⁰ Responses were provided by the following countries: Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, the Czech Republic, Denmark, Finland, Georgia, France, Hungary, Iceland, Latvia, Lithuania, Moldova, Montenegro, Netherlands, North Macedonia, Portugal, Romania, Serbia, Slovak Republic, Slovenia, Sweden, Türkiye, Ukraine.

- participation in budget planning (Belgium, Moldova, Montenegro, North Macedonia, Portugal, Serbia, Slovakia, Slovenia);
- development of personnel policy or participation in such development (Belgium, Moldova, Montenegro, North Macedonia, Portugal, Slovenia);
- approval or development of regulations for prosecutors or prosecutorial bodies (Latvia, Moldova, Montenegro, North Macedonia, Portugal, Serbia, Slovenia);
- selection of a candidate for the position of prosecutor general (Georgia, Moldova, Montenegro, Serbia);
- participation in the selection of the prosecutor general (North Macedonia, Slovenia);
- review of issues concerning the dismissal of the Prosecutor General (Serbia);
- selection, promotions, and transfer of prosecutors (Georgia, Latvia, Moldova, Montenegro, North Macedonia, Portugal, Serbia, Slovakia, Slovenia);
- standardisation of practices in the application of legislation (Belgium, Montenegro);
- evaluation of prosecutors' work and workload (Belgium, Georgia, Montenegro, North Macedonia, Portugal, Serbia, Slovakia, Slovenia);
- disciplinary functions (Georgia, Latvia, Moldova, Montenegro, the Netherlands, North Macedonia, Portugal, Serbia, Slovakia);
- protection of prosecutors' independence (Georgia, Montenegro, the Netherlands, North Macedonia, Portugal, Slovakia, Slovenia, Ukraine);
- training and education (Moldova, Montenegro, North Macedonia, Serbia, Slovakia).

132. Mixed councils have the following areas of authority:

- strategy development or participation in such development (Bulgaria, France, Romania);
- participation in budget planning (Bulgaria);
- participation in the development of criminal policy (Bulgaria, France, Romania);
- development of personnel policy or participation in such development (Bosnia and Herzegovina, Bulgaria, France, Romania);
- selection of a candidate for the position of Prosecutor General (Romania);
- selection, promotion, and transfer of prosecutors (Bosnia and Herzegovina, Bulgaria, France, Romania);
- evaluation of prosecutors' work and workload (Bosnia and Herzegovina, Bulgaria);
- disciplinary functions (Bosnia and Herzegovina, Bulgaria, France, Romania);
- protection of prosecutors' independence (Bosnia and Herzegovina, Bulgaria, France, Romania);
- training and education (Romania).

133. Prosecutorial councils in Georgia, Latvia, Moldova, Montenegro, the Netherlands, North Macedonia, Serbia, and Slovenia possess adequate financial and administrative resources. There is no such issue for mixed councils.

134. The composition of prosecutorial councils includes:

- half or a majority of prosecutors (Belgium, Georgia, Latvia, Montenegro, the Netherlands, North Macedonia, Portugal, Serbia, Slovakia, Slovenia);
- representatives of legal professions or other lay representatives (Georgia, Moldova, North Macedonia, Serbia, Slovenia);

- public officials or judges (Belgium, Moldova, Montenegro, Serbia).

135. The selection of prosecutors is carried out by:

- prosecutorial conference (Georgia, Moldova, Montenegro, Slovakia, Slovenia, Ukraine)
- self-governing bodies (Latvia);
- a special commission (Belgium, the Netherlands, North Macedonia);
- Parliament (Serbia);
- ex officio (Belgium, Latvia, Montenegro, the Netherlands, North Macedonia, Portugal, Serbia).

136. The selection of non-prosecutorial members is carried out by:

- courts or judicial or mixed councils (Georgia, Moldova);
- Parliament (Georgia, Moldova, North Macedonia, Serbia, Slovenia);
- the president, government, or minister of justice (Georgia, Moldova, Montenegro, Slovenia);
- other public institutions (Moldova, Ukraine);
- ex officio (Moldova, Serbia).

137. The chair and deputies of a prosecutorial council are elected by:

- the council itself (Georgia, Latvia, Moldova, the Netherlands, North Macedonia, Slovakia, Slovenia, Ukraine);
- ex officio (Belgium, Latvia, Montenegro, Portugal, Serbia).

V. Country Report – Latvia (Anna Skrjabina)

A. General Overview of the Prosecution Service and its Self-Governance

1. Briefly describe the constitutional status of the prosecutor's office and its key elements (its place within the system of state authorities, its functions, the nature of the position and role of the Prosecutor General, the role of prosecutorial self-governing bodies, etc.). If the constitutional provisions are limited, describe these aspects based on the key legislative acts.

Place within the System of State Authorities

The Prosecutor's Office is established by the "Office of the Prosecutor Law" (adopted on 19 May 1994) (hereafter – OPL) as an institution of judicial power that independently supervises compliance with the law within its statutory competence. It forms part of Latvia's judiciary and operates separately from the legislative and executive branches, ensuring the rule of law through criminal prosecution and oversight of investigative bodies¹¹¹.

The *Saeima* (Parliament) and the Cabinet of Ministers may request the Office to examine facts suggesting violations of law and receive reports on breaches of national importance, but they may not intervene in individual investigations or prosecutions. This indirect influence safeguards prosecutorial independence while preserving democratic oversight.

It is important to point out the finding confirmed by the Constitutional Court of the Republic of Latvia¹¹² that the principle of separation of powers arising from the concept of a democratic republic included in the Satversme should not be perceived dogmatically and formally, but its aim of preventing centralisation of power in one institution or one official should be respected. The Constitutional Court has acknowledged that no power can be absolutely independent, otherwise it is not possible to ensure the existence of the principle of separation of powers, which also envisages mutual control and interaction of powers. Also, in the opinion of the OECD¹¹³, the Prosecutor's Office interprets its independence more broadly than the Constitutional Court in Latvia. Understanding of the almost absolute independence of the Prosecutor's Office may contribute to the isolation of the Prosecutor's Office from the reforms implemented in the country aiming to modernise and streamline the activities of state institutions, including the Latvian judicial system.¹¹⁴

Functions of the Office of the Prosecutor

The key functions, as set out in Section 2 of the OPL¹¹⁵, are:

- supervise the conformity with laws of pre-trial investigation and operational activities, the intelligence and counterintelligence processes of State security institutions, and the system for the protection of official secret;

¹¹¹ Office of the Prosecutor Law. Latvijas Vēstnesis, 65, 02.06.1994. <https://likumi.lv/ta/id/57276>, see Section 1

¹¹² Section 1 of Judgment of the Constitutional Court in case No 03-05 (99) "On the Compliance of Paragraphs 1 and 4 of the Saeima Decision of 29 April 1999 on the Telecommunications Tariff Council with Articles 1 and 57 of the Constitution of the Republic of Latvia and other laws".

¹¹³ OECD Performance of the Prosecution Services in Latvia: A Comparative Study, page 19-20.

¹¹⁴ State Audit Office of the Republic of Latvia, 'Does the operation of the Prosecutor's Office of the Republic of Latvia require any improvements? Summary of conclusions and recommendations' (Performance Audit Sub-task No 2.4.1-34/2019, Riga, 11 January 2021) <https://www.lrvk.gov.lv/en/getrevisionfile/29451-x7eOREdleVjooAPJNz2qy1gslx0fOZSw.pdf>

¹¹⁵ Office of the Prosecutor Law. Latvijas Vēstnesis, 65, 02.06.1994. <https://likumi.lv/ta/id/57276>, see Section 2

- conduct a pre-trial investigation;
- initiate and conduct criminal prosecution;
- maintain the State prosecution;
- supervise the execution of punishments;
- protect the rights and lawful interests of persons and the State in accordance with the procedures laid down in law;
- submit a statement of claim or a submission to a court in the cases provided for by law;
- take part in court hearings in the cases provided for by law.

Role of the Prosecutor General

According to the Section 23 of OPL¹¹⁶ the Prosecutor General shall manage and control the activities of the Office of the Prosecutor, determine its internal structure and staff positions according to the allocated funds from the State budget, approve the regulatory enactments adopted by the Council of the Prosecutor General, and also directly manage the work of the prosecutors of the Office of the Prosecutor General.

The Prosecutor General shall, in accordance with the procedures laid down in law, appoint prosecutors to the office and remove or dismiss from the office, and also employees with whom the establishment of employment relationship in accordance with OPL is within the competence of the Prosecutor General. The instructions, commands, and orders of the Prosecutor General shall be mandatory for all prosecutors and employees.

The Prosecutor General has the right to:

- revoke unfounded or unlawful decisions of prosecutors;
- propose that the Plenary Session of the Supreme Court provides an opinion on issues related to interpretation of current legal norms;
- take part in the Plenary Session of the Supreme Court and to express his or her views concerning the issues to be considered;
- perform the functions of a prosecutor in all courts of the Republic of Latvia;
- take part in sittings of the Cabinet and express his or her views concerning the issues to be considered;
- in the cases and in accordance with the procedures laid down in the Constitutional Court Law, to submit an application for the initiation of a case to the Constitutional Court;
- to appoint prosecutors for participation in international missions;
- to exercise other rights specified in OPL and other laws and regulations.

In addition, the Prosecutor General shall notify the President, the *Saeima*, and the Cabinet of significant violations of law which have been discovered that are of national importance. Also, the Prosecutor General shall, by 1 March of each year, submit a report to the *Saeima* on that carried out in the previous year and on the priorities for activities of the following year.

Prosecutorial Self-Governing Bodies

Independence and internal governance are secured through the hierarchical model led by the Prosecutor General, the Code of Ethics of Prosecutors, and statutory guarantees in the OPL. Comparative analysis with

¹¹⁶ Ibid., see Section 23

Baltic and Eastern European reforms notes Latvia's reliance on a centralized model rather than autonomous self-governance structures.¹¹⁷

There is no separate Council of Prosecutors in place, but there are following self-governing bodies to be mentioned:

- Council of the Prosecutor General
- Prosecutors Attestation Commission
- Prosecutors Qualification Commission.

2. List the prosecutorial self-governing bodies, their key areas of competence, and the periods of their establishment and reform.

Council of Prosecutors General

According to the Section 29 of the OPL¹¹⁸ the Prosecutor General shall establish a council the composition of which includes chief prosecutors of departments and court districts of the Office of the Prosecutor General and the administrative director of the Office of the Prosecutor. Other prosecutors may be included in the composition of the council.

The Council of the Prosecutor General is a collegial advisory body which reviews the main issues related to the organization and activities of the Office of the Prosecutor, and also perform other functions specified in this Law.

The Council of the Prosecutor General shall develop and adopt:

- by-laws for the prosecutor's attestation and qualification commissions;
- the Code of Ethics of Prosecutors;
- the By-laws Regarding Wearing of Prosecutor's Robe and Insignia and their Standards;
- by-laws for selection, apprenticeship and qualification examination of candidates for the office of a prosecutor;
- the By-laws for Evaluation of the Professional Activity of Prosecutors;
- the By-laws for the Use of the Coat of Arms of the Office of the Prosecutor;
- the By-laws for Awarding;
- the By-laws Regarding Assistant to a Prosecutor.

Council of Prosecutors is established by OPL in 1994.

Prosecutors Attestation Commission

Prosecutors Attestation Commission introduced in 2013. According to Section 29.¹ of the OPL¹¹⁹ (hereinafter - the Attestation Commission) shall be established by the Council of the Prosecutor General for a year, determining the number of members and composition thereof.

¹¹⁷ Khotynska-Nor O, Podkopaiev S, Ponomarova H and Lukianov D, 'The Model of Prosecutorial Self-Governance in Ukraine and the Baltic Countries: A Comparative Aspect' (2024) 7(2) Access to Justice in Eastern Europe 393-409. Last published on 1 May 2024 <https://doi.org/10.33327/AJEE-18-7.2-a000201>

¹¹⁸ Office of the Prosecutor Law. Latvijas Vēstnesis, 65, 02.06.1994. <https://likumi.lv/ta/id/57276>, see Section 29

¹¹⁹ Ibid., see Section 29.¹

Prior to the appointment or promotion of a prosecutor in the office, the Attestation Commission shall provide an opinion on his or her eligibility for this office, express a proposal to the Prosecutor General regarding the application of a disciplinary punishment to the prosecutor if the law provides for the necessity of such opinion, and also perform other functions specified in OPL and provided for in the By-laws of the Prosecutors Attestation Commission. Decisions and opinions of the Attestation Commission shall be of recommendatory nature.

A prosecutor or a candidate for the office of a prosecutor may express objections regarding the opinion given by the Attestation Commission to the Prosecutor General.

The Attestation Commission shall, not less than once a year, provide an activity report to the Council of the Prosecutor General.

Prosecutors Qualification Commission

Prosecutors Qualification Commission introduced in 2013. Based on Section 29.² of the OPL¹²⁰ the Prosecutors Qualification Commission (hereinafter - the Qualification Commission) shall be established by the Council of the Prosecutor General for a year, determining the number of members and composition thereof.

The Qualification Commission shall assess and give an opinion on execution of the apprenticeship programme of a candidate for the office of a prosecutor, on the conformity of the knowledge and professional skills of a candidate for the office of a prosecutor and a prosecutor for the office of a prosecutor, and also perform other functions specified in the OPL and provided for in the By-laws of the Prosecutors Qualification Commission.

A prosecutor or a candidate for the office of a prosecutor may express objections regarding the opinion of the Qualification Commission to the Prosecutor General. The Qualification Commission shall, not less than once a year, provide an activity report to the Council of the Prosecutor General.

3. Describe the reasons for the establishment and reform of the prosecutorial self-governing bodies, and how the results were assessed by international institutions, primarily the Council of Europe and the EU.

The competence of the General Prosecutor's Council evolved over the time, as well as Prosecutors' Qualification Commission Prosecutors' Attestation Commission are established in 2013 in light of recommendation Rec (2000)19 of the Committee of Ministers of the Council of Europe dated October 6, 2000, "The Role of Public Prosecution in the Criminal Justice System".¹²¹

B. Prosecutors' Career

4. What are the stages in the procedure for first-time appointment as a prosecutor? Which entities are involved, and what is their role?

¹²⁰ Ibid., see Section 29.²

¹²¹ Recommendation Rec(2000)19 on the Role of Public Prosecution in the Criminal Justice System (Council of Europe Committee of Ministers, 6 October 2000) <https://rm.coe.int/16804be55a>

According to the Section 33.¹ of the OPL¹²² the procedures for performing the selection of candidates for the office of a prosecutor is determined in the By-laws of a Candidate for the Office of a Prosecutor¹²³.

In the framework of the selection process the Prosecutor General or his or her authorized official may request information and documents from a person who wishes to apply for the office of a prosecutor on his or her conformity with the requirements laid down in the law for applying for such office, and also information from other authorities or persons on the person who wishes to apply for the office of a prosecutor. The Prosecutor General or his or her authorized official may examine the information and documents received.

According to the Section 33.² of the OPL¹²⁴ candidate for the office of a prosecutor shall undergo apprenticeship in the vacant position of a district (city) prosecutor according to the procedures, time period, and other conditions specified in the apprenticeship contract.

The apprenticeship contract with the candidate for the office of a prosecutor shall be concluded by the Prosecutor General. The apprenticeship programme shall be an integral part of the contract. The candidate for the office of a prosecutor shall not have the procedural rights of a prosecutor during apprenticeship.

The monthly wage of the candidate for the office of a prosecutor during apprenticeship shall be determined by the Law on Remuneration of Officials and Employees of State and Local Government Authorities.

Other issues which are related to apprenticeship of the candidate for the office of a prosecutor at an Office of the Prosecutor and qualification examination are governed by the By-laws of Apprenticeship and Qualification Examination of Candidates for the Office of a Prosecutor.¹²⁵

Referring the procedure in more details the following stages should be mentioned:

- Selection procedure
- Internship (apprenticeship)

Selection procedure

- The selection is carried out in an open competition, testing the general knowledge and legal knowledge necessary for the performance of the duties of the prosecutor of the person who wishes to run for the position of prosecutor (hereinafter referred to as the applicant), assessing the applicant's compliance with the requirements for a candidate for the position of prosecutor set out in the OPL and the competencies and skills necessary for the position of prosecutor. The selection is organized at least once a year.

¹²² Office of the Prosecutor Law. Latvijas Vēstnesis, 65, 02.06.1994. <https://likumi.lv/ta/id/57276>, see Section 33.¹

¹²³ Regulation for the selection of candidates for the position of prosecutor, approved by the Prosecutor General's Order No. 100 of 15.05.2025 "On Approval of the Regulations for the Selection of Candidates for the Position of Prosecutor" [Prokurora-amata-kandidatu-atlases-nolikums.docx](https://prokuratura.lv/media/Normativie_akti/25.09.2023_Prokurora_amata_kandidatu_atlases_nolikums.docx)

¹²⁴ Office of the Prosecutor Law. Latvijas Vēstnesis, 65, 02.06.1994. <https://likumi.lv/ta/id/57276>, see Section 33.²

¹²⁵ Regulations on the internship and qualification examination of candidates for the position of prosecutor, approved by the Prosecutor General's Order No. 131 of 25.09.2023

"On Approval of the Regulations on the Internship and Qualification Examination of Candidates for the Position of Prosecutor" https://prokuratura.lv/media/Normativie_akti/25.09.2023_Prokurora_amata_kandidatu_stazesanas_kvalifikacijas_parbaudes_nolikums.pdf

- The selection process is ensured by the **Department of Performance Control and International Cooperation of the Prosecutor General's Office, the Personnel Department of the Administrative Director's Service and the Prosecutors' Attestation Commission.**
- The selection is announced on the Prosecutor's Office website www.prokuratura.lv.
- When applying for the selection competition, the applicant submits:
 - ✓ an application justifying compliance with the requirements for a candidate for the position of prosecutor set out in the OPL and certifying that the restrictions on holding the position of prosecutor set out in the OPL do not apply to him/her, and providing detailed answers to the following questions:
 - about previous work experience and the most significant professional achievements over the past three years, describing your role in achieving them and your benefits, but if you have no previous work experience, then about the experience gained in the training practice, describing your role in achieving the goal of the independent training practice and your benefits and providing conclusions about its possible impact on the performance of the prosecutor's duties;
 - about one important personal success in everyday life, describing the situation, your role and actions, results, providing conclusions about the experience gained and its further use;
 - about your qualities and skills that indicate your suitability for the position of prosecutor, as well as the goals you want to achieve in this position;
 - about your vision of the role of prosecutor in the development of the judicial system and the state;
 - about facts that may negatively affect the applicant's reputation (about administrative penalties, disciplinary sanctions imposed within the last five years);
 - ✓ a curriculum vitae (in accordance with the Europass CV standard), in which the specified e-mail address will be used for communication with the applicant;
 - ✓ documents confirming education and work experience in the legal specialty.
- In addition, the applicant is entitled to submit a request to be exempted from taking the test, attaching documents confirming his compliance with the following conditions, when the Prosecutor General may exempt a person from taking the test if person:
 - ✓ has successfully passed the qualification examination for a judge or lawyer within the last three years;
 - ✓ has previously worked as a prosecutor and no more than five years have passed since the termination of the legal relationship;
 - ✓ meets the requirements for a judge, academic staff of a university specializing in law or a sworn attorney to run for the position of prosecutor set out in Section 34 and 35 of the OPL;
 - ✓ has passed the state unified professional qualification examination for a lawyer within the last three years;
 - ✓ holds a position with a legal specialization in the prosecutor's office and has received a recommendation from the head of the structural unit;
 - ✓ has worked as an investigator for at least three years and has received a recommendation from the chief prosecutor of the structural unit that carries out supervision in accordance with the procedures specified in the Law on Criminal Procedure;
 - ✓ has worked as an assistant judge for the last three years.
- An applicant who has not passed the selection, has not completed the internship program or has not passed the qualification exam may re-apply for selection no earlier than one year after his/her non-

inclusion in the list of candidates for the position of prosecutor or the adoption of a decision by the Prosecutors Qualification Commission by which the internship program has been declared unfulfilled or his/her knowledge and professional skills have been declared inadequate for the position of prosecutor.

- If necessary, the Human Resources Department employee may ask the applicant to submit additional information.
- The selection takes place in **three rounds**:
 - ✓ first round – a written test that tests the applicant’s general and legal knowledge necessary for the performance of the duties of a prosecutor;
 - ✓ second round – evaluation of the application and submitted documents in accordance with the formal criteria, checking the applicant’s compliance with the requirements set out in the OPL for a candidate for the position of prosecutor (except for the requirement of impeccable reputation) and the absence of the specified restrictions on holding the position of prosecutor, as well as an interview of the applicant’s social competencies conducted by a specialist invited by the Personnel Department;
 - ✓ third round – evaluation of the applicant’s answers to the questions mentioned previously, verifying his/her competences in accordance with the criteria set out in the rules¹²⁶, motivation, ability to justify them and previous work and life experience, as well as assessing the applicant's compliance with the requirement for impeccable reputation set out in the Prosecutor's Office Law.
- The overall selection result is obtained by summing the applicant's evaluation obtained in the first and third rounds of selection.
- The applicant who has successfully completed the selection shall be recognized by the Commission as suitable for the position of prosecutor and shall be included in the list of candidates for the position of prosecutor. If the selection has been successfully completed by an applicant who participated in the selection conducted to fill the vacancy for the position of prosecutor of a specific specialized sectoral prosecutor's office of district status, the Commission shall recognize him/her as suitable for the position of prosecutor and shall include him/her in a separate list of candidates for the position of prosecutor of a specific specialized sectoral prosecutor's office of district status – the list of candidates for the position of prosecutor of a specialized sectoral prosecutor's office.
- The applicant may, within ten days of its notification, submit objections to the Prosecutor General regarding the decision of the Commission, which has been the basis for not including the applicant in the relevant list of candidates for the position of prosecutor. If the Prosecutor General establishes violations of the selection process that could have affected the selection result as a whole, he may order the relevant round of selection of the applicant to be re-organized. The applicant may appeal the Prosecutor General's response to the court within one month in accordance with the procedures specified in the Administrative Procedure Law.
- An applicant is included in the list of candidates for the position of prosecutor or in the separate list of candidates for the position of a specific specialized sectoral prosecutor's office of district status for a period of three years. After the expiration of this period, he is removed from the list of candidates for the relevant position of prosecutor. This person has the right to re-apply for selection.
- Before the expiration of the term, the applicant is removed from the list of candidates for the relevant prosecutor's position if an internship contract has been concluded with him/her, at his/her own

¹²⁶ Annex to the Regulation for the selection of candidates for the position of prosecutor, approved by the Prosecutor General's Order No. 100 of 15.05.2025 “On Approval of the Regulations for the Selection of Candidates for the Position of Prosecutor” [Prokurora-amata-kandidatu-atlases-nolikums.docx](#)

request, or if any of the circumstances that constitute an obstacle to the person's application for the position of prosecutor have arisen, which the applicant is obliged to notify the prosecutor's office of.

Internship

- The candidate is interning at a district-level prosecutor's office where there is a vacancy for the position of prosecutor. During the internship, the candidate completes an internship program. After reviewing the internship program, the candidate takes a qualification exam.
- The candidate's internship process is ensured by the Chief Prosecutor of the district-level prosecutor's office and the internship manager. The candidate's internship program performance and qualification check is ensured by the Department of Performance Control and International Cooperation of the Prosecutor General's Office, the Personnel Department of the Administrative Director's Service and the Prosecutor Qualification Commission.
- A candidate who, taking into account the number of points obtained in the selection of candidates for the position of prosecutor, is included with the first serial number in the list of candidates for the position of prosecutor, created in accordance with the Regulations for the Selection of Candidates for the Position of Prosecutor, is offered the opportunity to conclude an internship contract for the vacant position of prosecutor.
- The Prosecutor General shall conclude a fixed-term internship contract with the candidate. An integral part of the internship contract is the internship programme, which is developed by the Commission and approved by the Prosecutor General. Depending on the specialization of the district prosecutor's office, the internship contract may be general or specialized.
- The candidate's internship period is four months, of which three months are for the implementation of the internship program. After completing the internship program, the candidate prepares for the qualification exam and fulfills the instructions and tasks given by the Chief Prosecutor or internship manager, continuing to improve his or her professional skills.
- The qualification exam has two parts:
 - ✓ written part – preparation of a written solution to three cases;
 - ✓ oral part – presentation of the solution to the cases.
- Depending on the results of the candidate's qualification examination, the Commission shall issue an opinion:
 - ✓ recognizes the candidate's knowledge and professional skills as appropriate for the position of prosecutor and informs the candidate and the Personnel Department thereof;
 - ✓ recognizes the candidate's knowledge and professional skills as inappropriate for the position of prosecutor and informs the candidate thereof.

5. What are the eligibility criteria for first-time candidates for the position of prosecutor, and which legal act provides for them? Which entities involved in the selection procedure assess compliance with these criteria, and how?

The eligibility criteria for the first-time candidate are set in the Section 33 of the OPL¹²⁷, namely, the following persons may be appointed as a prosecutor:

- who are citizens of Latvia;
- who have knowledge of the official language at the highest level;
- who have attained 25 years of age;

¹²⁷ Office of the Prosecutor Law. Latvijas Vēstnesis, 65, 02.06.1994. <https://likumi.lv/ta/id/57276>, see Section 33

- who have acquired a higher vocational or academic education (except for the first level vocational education) and a lawyer qualification, and also a master's or doctoral degree;
- who have an impeccable reputation;
- who have undergone apprenticeship at an Office of the Prosecutor, have completed the apprenticeship programme, have passed the qualification examination and received an opinion of the Attestation Commission on eligibility for the office of a prosecutor.

The Prosecutor General may exempt such person from taking of the qualification examination who conforms to the requirements laid down in Sections 34 and 35 of the OPL for a judge, academic staff of judicial speciality of a higher education institution, or sworn advocate for applying as a candidate for the office of a prosecutor.

6. How is gender equality ensured in the appointment process? Are any positive measures applied for female candidates (e.g., quotas or provisions ensuring selection in cases of equal merit)? If yes, how are they implemented?

There are no specific quotas in place ensuring selection in case of equal merit. Rather the appointment process for prosecutors in Latvia is governed by the constitutional guarantee of equality and the general non-discrimination provisions.

In particular, according to the Section 33.¹ of the OPL¹²⁸ Selection of Candidates for the Office of a Prosecutor no discrimination based on origin, social and financial status, race or nationality, sex, attitude towards religion, type and nature of occupation, or political or other views is permitted in selection of candidates for the office of a prosecutor.

7. Describe the mandatory training required for first-time candidates or newly appointed prosecutors.

Initial qualification training for applicants for the position of prosecutor is mandatory – it is a prerequisite for receiving powers and taking up the position. Candidates must first complete the initial training program organized by the Academy of Justice, and without its successful completion, the position of prosecutor is not granted.

8. How has the procedure for first-time appointment and the relevant criteria functioned over time? What weaknesses have been identified? How were they assessed by international institutions, primarily the Council of Europe and the EU?

As described, in order to be appointed as a prosecutor, a candidate must first pass a theoretical and general knowledge test, complete tasks, answer examination paper questions, complete an internship program during the internship, and pass a qualifying examination finally. However, the audit findings suggest that there may be a situation where, despite the successful completion of all of the above, as evidenced by the assessment by the Prosecutors' Qualification Commission, the Prosecutors' Attestation Commission may decide that a candidate does not meet the requirements for the position of prosecutor based on an opinion provided by a Chief Prosecutor. This suggests that the decision on the candidate's suitability for the position

¹²⁸ Ibid., see Section 33.¹

may incur subjectivity, which does not comply with the practices and standards recommended in the supranational documents.¹²⁹

There is an opinion of the State Audit Office of Latvia that one should find an opportunity to separate the area of responsibility of the Prosecutors' Qualification Commission and the Prosecutors' Attestation Commission, as a situation arises when the Prosecutors' Attestation Commission re-evaluates the decision adopted by the Prosecutors' Qualification Commission. It is necessary to remove any doubts about the impartiality of the decision-making process in the procedure for appointing a prosecutor. The prosecutors' selection system established in the Prosecutor's Office supports previous professional experience in a specific field and ensures that individuals who are already largely prepared for the prosecutor's work are selected. Perhaps in the future, the Prosecutor's Office should also assess ways to strengthen and develop the institution of Assistant Prosecutors, which, like judge assistants in the judiciary, could be a significant internal resource for filling prosecutor vacancies by providing training and finding a pool of prosecutor candidates among the most qualified Assistant Prosecutors.¹³⁰

9. What are the stages in the procedure for transferring a prosecutor to another office, particularly to a higher-level position? Which entities are involved, and what is their role?

According to the Section 29.¹ of the OPL prior to the promotion of a prosecutor in the office, the Attestation Commission shall provide an opinion on his or her eligibility for this office. The process in general is supported by the Personnel Department of the Administrative Director's Service and is initiated based on the available vacancy. Prosecutor is transferred based on the order of the General Prosecutor.

Referring to the procedure in more details¹³¹, Attestation Commission shall evaluate and provide an opinion on a candidate who has applied in the announced competition for the vacant position of Chief Prosecutor or Deputy Chief Prosecutor of a district-level prosecutor's office, prosecutor of a court district prosecutor's office, Chief Prosecutor or Deputy Chief Prosecutor and Prosecutor or Chief Prosecutor of the Prosecutor General's Office, about which the Personnel Department of the Administrative Director's Service shall organize the publication of information on the internal and external websites of the prosecutor's office, indicating the deadline for the application of candidates, which shall not be shorter than one week.

The Personnel Department of the Administrative Director's Service shall organize a check of the person's compliance with the requirements of the OPL (except for the requirement of impeccable reputation), if a

¹²⁹ Section 11 of Recommendation Rec(2000)19 of the Committee of Ministers to Member States on the Role of Public Prosecution in the Criminal Justice System, Guidelines for the Status and Role of Prosecutors, approved jointly by the UNODC and the International Association of Prosecutors in 2014; standards "Professional Liability Standards and Outline of Main Responsibilities and Rights of Prosecutors" adopted by the International Association of Prosecutors on 23 Apr 1999.

¹³⁰ State Audit Office of the Republic of Latvia, 'Does the operation of the Prosecutor's Office of the Republic of Latvia require any improvements? Summary of conclusions and recommendations' (Performance Audit Sub-task No 2.4.1-34/2019, Riga, 11 January 2021) <https://www.lrvk.gov.lv/en/getrevisionfile/29451-x7eOREdleVjooAPJNz2qy1gsIx0fOZSw.pdf>

¹³¹ REGULATIONS OF THE PROSECUTOR ATTESTATION COMMISSION, Issued in accordance with Article 29, Part Three, Clause 2 of the Prosecutor's Office Law, Appendix to the Order of the Prosecutor General of 19.12.2024 No. P-101-100-2024-00017 (regulations not available online).

person who is not a prosecutor has applied for the competition, as well as, in the competition for a vacancy in a management position, organize the candidate's participation in a psychological assessment, in which the candidate's personality suitability for the position of Chief Prosecutor or his/her deputy of the prosecutor's structural unit is assessed (including leadership skills). The conclusion part of the specialist's opinion shall be sent to the applicant before the interview.

The assessment of candidates shall be carried out by the Commission in the form of an interview with the participation of the Chief Prosecutor of the structural unit in which the vacant prosecutor's staff unit is to be filled. If the vacancy of the Chief Prosecutor is to be filled, the Prosecutor General or a Chief Prosecutor authorized by him shall participate in the interview.

Before the interview, the Commission, in cooperation with the Chief Prosecutor or the Prosecutor General, shall develop a candidate's competency assessment form (hereinafter referred to as the Assessment Form). Rules do not specify the list of the skills; however, the selection of the necessary abilities and skills shall be based on the skills and abilities specified in the prosecutor's competency assessment form.

If necessary, the Commission, in cooperation with the Chief Prosecutor in whose structural unit the vacancy is to be filled, may organize a skills test for candidates, taking into account the competence of the relevant structural unit. A candidate who has not appeared for such an examination shall not continue to participate in the competition.

The Commission is entitled to invite any official of the Prosecutor's Office to participate in the interview with the right of advice, as well as to request all necessary information, including organizing surveys and asking for feedback. During the interview, the members of the Commission and the officials present question the candidate in order to gain confidence in the existence of the necessary competencies, as well as listen to the opinion of the Chief Prosecutor on the candidate's suitability for the position. A candidate who does not appear for the interview shall not continue participation in the competition.

After the interview, each member of the Commission shall fill in the Assessment Form, assessing the relevant ability or skill from 1 to 5, taking into account the competency assessment criteria specified in rules.¹³² If the Commission has recognized that the candidate's reputation is not impeccable, the assessment forms shall not be filled out.

The Secretary of the Commission shall compile the assessments recorded in the Assessment Forms and fill in the average assessment form of the candidate's competencies, which shall be signed by the Chairman of the Commission. The average assessment of each competency shall be obtained by summing the assessments of all members of the Commission and dividing by the number of members of the Commission present, while the average assessment of the candidate's competencies shall be obtained by adding up the average

¹³² For example, 5 would mean that “the candidate has developed the defined skill excellently. The candidate has reached the peak of skill development and is excellent at applying it in practice. The candidate's level of skill and its application in practice can be a model for others. The candidate's skill is praised by both colleagues in the prosecutor's office and cooperation partners in investigative institutions and the court. The level of the defined skill and its manifestation exceed the level required for a specific position and can maximally ensure the achievement of the priority goals defined in the prosecutor's office's operational strategy”. 1 would mean that “the lack of a specific skill or its type or form of expression discredits the candidate's image, its low level is incompatible with the position for which the candidate is applying, and may degrade the values declared in the prosecutor's office's operational strategy.”

assessment of each competency and dividing by the number of assessed competencies. If the average assessment of any individual competency is lower than 3, the candidate has not passed the competition.

Participants in the competition who meet the position shall be ranked on the list according to the average assessment of the competencies obtained. The results of the competition shall be submitted to the Prosecutor General.

If the Prosecutor General has assigned the winner of the competition to intern in a vacant position, appointing him as an acting officer of the position, then the Chief Prosecutor of the structural unit shall, no later than ten working days before the end of the internship period, provide an opinion to the Prosecutor General on his suitability for this position. If such an opinion is negative and the Prosecutor General agrees with its motivation, the next best participant in the competition may be appointed.

A participant in the competition may express objections to the Prosecutor General regarding the Commission's opinion unfavorable to him in accordance with the procedure provided for in the rules.¹³³ If the Prosecutor General recognizes that the competition procedure has been violated, he may order a repeated competition to be held.

Based on the Section 35.¹ of the OPL prior to the promotion of a prosecutor in the office, and also for the purpose of raising the qualification of a prosecutor, the Prosecutor General may assign the prosecutor to undergo apprenticeship in another unit of the Office of the Prosecutor in the office of a prosecutor for a period not exceeding six months.

10. What are the criteria for candidates being transferred to a higher-level position? Which entities assess compliance with these criteria, and how?

The candidates should comply with the Section 34 and 35 of the OPL depending on the vacant position. The compliance with the criteria set in law is assessed by the Personnel Department of the Administrative Director's Service and Attestation Commission. Please see detailed description in the Question 9.

11. How has the procedure for transferring prosecutors and the relevant criteria functioned over time? What weaknesses have been identified? How were they assessed by international institutions, primarily the Council of Europe and the EU?

Over the time the opinion of Attestation Commission is introduced as part of the process (with the establishment of Attestation Commission in 2013).

Also, the apprenticeship based on Section 35.¹ of the OPL as part of the process was introduced in 2013, as well as criteria for the eligibility has been expanded in 2013.

¹³³ REGULATIONS OF THE PROSECUTOR ATTESTATION COMMISSION, Issued in accordance with Article 29, Part Three, Clause 2 of the Prosecutor's Office Law, Appendix to the Order of the Prosecutor General of 19.12.2024 No. P-101-100-2024-00017 (regulations not available online), Article 26 "If the person on whom the decision has been made has objections to the Commission's decision, they shall be addressed to the Prosecutor General and submitted to the Commission within three working days of the notification of the motivated Commission's decision, which shall forward the objections together with the materials of the case examined by the Commission to the Prosecutor General. If objections to the Commission's decision are not received within this period, the decision shall be notified to the Prosecutor General."

12. Do individuals have the right to appeal decisions denying them appointment or transfer (particularly to higher-level positions)? If yes, on what grounds and what are the outcomes of such appeals?

Any prosecutor who is refused promotion or transfer to a senior post may challenge that decision before the courts as an administrative act. The following ground for appeal could be mentioned: breach of statutory procedure; lack of transparency or rational justification; violation of consent rule.

13. What are the grounds and sanctions for disciplinary liability of prosecutors? What are the stages of the disciplinary procedure? Which entities are involved, and what is their role?

According to the Section 43 of the OPL¹³⁴ prosecutor may be held disciplinary liable for:

- intentional violation of the law or negligence in the performance of official duties;
- intentional failure to perform official duties;
- disgraceful conduct incompatible with the office of a prosecutor;
- failure to comply with the norms of the Code of Ethics for Prosecutors.

The rendering of an acquittal, the referral of a case for the prevention of violations or the annulment of procedural decisions cannot in themselves be grounds for disciplinary liability of a prosecutor, unless the prosecutor has committed an intentional violation of the law or negligence that has caused significant consequences.

In order to assess a possible non-compliance with the provisions of the Code of Ethics for Prosecutors in connection with the commission of an administrative offence, the following information regarding the administrative offence committed by the prosecutor shall be requested from the Criminal Records Register in accordance with the procedure established by the Prosecutor General no less than once every six months:

- the provision of the regulatory enactment, which provides for the offence for which the prosecutor has been held administratively liable;
- the institution that has taken the decision to impose an administrative penalty, the number of the decision and the date of adoption;
- the type of penalty imposed;
- the date on which the decision to impose an administrative penalty entered into force.

According to the OPL only one disciplinary punishment may be applied for the same violation and the following disciplinary punishments may be applied to a prosecutor for the violations provided for in the Section 43 of OPL¹³⁵:

- a reproof;
- a reprimand;
- reduction of the monthly wage of the prosecutor up to 20 per cent for a period not exceeding six months;
- demotion in the office;
- dismissal from the office.

¹³⁴ Office of the Prosecutor Law. Latvijas Vēstnesis, 65, 02.06.1994. <https://likumi.lv/ta/id/57276>, see Section 43

¹³⁵ Ibid., see Section 44

Procedure for the application and appeal of disciplinary punishments is foreseen in the Section 45 of the OPL¹³⁶, namely, the Prosecutor General has the right to apply any disciplinary punishment to any prosecutor. A chief prosecutor has the right to, as a disciplinary punishment, issue a reproof or reprimand to a prosecutor of a unit under his or her management. If a violation of more serious nature has been committed, the chief prosecutor may submit to the Prosecutor General a proposal to apply another disciplinary punishment.

An official who has the right to apply a disciplinary punishment shall become acquainted with the materials received and request an explanation from a prosecutor and, if necessary, - organize the investigation of the fact of a disciplinary violation according to the procedures stipulated by the Prosecutor General. Prior to reduction of the monthly wage, demotion in the office, or dismissal from the office, the materials received shall be submitted to the Attestation Commission for the provision of an opinion.

A disciplinary punishment may be imposed not later than within three months from the date of discovery of the violation, excluding the period of probation and the period when a prosecutor has not been at work due to justifiable reasons, but not later than two years after the date of committing the violation.

The prosecutor held to liability shall be familiarized with the order regarding the application of a disciplinary punishment, ensuring the availability of the order to all prosecutors. The order shall be appended to the personal file of the prosecutor.

If within a year after application of a disciplinary punishment, except for dismissal from the office, a new disciplinary punishment has not been imposed on a prosecutor, the prosecutor shall not be regarded as disciplinarily punished, however, reinstatement in the previous office is possible only according to the attestation procedures.

An official who has applied a disciplinary punishment is entitled to revoke it before one year has elapsed. The prosecutor held to liability shall be familiarised with the order regarding the revocation of a disciplinary punishment, ensuring the availability of the order to all prosecutors. The order shall be appended to the personal file of the prosecutor.

A person has the right to become acquainted with the materials of investigation of the fact of a disciplinary violation. The disciplinary punishment applied by a chief prosecutor may be appealed, within a month, to the Prosecutor General, but the decision by the Prosecutor General or the disciplinary punishment imposed - to the Disciplinary Court. Appeal of the decision to impose a disciplinary punishment shall not suspend the operation thereof.¹³⁷

A person shall appeal the decision by the Prosecutor General or the disciplinary punishment imposed and the Disciplinary Court shall examine the relevant claim in accordance with the procedures laid down in the Judicial Disciplinary Liability Law.¹³⁸

¹³⁶ Ibid., see Section 45

¹³⁷ Appeal of the decisions of the Prosecutor General provided for in Section 45, Paragraph eight of this Law or the applied disciplinary punishments to the Disciplinary Court shall be applicable after 1 January 2014.

Until 1 January 2014 the relevant decisions shall be appealed to the Administrative Court in accordance with the procedures laid down in the Administrative Procedure Law.

¹³⁸ Judicial Disciplinary Liability Law, 132, 10.11.1994. <https://likumi.lv/ta/id/57677>

14. How have the grounds and procedure for disciplinary liability of prosecutors functioned over time? What weaknesses have been identified? How were they assessed by international institutions, primarily the Council of Europe and the EU?

The immunity of judges and prosecutors concerning administrative offences has been removed. In June 2020, amendments to the Judicial Disciplinary Liability Law, to the Law on Judicial Power and to the Law on the Prosecutor's Office removed the immunity of judges and prosecutors in cases of administrative offences (violations), in line with a GRECO recommendation.¹³⁹ The amendment positively evaluated by European Commission within the Rule of Law Report for 2020.¹⁴⁰

15. What are the stages of the appointment procedure for managerial positions in the prosecution (excluding the Prosecutor General)? Which offices at all levels does it apply to? Which entities are involved, and what is their role?

According to the Section 29.¹ of the OPL prior to the appointment of a prosecutor for managerial position, the Attestation Commission shall provide an opinion on his or her eligibility for this office. The process in general is supported by the Personnel Department of the Administrative Director's Service and is initiated based on the available vacancy. Prosecutor is appointed based on the order of the General Prosecutor.

Based on the Section 35.¹ of the OPL prior to the promotion of a prosecutor in the office, and also for the purpose of raising the qualification of a prosecutor, the Prosecutor General may assign the prosecutor to undergo apprenticeship in another unit of the Office of the Prosecutor in the office of a prosecutor for a period not exceeding six months.

For detailed description see Question Nr. 9. The same procedure is applied to the transfer and appointment to the managerial positions.

16. What are the eligibility criteria for managerial candidates (excluding the Prosecutor General)? Can non-prosecutors be appointed (e.g., lawyers, judges, other legal professionals)? Which entities assess compliance with the criteria, and how?

Excluding the Prosecutor General there are following managerial positions to be mentioned:

- Chief Prosecutor;
- Deputy Chief Prosecutor.

According to Section 34 of the OPL¹⁴¹ candidate for the Office of a Chief Prosecutor of a District (City) Office of the Prosecutor, a Prosecutor of the Office of the Prosecutor of a Court District, and a Prosecutor of the Office of the Prosecutor General should be:

- A person whose length of service in the office of a prosecutor or judge is not less than five years may be appointed as the chief prosecutor of a district (city) Office of the Prosecutor.

¹³⁹ GRECO Fourth Evaluation Round preventing corruption in respect of members of parliament, judges and prosecutors – Evaluation report and Compliance Reports, recommendation x. The amendments entered into force in July 2020.

¹⁴⁰ Commission Staff Working Document, 2020 Rule of Law Report – Country Chapter on the Rule of Law Situation in Latvia (SWD (2020) 313 final, 30 September 2020) <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020SC0313>

¹⁴¹ Office of the Prosecutor Law. Latvijas Vēstnesis, 65, 02.06.1994. <https://likumi.lv/ta/id/57276>, see Section 34

- A person whose length of service in the office of a prosecutor or judge is not less than five years or length of service in the office of academic staff of judicial speciality of a higher education institution or sworn advocate is not less than 10 years may be appointed as a prosecutor of the Office of the Prosecutor of a court district and a prosecutor of the Office of the Prosecutor General.

Information on vacancies of the office of chief prosecutors of a district (city) Office of the Prosecutor, prosecutors of the Office of the Prosecutor of a court district, and prosecutors of the Office of the Prosecutor General shall be published, not later than one month before the filling thereof, on the website of the Office of the Prosecutor, indicating the time period for application which is not less than one week.

According to the Section 35 of the OPL¹⁴² candidate for the Office of a Chief Prosecutor of the Department, a Chief Prosecutor of the Division of the Office of the Prosecutor General, and the Chief Prosecutor of the Office of the Prosecutor of a Court District should be:

- A person whose length of service in the office of a prosecutor is not less than 10 years or length of service in the office of a judge of the Supreme Court is not less than five years may be appointed as a chief prosecutor and deputy chief prosecutor of the department, division of the Office of the Prosecutor General or the Office of the Prosecutor of a court district.

For more detailed information on the selection process and the reasons the candidate for the managerial position is rejected, see Question Nr. 9.

17. How is gender equality ensured in the appointment of managerial positions (excluding the Prosecutor General)? Are any positive measures applied for female candidates (e.g., quotas or provisions ensuring selection in cases of equal merit)? If yes, how are they implemented?

There are no specific quotas in place ensuring selection in case of equal merit. Rather the appointment process for prosecutors in Latvia is governed by the constitutional guarantee of equality and the general non-discrimination provisions.

In particular, according to the Section 33.¹ of the OPL¹⁴³ Selection of Candidates for the Office of a Prosecutor no discrimination based on origin, social and financial status, race or nationality, sex, attitude towards religion, type and nature of occupation, or political or other views is permitted in selection of candidates for the office of a prosecutor.

18. How has the procedure for appointing prosecutors to managerial positions and the relevant criteria functioned over time? What weaknesses have been identified? How were they assessed by international institutions, primarily the Council of Europe and the EU?

Over the time the opinion of Attestation Commission is introduced as part of the process (with the establishment of Attestation Commission in 2013).

Also, the apprenticeship based on Section 35.1 of the OPL as part of the process was introduced in 2013, as well as criteria for the eligibility has been expanded in 2013.

¹⁴² Ibid., see Section 35

¹⁴³ Ibid., see Section 33.¹

19. Is a reserve list of candidates for managerial positions (excluding the Prosecutor General) maintained? If yes, what are the key elements and procedures? How effective is this practice? Have there been any appeals from those excluded, and what were the outcomes?

No, there is no reserve list of candidates for managerial positions maintained.

20. Describe the mandatory training for managerial candidates or newly appointed managers.

There is no mandatory training in place for managerial candidates or newly appointed managers, however the training related to the skills in general is provided by Justice Academy and previously (before 2025) by Latvian Judicial Training Center and other authorities.

21. Do heads of prosecutor's offices (excluding the Prosecutor General) bear disciplinary liability for ineffective management (e.g., failure to achieve organizational goals, low performance of subordinates, or other organizational shortcomings)? If yes, what are the qualifying conditions and are there specific sanctions? If not, do they bear other forms of liability and under what procedures? Which entities assess compliance, and how?

There are no specific grounds foreseen related to the liability of the management in light of inefficiency, however, the general grounds foreseen in the Section 43 of the OPL could be applied. See question Nr.13.

C. Appointment and dismissal of the Prosecutor General

22. What are the stages in the appointment procedure for the Prosecutor General? Which entities are involved, and what is their role? Who holds de facto veto power over the selection?

According to the Section 38 of the OPL¹⁴⁴ upon proposal of the Judicial Council, the Prosecutor General shall be appointed to the office by the *Saeima* for five years. The same person may be the Prosecutor General for not more than two consecutive terms.

Selection of the candidates for the office of the Prosecutor General shall take place in an open competition. A person who conforms to the criteria referred to in OPL (Section 36) may apply himself or herself as a candidate for the office of the Prosecutor General. The by-laws of the competition approved by the Judicial Council, namely, the procedures and criteria for the evaluation of the candidates for the office of the Prosecutor General shall be determined by the Judicial Council.¹⁴⁵

After the Judicial Council has ascertained the conformity of candidates with the requirements of Section 36 of OPL, it shall, without delay, request the competent State security institution to provide an opinion on the conformity of the candidates with the requirements laid down in the law On Official Secret for the receipt of a facility security clearance.

The Judicial Council shall assess the candidates for the office of the Prosecutor General and select one - the most suitable one - from amongst them. The Judicial Council shall advance only such candidate for appointing

¹⁴⁴ Ibid., see Section 34

¹⁴⁵ Regulations on the competition, evaluation criteria and procedures for candidates for the position of Prosecutor General, approved by the Judicial Council decision No.16 of 30 March 2020

to the office of the Prosecutor General on whom a positive opinion of the competent State security institution on his or her conformity with the requirements laid down in the law On Official Secret for the receipt of a facility security clearance has been received.

The Judicial Council shall submit the proposal for the appointing of the Prosecutor General to the office to the Saeima not later than one month before the end of the term of office of the Prosecutor General. If the Saeima rejects the proposal of the Judicial Council, a new proposal for appointing of the Prosecutor General to the office shall be submitted not later than two months after the day when the previous proposal was rejected.

A notification regarding appointing of the Prosecutor General, chief prosecutor, and deputy chief prosecutor to the office shall be made in the official gazette *Latvijas Vēstnesis* and information shall be inserted on the website of the Office of the Prosecutor.

Referring the procedure in more details (based on Regulations on the competition, evaluation criteria and procedures for candidates for the position of Prosecutor General approved by the Judicial Council):

- The competition for the vacant position of Prosecutor General is announced in the official publication "Latvijas Vēstnesis" and on the website of the Supreme Court (website www.at.gov.lv, section "Council of Justice"), indicating the requirements for the candidate for the position of Prosecutor General, the documents to be submitted, the application deadline and place. The deadline for submitting applications is 15 working days.
- The competition shall be announced no later than 6 months before the end of the term of office of the Prosecutor General or, if the relevant position has become vacant before the end of the term of office of the Prosecutor General, within 5 working days from the day on which the relevant position has become vacant.
- The applicant must submit the following documents:
 - ✓ a motivated application letter, confirming compliance with the requirements contained in the Law on the Prosecutor's Office;
 - ✓ a concept for the development of the prosecutor's office's activities (hereinafter - the development concept), in which the applicant presents his/her opinion on the future activities and development of the prosecutor's office, strategic goals, international integration and cooperation of the Prosecutor's Office of the Republic of Latvia. If the applicant applies for a repeated term in this position, the concept must include an evaluation of the work done during the previous term of office;
 - ✓ a curriculum vitae (Europass CV standard format);
 - ✓ documents confirming education and work experience in the legal specialty;
 - ✓ a questionnaire filled out by the applicant in accordance with Annex 2 to the Cabinet of Ministers Regulation No. 21 of 6 January 2004 "Regulations on the Protection of State Secrets, Classified Information of the North Atlantic Treaty Organization, the European Union and Foreign Institutions".
- The application and documents must be sent or submitted in person to the Secretariat of the Judicial Council.
- After receiving the application, the secretariat checks each applicant's compliance with the requirements set out in Section 36 of the OPL.
- For each applicant who meets the requirements set out in Section 36 of the OPL, an opinion is requested from the Constitutional Protection Bureau on compliance with the requirements set out in

the Law "On Official Secrets" for receiving a special permit for access to official secrets (hereinafter - opinion).

- Applicants who do not meet the requirements set out in Section 36 of the OPL or who have not received a positive opinion shall not participate in the competition in the future.
- The development concepts submitted by applicants who have received a positive opinion are published on the portal "Latvijas Vēstnesis" and on the website of the Supreme Court (website www.at.gov.lv, section "Judicial Council"), and they are invited to a meeting of the Judicial Council.
- The hearing of the candidates shall be held in public. The deliberation and voting shall be held in private.
- When assessing the applicant's suitability for the position, the Judicial Council takes into account:
 - ✓ work experience and education;
 - ✓ work organization and management skills;
 - ✓ opinion on the future activities and development of the Prosecutor's Office, strategic goals, international integration and cooperation of the Prosecutor's Office of the Republic of Latvia;
 - ✓ reputation;
 - ✓ activities in the scientific or academic field;
 - ✓ foreign language skills (English, French or German);
 - ✓ activities to improve professional qualifications;
 - ✓ other activities (leading seminars, publications, participation in working groups for the development of regulatory enactments, etc.).
- The Judicial Council makes a decision on the most suitable candidate by voting on each candidate separately. A candidate who has received more than half of the total number of members of the Judicial Council specified by law (8 votes) is nominated for the position of Prosecutor General.
- The Judicial Council shall announce a new competition for the position of Prosecutor General if:
 - ✓ none of the candidates has received a positive opinion from the Constitutional Protection Office;
 - ✓ the Judicial Council has not recognized any of the candidates as suitable for the position of Prosecutor General;
 - ✓ the Saeima has rejected the candidate nominated by the Judicial Council.

Although the Judicial Council controls the selection process and nomination, the Saeima's confirmation vote serves as the ultimate safeguard. By declining to approve the Council's nominee, Parliament exercises de facto veto power over the appointment of the Prosecutor General.

23. What are the eligibility criteria for candidates for the Prosecutor General? Which entities assess compliance, and how?

There are number of age, education, experience and other related criteria. According to the Section 36 of the OPL the candidate for the Prosecutor General should be the person:

- who attained 40 years of age;
- who is a citizen of Latvia;
- who have knowledge of the official language at the highest level;
- who have acquired a higher vocational or academic education (except for the first level vocational education) and a lawyer qualification, and also a master's or doctoral degree;
- who have an impeccable reputation;

- who have worked for not less than five years as a judge of the Constitutional Court, a judge of the Supreme Court, a judge of an international court, or a judge of a supranational court, has worked for not less than 10 years in the office of a judge of a regional court, a chief prosecutor, a prosecutor of the Office of the Prosecutor of a court district or the Office of the Prosecutor General or whose total length of service in the office of a judge or prosecutor is 15 years.

The compliance is assessed by the Judicial Council, the technical review provided by the Secretariat of the Judicial Council.

24. How has the appointment procedure and the relevant criteria for the Prosecutor General functioned over time? What weaknesses have been identified? How were they assessed by international institutions, primarily the Council of Europe and the EU?

Over the time the role of the judiciary in selecting the candidate for Prosecutor General has been reinforced, that is positively evaluated by the European Commission in the Rule of Law Report for Latvia for 2020.¹⁴⁶ In March 2020, amendments to the Laws on Judicial Power and the Office of the Prosecutor entered into force, which changed the procedure for selecting the candidate for Prosecutor General. The Prosecutor General is now appointed by the Saeima (Parliament) on the proposal of the Council for the Judiciary,¹⁴⁷ which also determines the procedure and criteria for the evaluation of candidates who applied in an open competition.¹⁴⁸ In June 2020, the Council first exercised its new power to evaluate and select a candidate Prosecutor General who was later appointed by the Parliament.¹⁴⁹

25. Are general grounds for disciplinary liability applicable to the Prosecutor General? If not, are there special grounds or procedures for holding the Prosecutor General accountable, including through dismissal?

No, general grounds for disciplinary liability foreseen in the Section 43 of the OPL are not applicable to the Prosecutor General. There is early dismissal procedure foreseen described below.

26. What are the grounds for early dismissal of the Prosecutor General, and under which legal act are they defined?

Grounds for early dismissal of the Prosecutor General are defined in the Section 41.¹ of the OPL¹⁵⁰, namely, the Prosecutor General may be dismissed from the office if, in accordance with the procedures laid down in this Law, it is detected that he or she:

¹⁴⁶ Commission Staff Working Document, 2020 Rule of Law Report – Country Chapter on the Rule of Law Situation in Latvia (SWD (2020) 313 final, 30 September 2020) <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020SC0313>

¹⁴⁷ Previously, the right to propose the Prosecutor General was with the Chief Justice of the Supreme Court.

¹⁴⁸ Council for the Judiciary of Latvia (2020), The selection of candidates for the position of the Prosecutor General will henceforth be the responsibility of the Judicial Council. <https://at.gov.lv/en/jaunumi/par-tieslietu-padomi/the-selection-of-candidates-for-the-position-of-the-prosecutor-general-will-henceforth-be-the-responsibility-of-the-judicial-council-10023?year=2020&>

¹⁴⁹ Council for the Judiciary of Latvia (2020), The Judicial Council will evaluate the candidates for the position of Prosecutor General. <http://at.gov.lv/en/jaunumi/par-tieslietu-padomi/the-judicial-council-will-evaluate-the-candidates-for-the-position-of-prosecutor-general-10077?year=2020&>

¹⁵⁰ Office of the Prosecutor Law. Latvijas Vēstnesis, 65, 02.06.1994. <https://likumi.lv/ta/id/57276>, see Section 41.¹

- does not conform to the requirements laid down in the OPL in relation to the persons who may not be prosecutors and candidates for the office of a prosecutor;¹⁵¹
- is a member of a party or a political organisation;
- has not complied with any of the restrictions and prohibitions specified in the law On Prevention of Conflict of Interest in Activities of Public Officials;¹⁵²
- during the performance of duties of service has allowed intentional violation of law or negligence resulting in significant consequences;
- has allowed a shameful act which is incompatible with his or her office.

27. What are the stages in the early dismissal procedure for the Prosecutor General? Which entities are involved, and what is their role? Who holds de facto veto power over dismissal?

According to the Section 41.³ of the OPL¹⁵³ the Saeima may dismiss the Prosecutor General from office, if a judge of the Supreme Court specially authorized by the President of the Supreme Court, in carrying out an investigation, has determined any of the bases for dismissal referred to Section 41.¹ of the OPL and an opinion regarding this has been provided by a Plenary Session of the Supreme Court.

An investigation shall be proposed by the President of the Supreme Court upon his or her own initiative, upon request of one third of the members of the Saeima or the Judicial Council. The proposal shall indicate:

- a particular fact of a violation specified in Section 41.¹ of the OPL
- if the investigation has been proposed upon request of members of the Saeima - the given name, surname of the members who submitted the proposal and the date of signing the proposal.

If the President of the Supreme Court, upon proposing an investigation, considers that the holding of office by the Prosecutor General may interfere with an objective examination of the issues, he or she shall suspend the Prosecutor General from office until taking of the final decision, and shall determine which of the chief prosecutors of departments of the Office of the Prosecutor General shall perform the duties of the Prosecutor General during this time.

If the basis for dismissal provided for in Section 41.¹ of the OPL has been detected, the President of the Supreme Court shall forward the materials of investigation together with his or her and a Plenary Session's opinion to the Saeima for further examination. If the basis for dismissal provided for in the law has not been detected, the President of the Supreme Court shall inform the Prosecutor General and the members who submitted the proposal thereof.

De facto veto powers over dismissal are held by Saeima.

28. How has the early dismissal procedure and relevant grounds for the Prosecutor General functioned over time? What weaknesses have been identified? How were they assessed by international institutions, primarily the Council of Europe and the EU?

¹⁵¹ See Section 37 of OPL

¹⁵² On Prevention of Conflict of Interest in Activities of Public Officials. Latvijas Vēstnesis, 69, 09.05.2002. <https://likumi.lv/ta/id/61913>

¹⁵³ Office of the Prosecutor Law. Latvijas Vēstnesis, 65, 02.06.1994. <https://likumi.lv/ta/id/57276>, see Section 41.³

The grounds and procedure, as referred previously, were introduced as separate Sections 41.¹ and 41.³ in 1998. The initial version of the OPL (adopted 1994) foresaw that the Saeima shall dismiss the Prosecutor General upon the proposal of the Chief Justice of the Supreme Court. The general ground set in law applied. There were no cases where the early dismissal procedure was applied previously.

D. Prosecutorial Self-Government Bodies

29. List the prosecutorial self-governing bodies, their legal status, and their relationship with each other and with the prosecution service.

- **Council of the Prosecutor General** – established according to the Section 29 of the OPL as a collegial advisory body. Functions described in the question Nr.1.
- **Prosecutors Attestation Commission** – established according to the Section 29.¹ of the OPL by the Council of Prosecutor General. Attestation Commission reports to the Council of the Prosecutors General. Functions described in the question Nr.1.
- **Prosecutors Qualification Commission** – established according to the Section 29.² of the OPL by the Council of the Prosecutor General. Qualification Commission reports to the Council of the Prosecutors General. Functions described in the question Nr.1.

30. Describe their composition, terms of office, and the procedures for selecting their members.

Council of the Prosecutor General includes chief prosecutors of departments and court districts of the Office of the Prosecutor General and the administrative director of the Office of the Prosecutor. Other prosecutors may be included in the composition of the council. Terms of office as well as procedure for selecting of members is not specified.

Prosecutors Attestation Commission is established for a term of one year, the number of members and composition is determined by the Council of the Prosecutor General.

Namely, the Commission, consisting of eight prosecutors whose professional activities have been positively assessed, shall be established for a year by the Prosecutor General's Council, by electing one representative from each court district (including district-level prosecutor's offices, but including specialized prosecutor's offices in the Riga Court District) and three representatives from the Prosecutor General's Office. One of these prosecutors shall be appointed as the Chairman of the Commission and one as the Deputy Chairman of the Commission.

By December 1, prosecutors from each group of structural units referred previously shall submit their candidacies for participation in the Commission to the Personnel Department of the Administrative Director's Service, which shall organize an anonymous survey in the relevant group of structural units by December 15 to identify the most suitable candidates. The results of the survey shall be submitted to the Prosecutor General's Council.

The composition of the Commission shall be updated annually by replacing at least three members of the Commission from the previous year. The same prosecutor shall be included in the Commission for no more than three consecutive terms.

The Commission shall not include members of the Prosecutors' Qualification Commission.

A prosecutor who has been subject to disciplinary action and the disciplinary action imposed on him/her is in force shall not be included in the Commission. If a disciplinary action is imposed on a member of the Commission, the Council of the Prosecutor General shall exclude him/her from the Commission. A prosecutor whose professional activities have been negatively assessed shall not be included in the Commission.

If a member of the Commission has terminated his/her official relationship, has been excluded due to disciplinary action or is unable to perform his/her duties for other objective reasons, the Council of the Prosecutor General shall elect another member of the Commission upon the proposal of the Chairperson of the Commission.¹⁵⁴

Prosecutors Qualification Commission is established for a term of one year, the number of members and composition is determined by the Council of the Prosecutor General.

The Commission, consisting of eight prosecutors whose professional activities have been positively assessed, shall be established for a year by the Prosecutor General's Council, by electing one representative from each court district (including district-level prosecutor's offices, but including specialized prosecutor's offices in the Riga Court District) and three representatives from the Prosecutor General's Office. One of these prosecutors shall be appointed as the Chairman of the Commission and one as the Deputy Chairman of the Commission. The composition of the Commission shall be updated annually, replacing at least three members of the Commission from the previous year.

The same prosecutor shall be included in the Commission for no more than three consecutive terms. Members of the Prosecutors' Attestation Commission shall not be included in the Commission.

A prosecutor who has been disciplined and the disciplinary penalty imposed on him is in force shall not be included in the Commission. If a disciplinary penalty is imposed on a member of the Commission, the Prosecutor General's Council shall exclude him from the Commission.

If a member of the Commission has terminated his/her official relationship, has been excluded due to a disciplinary penalty or is unable to perform his/her duties for other objective reasons, the Council of the Prosecutor General shall elect another member of the Commission upon the proposal of the Chairperson of the Commission.¹⁵⁵

31. What are the eligibility criteria for candidates for self-governing bodies? Which entities assess compliance, and how?

There is no specific eligibility criteria prescribed for candidates for self-governing bodies.

¹⁵⁴ REGULATIONS OF THE PROSECUTOR ATTESTATION COMMISSION, Issued in accordance with Article 29, Part Three, Clause 2 of the Prosecutor's Office Law, Appendix to the Order of the Prosecutor General of 19.12.2024 No. P-101-100-2024-00017 (regulations not available online)

¹⁵⁵ REGULATIONS OF THE PROSECUTOR QUALIFICATION COMMISSION, Annex to the Order of the Prosecutor General of 25.09.2023 No. P-101-100-2023-00016, Issued in accordance with Article 29, Part Three, Clause 2 of the Law on the Prosecutor's Office (rules are not available online)

32. How has the procedure for selecting members of self-governing bodies and the relevant criteria functioned over time? What weaknesses have been identified? How were they assessed by international institutions, primarily the Council of Europe and the EU?

The procedure for selecting members has not evolved over time.

33. Provide a comprehensive list of powers of self-governing bodies regarding:

- Initial selection of prosecutors,
- Transfer of prosecutors (including to higher-level positions),
- Selection of candidates for managerial positions (excluding the Prosecutor General),
- Disciplinary functions,
- Participation in selection of the Prosecutor General,
- Participation in early dismissal of the Prosecutor General.

Initial selection of prosecutors - Council of the Prosecutor General, Prosecutors Attestation Commission, Prosecutors Qualification Commission.

Transfer of prosecutors (including to higher-level positions) - Prosecutors Attestation Commission.

Selection of candidates for managerial positions (excluding the Prosecutor General) - Prosecutors Attestation Commission.

Disciplinary functions – self-governing bodies are not involved.

Participation in selection of the Prosecutor General – self- governing bodies are not involved.

Participation in early dismissal of the Prosecutor General - self- governing bodies are not involved.

34. Do prosecutorial self-governing bodies have formal procedures (beyond legislation) and/or soft tools (guidelines, methodologies, best practices) that structure the execution of powers listed above in point 33? If yes, list and briefly describe them, indicating who adopted them and for what purpose.

The following procedure to be mentioned:

- Regulation for the selection of candidates for the position of prosecutor, approved by the Prosecutor General's Order No. 100 of 15.05.2025 “On Approval of the Regulations for the Selection of Candidates for the Position of Prosecutor”.
- Regulations on the internship and qualification examination of candidates for the position of prosecutor, approved by the Prosecutor General's Order No. 131 of 25.09.2023 “On Approval of the Regulations on the Internship and Qualification Examination of Candidates for the Position of Prosecutor”.
- Regulations on the competition, evaluation criteria and procedures for candidates for the position of Prosecutor General, approved by the Judicial Council decision No.16 of 30 March 2020.

35. Do other institutions assist the self-governing bodies in executing the powers listed in point 33? If yes, list them and explain their status, relationship with the self-governing bodies and prosecution, and their role.

The involvement of the Judicial Council in the selection process of the Prosecutor General to be mentioned. See procedure described in question 22.

36. Do the prosecutorial self-governing bodies have separated funding and a secretariat staffed with personnel outside the prosecution service?

No, there is no separate funding for the prosecutorial self-governing bodies outside the prosecution service. As regards the secretariat, each of the bodies is supported by the appointed secretary and one representative of the Human Resource Division (within the Administrative Department subordinated the Prosecutor General).

37. Who approves the structure of the secretariat and selects its personnel? What units comprise the secretariat, and what are their functions?

As mentioned, there is no special formally dedicated secretariat, rather an appointed secretary and representative of the Human Resource Division (as staff to support technically the functioning of the self-governing bodies and further implementation of the decisions).

38. Do self-governing bodies have a unit responsible for interaction with the parliament, government, or president? If yes, briefly describe its role and functions.

No, there is no separate unit in place responsible for interaction with the parliament, government, and president.

VI. Country Report – Moldova (Răzvan Horațiu Radu)

A. General Overview of the Prosecution Service and its Self-Governance

1. Briefly describe the constitutional status of the prosecutor's office and its key elements (its place within the system of state authorities, its functions, the nature of the position and role of the Prosecutor General, the role of prosecutorial self-governing bodies, etc.). If the constitutional provisions are limited, describe these aspects based on the key legislative acts.

According to art. 124 and 125 of the *Constitution of the Republic of Moldova* which regulate *the Prosecutor's Office*:

“The prosecution system shall represent the general interests of the society, defend the rule of law and the citizens' rights and liberties, it shall also supervise and exercise, under the law, the criminal prosecution and bring the accusation in the courts of law.

The public prosecution system shall include the General Prosecutor's Office, the territorial and specialised prosecution offices.

The structure, ambit of competence and the manner of operation of the prosecution offices shall be provided for by law.

The Prosecutor General is appointed by the President of the Republic of Moldova, at the proposal of the SCP, for a seven years term of office, which may not be renewed.

The Prosecutor General is dismissed by the President of the Republic of Moldova, at the proposal of the SCP, according to the law, for objective reasons and based on a transparent procedure.

The appointment, transfer, promotion and dismissal of subordinated prosecutors are carried out by the Prosecutor General, at the proposal of the SCP”.

According to art. 125¹ entitled *Superior Council for Prosecutors*:

“The SCP is the safeguard for the independence and impartiality of individual prosecutors.

The SCP 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 an important part within the SCP.

The SCP ensures the appointment, transfer, promotion and imposition of disciplinary sentences against prosecutors.

The organization and functioning of the SCP is established by the law”.

The constitutional provisions are complemented by an *organic law on the Public Prosecution Service (Law no 3/2016)*. This Law contains extensive provisions regarding the activity of the SCP, provisions that are

complemented by *Decision no. 12-225/16 on the approval of the Regulation of the SCP* and with other infra-legislative level regulations that regulate specific aspects.

The Prosecutor's Office is an autonomous public organization integrated into the judicial system, designed to be independent of legislative, executive, and judicial powers, as well as political parties or other organizations. Intervention in its activities is prohibited, though it cooperates with other authorities in fulfilling its functions. The prosecutor's activities are based on principles of legality, impartiality, rationality, integrity, and procedural independence, allowing for independent decision-making. Procedural independence is guaranteed to exclude political, financial, administrative, or other influences on prosecutors.

The Prosecutor's Office performs various functions according to the law. These include directing and performing criminal prosecution, representing accusations in court, and coordinating the execution of decisions in criminal cases. It also organizes, directs, and controls the activities of criminal prosecution authorities. Furthermore, the Prosecutor's Office controls compliance with laws regarding special search activities and the registration of crime reports. It initiates, considers, and participates in hearings for offenses, provides international legal assistance in criminal matters, and participates in developing criminal policy and legislation. The office also applies measures for witness and victim protection, makes civil actions, and considers applications and petitions within its competence.

Nature and Role of the Prosecutor General

The Prosecutor General heads the Prosecutor's Office, which is a single system consisting of the Prosecutor General's Office, specialized prosecutor's offices, and territorial prosecutor's offices. The specialized prosecutor's office structures (one for anti-corruption and one for combating organized crime) are subordinate to the Prosecutor General and are led by a chief prosecutor.

The Prosecutor General represents the Prosecutor's Office in relations with other public authorities, legal entities, and individuals both domestically and internationally. They appoint prosecutors based on proposals from the SCP and establish the spheres of competence for their deputies. The Prosecutor General also approves regulations, issues orders, and manages the budget of the Prosecutor's Office. Annually, by 31st of March, the Prosecutor General submits an activity report for the previous year to Parliament. The Prosecutor General is appointed for a seven-year term without the right to re-appointment.

2. List the prosecutorial self-governing bodies, their key areas of competence, and the periods of their establishment and reform.

The Superior Council of Prosecutors (SCP) is primary responsible for the self-governance of the prosecutorial matters. The SCP is different from the Superior Council of Magistracy (SCM), which oversees the independence of judges' activities.

This body plays a crucial role in proposing candidates for prosecutor positions and, in consultation with the Prosecutor General, establishing the number of prosecutors within the system and the internal structure of prosecutor's offices. The SCP is constitutionally mandated to select and propose candidates for the Prosecutor General position to the President.

The Superior Council of Public Prosecutors subordinates the following specialized bodies:

1. The College for the Selection and Evaluation of Prosecutors;
2. The College for Disciplinary and Ethics;
3. The Inspection of Prosecutors (see also Q 37).

Its constitutional and legislative framework generally ensures the independence of the judiciary and its impartiality.

In 2023, the legal framework was revised to transfer the Inspection of Prosecutors to the SCP.

SCP, along with specialized bodies under its subordination, plays a crucial role in the management and oversight of prosecutors. The SCP and its specialized bodies exercise competencies related to the selection, appointment, promotion, transfer, suspension, and removal of prosecutors. The SCP also provides consent for the establishment and modification of the internal structure of prosecutor's offices. They are involved in determining the total number of prosecutors in the Prosecutor's Office, in coordination with Parliament and the Prosecutor General. Additionally, the SCP has a role in the appointment and dismissal of the Prosecutor General.

The Law no. 3/2016 outlines the organizational structure and activities of the Prosecutor's Office, including provisions related to self-governance.

Regarding the history of the SCP, on March 17, 2009, the Law on the Prosecutor's Office No. 294-XVI of December 25, 2008, entered into force, which provided for the establishment of a representative and self-administrative body of prosecutors - the Superior Council of Prosecutors, an autonomous institution that took over a model widespread in states with a considerable democratic tradition, having as its main objective - ensuring the independence of prosecutors. According to art. 81 of Law 294/2008, the Superior Council of Prosecutors was composed of 12 members, of which 3 were ex officio members - the Prosecutor General, the Minister of Justice and the President of the Superior Council of Magistracy, five members elected by the prosecutors in office by secret, direct and freely expressed vote, four members of the Superior Council of Prosecutors elected by Parliament from among the full professors. On 30.12.2009 the General Assembly of Prosecutors elected its first members of the Superior Council of Prosecutors. The first meeting of the Superior Council of Prosecutors was organized on 14.01.2010. Subsequently, the composition of the SCP was modified, in accordance with international standards, until it reached its current organizational form with 11 (10) members (see Q 30).

Constitutional amendments concerning the functioning of the judiciary came into effect in April 2022, significantly improving the legal framework for judicial independence, accountability, and efficiency, in line with Council of Europe recommendations. In March 2022, a law on pre-vetting candidates for judicial and prosecutorial councils was adopted. This law establishes an assessment of integrity for future members of the SCP and their specialized bodies by an Evaluation Committee. This committee is responsible for evaluating candidates for positions that were vacant on the law's entry into force or would become vacant within seven months. As of 2024, the two main self-governing judicial and prosecutorial bodies are fully functional with a new composition. An EU-funded project, implemented by the Council of Europe, started on May 27, 2023, and is ongoing until November 26, 2026, with the aim of reforming the SCM and SCP.

- 3. Describe the reasons for the establishment and reform of the prosecutorial self-governing bodies, and how the results were assessed by international institutions, primarily the Council of Europe and the EU.**

The establishment and reform of prosecutorial self-governing bodies in the Republic of Moldova have been driven by a need to strengthen the independence, integrity, efficiency, accountability, and transparency of the justice and prosecution systems. This includes addressing issues such as undue internal and external interference in the judiciary and ensuring a merit-based appointment process for judges and prosecutors.

Historically, the prosecution service in Moldova has faced "little public trust." Reforms have aimed to address this by enhancing the service's integrity, independence, and professionalism.

The primary goal of establishing and reforming these bodies is to enhance the integrity of the Supreme Council of Prosecutors, and its specialized bodies. This is also intended to increase public trust in the activities of self-governing institutions of judges and prosecutors and the justice system as a whole.

Reforms aim to bolster the functional independence of the Prosecution Service and the efficiency of the General Prosecutor's Office. Historically, decisions affecting the management and leadership of the Moldovan Prosecution Service have sometimes been politically motivated.

Legislative reforms, such as the 2019 and 2021 amendments, have been influenced by institutional needs and political considerations. For example, the 2021 amendments were adopted amid "acute political conflict" between the parliamentary majority and the Prosecutor General (PG), aiming to tackle perceived issues of "incompetence and lack of integrity."

The involvement of entities outside the SCP in the pre-selection process for the Prosecutor General has been identified as problematic, as it can diminish the Council's constitutional role. The Constitutional Court, in a May 2020 ruling, found that the involvement of a commission set up by the Ministry of Justice in the appointment process of the Prosecutor General was contrary to Article 125 of the Constitution.

Frequent changes to the SCP's composition, as seen in both 2019 and 2021, have created an impression that successive parliamentary majorities sought to shift the balance of power within the SCP in their favor.

Specific Reforms and Changes

2019 Amendments: These amendments increased the SCP's membership from 12 to 15, altered the proportion of elected prosecutors, and introduced a pre-selection committee under the Ministry of Justice for the PG position. The number of ex officio members rose from four to six (including the President of the Bar Association and the Ombudsman), and civil society representatives increased to four.

August 2021 Amendments (Law no. 102): These further reorganized the SCP by reducing its membership back to 12. The new composition includes three ex officio members (the Ombudsperson, the Minister of Justice, and the President of the Supreme Judicial Council), five prosecutors elected by their peers, and four non-prosecutorial members from civil society. Notably, these amendments excluded the Prosecutor General, the Chief Prosecutor of Gagauzia, and the President of the Bar from ex officio SCP membership and reduced the retirement age for SCP members to 65.

At this moment, the number of SCP members is 11, and from January 1, 2026, it will be only 10. Only one ex officio member remains, namely the president of the SCM.

Republic of Moldova has undertaken these reforms to align its legal framework with European public administration principles and European standards and practices, especially in the context of its application for EU membership.

International institutions, particularly the Council of Europe and the EU, have closely monitored and assessed Republic of Moldova's justice sector reforms providing opinions and recommendations to ensure a balance between accountability and independence.

The EU considers justice reforms a priority for the Moldovan government. In its 2022 opinion on Moldova's application for EU membership, the European Commission noted that Moldova had taken decisive steps in justice reform, including constitutional reforms to improve the functioning of the judiciary.

The EU observed that the constitutional and legal framework for the judiciary is largely in line with European standards. However, it highlighted the need for significant improvements in the integrity, independence, and accountability of the judiciary in practice¹⁵⁶.

The adoption of the law on pre-vetting for candidates to judicial and prosecutorial councils was seen as a positive step to increase the integrity of these self-administration bodies. The EU emphasized the need to complete essential steps of the comprehensive justice system reform to ensure independence, integrity, efficiency, accountability, and transparency. It also recommended filling all remaining vacancies in the SCM and its specialized bodies¹⁵⁷.

The Council of Europe, through bodies like the Venice Commission and GRECO (Group of States against Corruption), has provided recommendations and opinions on Moldova's legal framework and reforms.

Regarding the composition and role of the SCP, the Venice Commission generally supports a pluralistic SCP where elected prosecutors constitute a "substantive part" but not necessarily a majority. The August 2021 amendments, which reduced the SCP to 12 members (including 5 elected prosecutors), were considered compatible with previous recommendations. The Commission also deemed the PG's participation in the SCP acceptable if without voting rights or if prosecutorial members remain a minority, while cautioning against undue influence from the PG due to their hierarchical position¹⁵⁸.

The Venice Commission, for instance, in an opinion (CDL-AD(2019)034), stated that any substantial redistribution of decision-making powers affecting a constitutional body's mandate requires a constitutional amendment. It also stated that while Parliament can define general procedures for the SCP, it should not usurp the Council's constitutional role in selecting and proposing candidates.

¹⁵⁶ COM(2022) 406 final, Communication from the Commission to the European Parliament, the European Council and the Council, Commission opinion on the Republic of Moldova's application for membership of the European Union, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52022DC0406#:~:text=The%20appointment%20of%20judges,on%20the&text=and%20prosecutors%20is%20still,on%20the&text=entirely%20based%20on%20objective,on%20the&text=Undue%20internal%20and%20external,on%20the>.

¹⁵⁷ *Ibidem*, see Recommendations; Even if the recommendation regarding filling all the remaining vacancies do refer only to SCM, mutatis mutandis, they are also valid for SCP.

¹⁵⁸ CDL-AD(2021)047, Venice Commission, Republic of Moldova - Opinion on the amendments of 24 August 2021 to the law on the prosecution service, § 37-42.

Then, the Commission considered that the Constitution does not regulate in detail the organisation and the functioning of the SCP (see Article 125 § 4). This means that the Law on the Prosecutors' Office may in principle leave space for other bodies, panels, committees, etc. which contribute to the work of the SCP or to which the SCP may delegate a part of its powers. A special body involved in the process of selection of candidates to the prosecutorial positions can be constitutional if it does not usurp the substantive decision-making power of the SCP¹⁵⁹.

The Council of Europe is actively involved in a project, co-funded by the EU, to support justice reform in Moldova, aiming to increase the independence, professionalism, and transparency of the judiciary in line with European standards. The project's specific objectives include improving the legal framework and reforming the SCM and SCP to ensure they exercise their powers effectively, objectively, and transparently.

Outstanding recommendations from the Council of Europe's Group of States against Corruption (GRECO) are still present, indicating ongoing areas for improvement in combating corruption.

GRECO assessed the SCP reform by highlighting its positive aims to strengthen independence and institutional autonomy, while also identifying significant concerns regarding its weak position, lack of independence, and operational transparency under the existing system¹⁶⁰.

GRECO welcomed the new Law on the Prosecution Service, noting that it aims to build the SCP's capacity, widen its membership, and give it greater competences to strengthen its independence and institutional autonomy. This aligns with the constitutional framework of the Republic of Moldova, where the prosecution service is an autonomous state body. GRECO specifically welcomed the new Code of Ethics and Conduct, which takes into account international and GRECO standards.

GRECO recommended that appropriate measures be taken to ensure that the composition and operation of the Superior Council of Prosecutors be subject to appropriate guarantees of objectivity, impartiality and transparency, including by abolishing the ex officio participation of the Minister of Justice and the President of the Superior Council of Magistracy (Rec. XV).

The authorities reported that the composition of the SCP has been revised by Law no. 200 of 31 July 2023³⁶ which entered into force in August 2023. The SCP will consist of 10+1 members: the Minister of Justice (until 1 January 2026), the President of the SCM, five prosecutors elected by the General Assembly of Prosecutors (one member from amongst prosecutors of the Prosecutor General's Office and four from amongst prosecutors of the territorial and specialised prosecutors' offices), and four lay members from civil society chosen by competition (one appointed by the President of the Republic, one by Parliament, one by the Government and one by the Academy of Sciences of Moldova).

GRECO considered that the new mixed composition of the Superior Council of Prosecutors, in which the prosecutor members do not constitute the majority, is not in line with the recent Consultative Council of European Prosecutors' (CCPE) Opinion no. 18 (2023) on council of prosecutors as key bodies of prosecutorial

¹⁵⁹ CDL-AD(2019)034, Venice Commission, Republic of Moldova - Amicus Curiae Brief for the Constitutional Court of the Republic of Moldova on the amendments to the Law on the Prosecutor's Office, § 27

¹⁶⁰ GRECO, GrecoEval4Rep(2016)6-rev, Fourth Evaluation Round, Corruption prevention in respect of members of Parliament, judges and prosecutors, §§ 144-148, <https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/168075bb45>.

selfgovernance. Also, it is concerned that, in spite of recent statutory amendments, the Minister of Justice will remain ex officio member of the SCP (at least until 1 January 2026), as will the President of the Superior Council of Magistracy, which is contrary to the requirements of the recommendation. Even the recent CCPE Opinion no. 18 (2023) is not in favour of including members of the executive in the composition of councils of prosecutors.

Thus, the recommendation remained partly implemented¹⁶¹.

GRECO welcomed the amendments to the Constitution which provided a constitutional basis for the SCP (Article 125¹) as guarantor of independence and impartiality of prosecutors. However, the Minister of Justice and the President of the SCM continued to be ex officio members of the SCP, contrary to what is required in the recommendation¹⁶².

Despite these positive aims, GRECO expressed concern regarding the SCP's weak position and lack of independence under the previous system, which prevented it from fully exercising its role in safeguarding the autonomy, objectivity, and impartiality of the prosecution service. Unlike the Superior Council of Magistracy, the SCP was not mentioned in the Constitution, lacked its own budget, deployed members, auxiliary staff, or premises. GRECO noted that it was too early to assess if the new composition, increased capacity, and powers of the SCP would be sufficient to achieve its goals.

To strengthen the SCP's effectiveness and transparency, GRECO recommended that appropriate measures be taken to ensure its composition and operation are subject to guarantees of objectivity, impartiality, and transparency. This includes abolishing the ex officio participation of the Minister of Justice and the President of the Superior Council of Magistracy. GRECO's assessment indicated that while the new law contained welcome measures, its ultimate success would depend on its implementation and that additional measures were still needed.

B. Prosecutors' Career

4. What are the stages in the procedure for first-time appointment as a prosecutor? Which entities are involved, and what is their role?

The procedure for first-time appointment as a prosecutor in the Republic of Moldova involves several stages and entities, with specific eligibility criteria and an emphasis on professional assessment rather than gender-specific positive measures (art. 19-25 Law no 3/2016).

The first-time appointment of a prosecutor involves several key stages, beginning with candidate registration, followed by decisions and proposals from the SCP, and concluding with a decision from the Prosecutor General. The SCP plays a central and crucial role in the appointment process through its College for the selection and evaluation of prosecutors.

¹⁶¹ GrecoRC4(2024)13 Fourth Evaluation Round, Corruption prevention in respect of members of parliament, judges and prosecutors, Third interim compliance report Republic of Moldova, §§70-75, <https://rm.coe.int/grecoRC4-2024-13-final-eng-3rd-interim-republic-of-moldova-public/1680b29b9d>.

¹⁶² GrecoRC4(2020)9 Fourth Evaluation Round, Corruption prevention in respect of members of Parliament, judges and prosecutors, Second Compliance Report Republic of Moldova, <https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/16809fec2b>.

The procedure for the first-time appointment as a prosecutor is structured into distinct stages to ensure a rigorous selection process.

1. Candidate Inclusion in Registry

Candidates for vacant prosecutor positions are first included in a specialized Registry, irrespective of the existence of vacancies at the time of registration. This Registry is managed by the Secretariat of the SCP and includes a specific section for those aspiring to vacant positions. The precise procedure for adding candidates to this Registry is approved by the SCP.

2. SCP' Decision and Proposal

Following the initial registration, the SCP makes a decision regarding the appointment of these candidates to vacant prosecutor positions. This decision is then followed by a formal proposal submitted to the Prosecutor General. This proposal, stemming from the recommendation of the SCP, is legally binding on the Prosecutor General.

In more details, the College for the Selection and Evaluation of Prosecutors under the SCP evaluates the candidates entered in the Register on the basis of the criteria provided for by the Law no 3/2016 and in accordance with the regulation approved by the SCP.

The candidates shall be assessed on the basis of the following main criteria: level of knowledge and professional skills; ability to apply knowledge in practice; quality and efficiency of work as a prosecutor; compliance with the rules of professional ethics;

In the assessment of the candidate for the position of prosecutor, the total score obtained in the competition shall be as follows: 60% shall be the average general graduation mark of the National Institute of Justice or the mark obtained in the examination taken on the basis of seniority before the Commission for the graduation examinations of the National Institute of Justice, 20% shall be the score awarded by the College for the Selection and Evaluation of Prosecutors and 20% shall be the score awarded by the SCP.

In the assessment of the candidate for the position of prosecutor who didn't graduate the National Institute of Justice, the score obtained in the competition shall constitute the score of the College for the Selection and Evaluation of Prosecutors, which shall be up to 100%.

Following the competition, each member of the College for the Selection and Evaluation of Prosecutors shall award marks to each candidate on the basis of the rules provided above. The score accumulated by the candidate shall be the average of the scores given by the members of the College.

3. Prosecutor General's Decision

Upon receiving the proposal, the Prosecutor General is required to make a decision within 5 working days. The Prosecutor General has the authority to reject a submitted candidacy, provided a motivated reason is given for the rejection. However, if a rejection occurs, the SCP retains the option to re-propose the same candidate. This re-proposal must be supported by a vote of 2/3 of its members.

5. What are the eligibility criteria for first-time candidates for the position of prosecutor, and which legal act provides for them? Which entities involved in the selection procedure assess compliance with these criteria, and how?

The general framework and criteria for the selection of prosecutor candidates are established by Law No. 3/2016 (art. 20, 23). This law outlines the overarching principles and criteria for the selection of prosecutor candidates and their career progression. While Law No. 3/2016 provides the general framework, the detailed procedure and specific criteria for the selection are set forth in a regulation approved by the SCP and published on the Council's website for public access, ensuring transparency and accessibility of information.

The selection process for these candidates is designed to be objective, impartial, and transparent, ensuring that the most suitable individuals are chosen.

The fundamental eligibility for first-time candidates for the prosecutor position is largely determined by their performance in a competitive examination and, for some, by professional experience.

First-time candidates for the position of prosecutor must meet several eligibility criteria. These include citizenship, language proficiency, and educational qualifications.

The specific requirements for aspiring prosecutors are: be a citizen of the Republic of Moldova; possess knowledge of the state language; have full legal capacity; hold a Bachelor and Master Degree Diploma in law, or an equivalent document recognized by the relevant authorities; have graduated from the initial training for prosecutors at the National Institute of Justice (NIJ), or, for individuals with the necessary length of service, have passed the examination before the Graduation Commission of the National Institute of Justice with a minimum grade of 8; enjoy an irreproachable reputation; not have been previously found guilty of committing a crime; in the last five years, have no negative entries in their professional integrity record regarding a violation of the professional integrity test obligation as per Article 7 and is medically fit.

The selection process for candidates is objective, impartial, and transparent, aiming to ensure the best candidates are chosen for the position. The final decision on appointments to vacant prosecutor positions is made by the SCP, considering various factors such as the candidate's selected post, scores from the College for the selection and evaluation of prosecutors, and scores from the National Institute of Justice's graduation commission.

Two exceptions to the initial training requirement at the National Institute of Justice (NIJ) exist for individuals who possess at least five years of experience in specific legal fields or for a person who has exercised the function of prosecutor, judge or lawyer for at least 10 years and whose function has ceased for reasons not attributable to him/her. This allows for a broader pool of qualified candidates based on their practical experience.

The assessment of compliance with eligibility criteria and overall suitability of candidates involves two key entities: *The Graduation Commission at the National Institute of Justice and the College for the selection and evaluation of prosecutors.*

According to the Law no 3/2016 (art. 23 para 4), when assessing the candidate for the position of prosecutor, the total score obtained in the competition shall be as follows: 60% shall be the average overall grade of the National Institute of Justice or the grade obtained in the examination taken on the basis of seniority before

the Graduation Commission at the National Institute of Justice, 20% shall be the score awarded by the College for the Selection and Evaluation of Prosecutors and 20% shall be the score awarded by the SCP.

In practice, according to the Regulation on the selection procedure of prosecutors, the procedure for evaluating the performance of prosecutors and the functioning of the College for the selection and evaluation of prosecutors, this legal provision is transformed into the following calculation formula: $0.6 \times \text{NIJ} + 0.2 \times \text{CSEP} + 0.2 \times \text{CSP}$, where NIJ is the grade obtained in the exam taken before the Graduation Commission of the National Institute of Justice; CSEP is the score awarded by the College; SCP is the score awarded by the SCP.

6. How is gender equality ensured in the appointment process? Are any positive measures applied for female candidates (e.g., quotas or provisions ensuring selection in cases of equal merit)? If yes, how are they implemented?

The Republic of Moldova promotes gender equality in its laws, but the information available doesn't specify special measures like quotas for female candidates in prosecutor appointments. The focus remains on candidates meeting the professional criteria and passing the required assessments. The ordinary system for filling vacancies requires candidates, regardless of gender, to meet minimum eligibility requirements. Measures aimed at increasing women's participation in public and political life have been of limited effectiveness because there is no obligation to place female candidates in "winnable positions" on lists.

7. Describe the mandatory training required for first-time candidates or newly appointed prosecutors.

First-time candidates or newly appointed prosecutors in the Republic of Moldova are required to undergo mandatory training. To become a prosecutor, individuals typically complete an initial one-and-a-half-year training program at the Moldovan National Institute of Justice (NIJ). The NIJ's training curriculum builds upon the legal knowledge acquired from Moldovan law schools. This initial training is designed to provide elementary training for candidates for judgeships and prosecutor positions. Beyond initial training, continuous training is also provided for effective judges and prosecutors. The professional competence of prosecutors is considered a duty and should be continuous, emphasizing knowledge of current legislation, ethical conduct, and professional development through intensive training. Some newly appointed prosecutors are also provided with six months of mandatory training in the form of internships.

8. How has the procedure for first-time appointment and the relevant criteria functioned over time? What weaknesses have been identified? How were they assessed by international institutions, primarily the Council of Europe and the EU?

Historically, the appointment process for prosecutors in the Republic of Moldova has been subject to various changes and criticisms. The Constitution and international standards form the basis for the vetting process, which includes the appointment, selection, and training of prosecutors. The procedure and criteria for the selection of candidates for prosecutor posts and career progression are established by law. Safeguards are in place to ensure that decisions regarding a prosecutor's appointment and career are based on objective criteria.

International institutions, particularly the Council of Europe and the EU, have identified weaknesses in Moldova's prosecutor appointment process. A 2017 study highlighted deficiencies in the judicial appointment system, suggesting it "could be improved". Issues such as the increasing politicization of the judiciary and prosecution have been noted. A significant weakness identified is that integrity is not among the eight criteria

assessed when deciding to transfer a prosecutor, appoint a head prosecutor, or a prosecutor to specialized prosecution offices or the Prosecutor General's Office (PGO).

An older opinion of the Venice Commission welcomed that Art. 21 of the Draft Law regarding the prosecution service sets out the principles of a competition-based appointment of prosecutors, through an objective, impartial and transparent selection process¹⁶³.

The Draft Law [...] introduced additional requirements for candidates to prosecutorial positions, including subjective personality criteria such as personal integrity (Article 19.3), a faultless reputation (Article 23.1.f) and, to a certain degree, observance of the rules and standards of professional ethics (Article 21.2.e and Article 23.2.d). Especially in a younger democracy, it would be important to ensure that these subjective criteria contribute to efficiency and do not allow for bias and abuse. The Draft Law should specify how to determine whether or not the candidates meet those criteria and perhaps also make it possible for candidates to challenge decisions on appointments in court.

Similarly, there is a need to clarify the way in which the health check required under Article 24 for appointment and after every five years of service is to be implemented, with a view to ensuring that the information gathered thereby is not disclosed or stored in a manner incompatible with the right to respect for private life. If needed, appropriate arrangements should be made to safeguard the right in a manner consistent with Article 8 ECHR. Moreover, it would be useful to specify which criteria will be of relevance in the 'psychological and psychiatric assessment of candidates for prosecutor's office and of prosecutors in office'¹⁶⁴.

According to a later Opinion of the Venice Commission, a special body involved in the process of selection of candidates to the prosecutorial positions can be constitutional if it does not usurp the substantive decisionmaking power of the SCP. If an external body had an advisory role or, for example, carried out some screening of the candidates based on their professional qualifications to ensure the transparency and the integrity of the recruitment process, it would not interfere substantially with the constitutional mandate of the SCP¹⁶⁵.

Moldova's appointment system has been noted to align with Venice Commission recommendations and received positive evaluation in the EU's 2023 Progress Report. The EU also emphasizes the need for prosecutors to operate in line with European standards¹⁶⁶.

¹⁶³ CDL-AD(2015)005, Venice Commission, Joint Opinion on the draft Law on the Prosecution Service of the Republic of Moldova, § 100

¹⁶⁴ Ibidem, §§ 102 and 103

¹⁶⁵ CDL-AD(2019)034, Venice Commission, Republic of Moldova - Amicus Curiae Brief for the Constitutional Court of the Republic of Moldova on the amendments to the Law on the Prosecutor's Office, §§ 26-28

¹⁶⁶ SWD(2023) 698 final Commission staff working document Republic of Moldova 2023 Report Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2023 Communication on EU Enlargement policy, p. 24, https://enlargement.ec.europa.eu/document/download/d8ef3ca9-2191-46e7-b9b8-946363f6db91_en?filename=SWD_2023_698%20Moldova%20report.pdf.

In a positive change of practice in judicial appointments, since June 2023, the SCP selected new prosecutors amongst graduates from the National Institute of Justice, reducing the list of NIJ graduates waiting for judicial appointment¹⁶⁷.

9. What are the stages in the procedure for transferring a prosecutor to another office, particularly to a higher-level position? Which entities are involved, and what is their role?

Promotions of prosecutors to higher-level positions are distinct from transfers to positions at the same or lower levels.

Promotions involve moving from a territorial office to a specialized or General Prosecutor's Office, or from a specialized office to the General Prosecutor's Office.

Appointments to Chief Prosecutor and Deputy Chief Prosecutor positions are also considered promotions.

Transfers to the same or lower levels can occur between various types of prosecutor's offices (e.g., territorial to territorial, specialized to specialized, General Prosecutor's Office subdivisions to specialized or territorial offices). Both promotions and transfers generally occur through a competition process, with specific regulations for each.

The SCP approved the regulation that establishes the procedure for transfer competitions and makes proposals to the Prosecutor General concerning the transfer of prosecutors.

For promotions, the College for the selection and evaluation of prosecutors operates under the SCP, overseeing the selection and career process.

The selection procedure in the competition for promotion is carried out among prosecutors for the purpose of joining a higher prosecutorial position, as follows:

- a) from the position of prosecutor in the territorial prosecutor's office to the position of prosecutor in the specialized prosecutor's office;
- b) from the position of prosecutor in the territorial prosecutor's office to the position of prosecutor in the Prosecutor General's Office;
- c) from the position of prosecutor in the specialized prosecutor's office to the position of prosecutor in the Prosecutor General's Office;
- d) appointment to the position of Chief Prosecutor and Deputy Chief Prosecutor.

The College for the selection and evaluation of prosecutors assesses candidates for promotion based on professional experience and competence, their relevance for the position for which he/she is applying;

¹⁶⁷ SWD(2024) 698 final Commission staff working document Republic of Moldova 2024 report accompanying the document communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions 2024, Communication on EU enlargement policy, p.27, https://enlargement.ec.europa.eu/document/download/858717b3-f8ef-4514-89fe-54a6aa15ef69_en?filename=Moldova%20Report%202024.pdf.

motivation to apply for the position for which he/she is applying; performance at the interview before the College; the candidate's involvement in teaching activities and areas relevant to the Prosecutor's Office; knowledge of internationally spoken foreign languages; ethical profile and professional integrity; managerial skills.

It awards points to participants in the competition.

The College evaluates candidates based on the application files and the interview. The assessment of knowledge of internationally spoken foreign languages is carried out by a specialist designated for this purpose by the College.

Each member of the College present at the interview session receives a nominal assessment sheet for each candidate interviewed.

For the competition for the position of Chief Prosecutor, Deputy Chief Prosecutor, as well as for the transfer competition or promotion in the specialized prosecutor's office or in the Prosecutor General's Office, candidates are assessed also on the basis of practical cases that will include, as appropriate, testing of managerial skills. If necessary, the members of the College will ask the candidate specific questions, taking into account the specifics of the cases solved by the candidate. The Prosecutor General or a deputy of his, as appropriate the Chief Prosecutor of the specialized prosecutor's office, may attend, separately, the interviews organized for the competitions in their field of competence and, if necessary, ask the candidates specific questions.

For candidates for promotion the total score obtained in the competition is calculated by the Council, according to the formula: $0.7 \times \text{CSEP} + 0.3 \times \text{SCP}$, where CSEP is the result of the professional evaluation; SCP is the score awarded by SCP.

The results of the assessment of candidates are published, for 2 working days, on the official website of the Council. Candidates who do not agree with the assessment results, within 5 working days from the publication of the results, may appeal them to the Council, through the College. The appeal will be resolved at the first meeting of the Council, but no later than 20 working days from the submission. During the meeting of the SCP, the chief prosecutor of the specialized prosecutor's office will also be invited to express his opinion on the appeals, except in the case where the appeal is based solely on issues regarding the legality of the procedure. The Council's decision may be appealed to the Supreme Court of Justice.

The technical apparatus of the SCP maintains the *"Register of Candidates to fill vacancies," (The Registry)* which includes lists for prosecutors applying for promotion or transfer.

10. What are the criteria for candidates being transferred to a higher-level position? Which entities assess compliance with these criteria, and how?

Candidates for promotion to higher-level prosecutor positions, such as those in the General Prosecutor's Office, specialized prosecutor's offices, or Chief Prosecutor roles, undergo a competitive, objective, impartial, and transparent selection process.

To be eligible for a higher-level prosecutor position, candidates must meet specific criteria related to seniority, performance, and professional experience.

General Criteria for Specialized or General Prosecutor's Offices

Seniority - Candidates must have at least four years of seniority as a prosecutor.

Performance Evaluation - A minimum rating of 'very good' in their performance appraisal is required.

Specific Criteria for Chief Prosecutor Positions

Candidates for certain chief prosecutor roles have additional requirements. Thus, for the Autonomy Territory Unit (ATU) Gagauzia Prosecutor's Office:

Professional Experience - At least 10 years of continuous professional experience in the legal field, with five of those years as a prosecutor or judge.

Political Neutrality - Must not have been involved in political activities within a political party or socio-political organization in the three years preceding the competition announcement.

Language Proficiency - Knowledge of the Gagauz language.

The legal provisions regarding the appointment of the chief prosecutor of the ATU Gagauzia were declared unconstitutional by a Decision of the Constitutional Court in April 2025. For now, the legislator has not modified them.

The detailed procedure and criteria for candidate selection and career progression are outlined in a regulation. This regulation is approved by the Superior Council of Prosecutors and published on its official website, ensuring transparency and adherence to established legal conditions.

The College for the selection and evaluation of prosecutors is responsible for assessing candidates registered in the Registry.

The assessment is conducted within a contest and considers various factors:

Professional Knowledge and Skills - Evaluation of the candidate's level of professional knowledge and their ability to apply this knowledge practically.

Length of Service - Consideration of the candidate's seniority as a prosecutor or in other specified positions.

Work Quality and Effectiveness - Assessment of the quality and effectiveness of their work within the public prosecutor's office.

Professional Ethics - Compliance with professional ethics rules.

Scientific and Educational Activities - Consideration of any scientific and educational contributions.

When assessing the candidate for a transfer to a higher-level position, the total score obtained in the competition shall be as follows: 70% shall be the result of the professional evaluation and no more than 30% shall be the mark awarded by the SCP.

In practice, according to the Regulation on the selection procedure of prosecutors, the procedure for evaluating the performance of prosecutors and the functioning of the College for the selection and evaluation of prosecutors, this legal provision is transformed into the following calculation formula: $0.7 \times \text{CSEP} + 0.3 \times \text{SCP}$, where CSEP is the score awarded by the College; SCP is the score awarded by the SCP.

11. How has the procedure for transferring prosecutors and the relevant criteria functioned over time? What weaknesses have been identified? How were they assessed by international institutions, primarily the Council of Europe and the EU?

Historically, the process for transferring, promoting, and disciplining prosecutors in Moldova has been a subject of assessment, with reports highlighting the need for enhancements in these areas. The transfer procedures passed, with the establishment of the SCP, from the Prosecutor General to the SCP. The procedure for the appointment, transfer, promotion, and discipline of prosecutors is intended to be clearly defined in writing and closely mirror that of judges.

Several weaknesses have been identified in the procedure for transferring prosecutors and related processes in Republic Moldova. These issues included a lack of clear criteria and potential for political influence, which have been noted by various assessments and reports.

A significant weakness was the absence of clear and motivated criteria for transfer decisions. This lack of clarity raised suspicions and speculations, leading candidates to request the publication of scores for maximum transparency.

A 2021 International Monetary Fund 'report indicated that integrity was not among the eight criteria used in decisions to transfer a prosecutor, appoint a head prosecutor, or assign a prosecutor to specialized prosecution offices¹⁶⁸.

Flaws in the prosecutor transfer procedure have been observed, with some repeated in significant cases, such as those at the Chisinau Court. The cancellation of contests for high-level positions, like the General Prosecutor, due to unmotivated discrepancies in evaluation, leads to significant delays, potentially extending the selection process.

The Council of Europe's anti-corruption body, GRECO, has published follow-up reports assessing Moldova's compliance with its recommendations. As of a November 2024 report, Moldova had satisfactorily implemented 13 out of 18 recommendations and partially implemented four others. The Council of Europe has also been involved in assessing draft laws related to the external evaluation of judges and prosecutors. These assessments emphasize the importance of robust legal frameworks for prosecutors' independence and autonomy.

Republic of Moldova's progress in judicial reform, including prosecutor transfers, is a key requirement for its European Union accession process. The EU and the Venice Commission have provided recommendations for

¹⁶⁸ International Monetary Fund, Republic of Moldova technical assistance report — country governance assessment, & 62, <https://www.elibrary.imf.org/downloadpdf/view/journals/002/2021/167/article-A001-en.pdf#:~:text=%E2%80%A6%20Integrity%20is%20not,or%20PGO.%E2%80%A6&text=eight%20criteria%20assessed%20in,or%20PGO.%E2%80%A6&text=a%20prosecutor%2C%20appoint%20a,or%20PGO.%E2%80%A6&text=a%20prosecutor%20to%20the,or%20PGO.%E2%80%A6>.

addressing public perception of corruption in the justice sector, which align with Moldova's vetting process. The EU's 2023 Progress Report positively evaluated Moldova's appointment system for vetting commissions¹⁶⁹.

International bodies advocated for the establishment of independent prosecutorial self-governance systems with powers over budgets, appointments, promotions, and disciplinary proceedings, ensuring transparency and limiting terms of service. They recommended clear, transparent, and credible procedures for the selection, appointment, and dismissal of the leadership of the Prosecution Service, with involvement from the legal community and civil society. Transfers of prosecutors without consent should generally be prohibited unless due to necessary organizational changes or a transparent mandatory rotation mechanism¹⁷⁰.

The Venice Commission stated that there is a need for [...] objective transparency in [the] process [of promotion of prosecutors] such as recommendation of suitability by an appropriate board. [...] [It] should not be left to the sole discretion of an immediate superior¹⁷¹.

12. Do individuals have the right to appeal decisions denying them appointment or transfer (particularly to higher-level positions)? If yes, on what grounds and what are the outcomes of such appeals?

According to Art. 79 of Law no 3/2016, individuals generally have the right to appeal decisions of the SCP to the Supreme Court of Justice if they are aggrieved by such a decision within 10 working days from the date of communication. This provision covers decisions related to appointments or transfers.

13. What are the grounds and sanctions for disciplinary liability of prosecutors? What are the stages of the disciplinary procedure? Which entities are involved, and what is their role?

According to art. 38 of the Law no. 3/2016 the following shall constitute a disciplinary violation: improper performance of official duties; failure to apply or incorrect application of the law, unless justified by a change in the practice of applying the rules laid down in the legal system; unlawful interference in the work of another prosecutor or interference of any kind with authorities, institutions or officials for the resolution of any matter; deliberately obstructing the work of the Inspectorate of Public Prosecutions by any means; committing, in the exercise of official duties, actions or inactions by which, intentionally or through gross negligence, the fundamental rights and freedoms of natural or legal persons, guaranteed by the Constitution of the Republic of Moldova and international treaties on fundamental human rights to which the Republic of Moldova is a party, have been violated; undignified attitude, manifestations or way of life which are prejudicial to the honour, integrity, professional probity, prestige of the Prosecutor's Office; the violation of

¹⁶⁹Andrea Mazellu, Navigating the vetting process in Moldova: a comparative analysis with the Albanian model quis custodiet ipsos custodes? p. 1-2, https://freedomhouse.org/sites/default/files/2024-05/Navigating-the-Vetting-Process_Eng.pdf#:~:text=positive%20evaluation%20in%20the%20EU%E2%80%99s%202023%20Progress%20Report.23

¹⁷⁰ OECD, The Independence of Prosecutors in Eastern Europe, Central Asia and Asia Pacific, p. 13-14 , [https://www.oecd.org/content/dam/oecd/en/networks/acn/documents-\(pdfs\)/Independence-of-Prosecutors.pdf#:~:text=%EF%82%B7%20Clear%2C%20transparent%20and%20credible%20procedures%20for%20the%20selecti on%2C%20appointment%20and%20dismissal%20of%20t](https://www.oecd.org/content/dam/oecd/en/networks/acn/documents-(pdfs)/Independence-of-Prosecutors.pdf#:~:text=%EF%82%B7%20Clear%2C%20transparent%20and%20credible%20procedures%20for%20the%20selecti on%2C%20appointment%20and%20dismissal%20of%20t)

¹⁷¹ CDL-AD(2008)019, Venice Commission, Opinion on the draft law on the Public Prosecutors' service of Moldova, § 50

the Code of Ethics of Prosecutors; the breach of the obligation laid down in Article 7, para.(2), letter a) of Law No. 325/2013 on the evaluation of institutional integrity

According to art. 39 of the Law 3/2016, the prosecutor shall be subject to the following disciplinary sanctions by decision of the College of Discipline and Ethics of the SCP: Warning; Reprimand; Reduction of salary; Demotion from office (e.g., transfer from chief prosecutor to a regular prosecutor's office); Dismissal from the office of public prosecutor.

The disciplinary proceedings against a prosecutor begin with a notification and include four main stages (art. 42 of the Law no. 3/2016):

1. Submission of notification: This involves reporting facts that could constitute a disciplinary violation.
2. Verification of the notification: The Inspection of Prosecutors reviews the submitted notification. This stage establishes the facts, their consequences, and the circumstances of their commission to determine if a disciplinary offense exists.
3. Examination by the College of Discipline and Ethics: The case is then examined by this college, which operates under the Superior Council of Prosecutors.
4. Adoption of a decision: A final decision is made regarding the disciplinary cause.

As follows from the above, the disciplinary investigation in the first phase is carried out by the Inspection of Prosecutors the disciplinary trial by the College of Discipline and Ethics.

During the verification stage, the prosecutor against whom the notification was lodged has specific rights, such as knowing the notification's content, presenting explanations, submitting evidence, and being assisted by a lawyer. They are also obligated not to impede the verification process or contact the notification's author personally, except in the inspector's presence.

The timeframe for disciplinary action varies: a prosecutor can be held liable within two years from the date of the disciplinary offense. However, if the misconduct occurs during procedural activity, the period of disciplinary liability extends to five years from the offense date.

14. How have the grounds and procedure for disciplinary liability of prosecutors functioned over time? What weaknesses have been identified? How were they assessed by international institutions, primarily the Council of Europe and the EU?

The disciplinary liability framework for prosecutors in the Republic of Moldova has undergone historical changes aimed at improvement, but it has faced weaknesses and criticisms from international institutions.

In 2009, a new law was introduced in the Republic of Moldova that clarified the organizational structure of the Public Prosecution Service. There have been recent amendments to the law concerning the disciplinary liability of prosecutors, which have led to discussions about increasing the number of entities empowered to initiate disciplinary action and expanding the scope of disciplinary offenses. Changes are continually being made to the prosecutor's office to enhance its activities, establish a new foundation for its operations in line with European standards, and create a new model designed to effectively carry out its constitutional functions. The mechanism for selecting, evaluating, and determining the disciplinary liability of prosecutors is also subject to ongoing improvements. The normative and legal framework governing the administrative

and legal status of the Disciplinary College of prosecutors has been established and its elements, such as powers, staff formation procedures, legal guarantees, and objectives, are clearly regulated.

Despite legal stipulations for clear grounds and procedures, their application in practice has been problematic. The country's disciplinary liability regime for prosecutors has faced several issues, including those related to disciplinary responsibility and dismissal. One significant weakness identified is the lack of independence, impartiality, resources, and transparency within relevant bodies. This includes the statutory and budgetary dependence of the Inspection of Prosecutors, and the possibility for a Superior Council of Prosecutors (SCP) member to be involved in multiple stages of disciplinary proceedings against a prosecutor. The process for bringing prosecutors to disciplinary liability has been described as a cumbersome, multi-staged approach, particularly given the one-instance nature of the College of the SCP after an initial review by the Inspection of prosecutors¹⁷².

Legal Framework Development

The foundational legal framework includes Articles 124 and 125 of the Constitution, which define the mandate and powers of the Prosecution Service. Historically, Law No. 118-XV of 14 March 1993 governed the service until it was replaced by Law No. 294-XVI of 25 December 2008 on the Public Prosecutor's Service of the Republic of Moldova. This 2008 law, along with the Criminal Procedure Code, established the primary regulations for disciplinary liability. Further efforts to refine these regulations were guided by the Justice Sector Reform Strategy for 2011-2016. Then, the Law no. 3/2016 was adopted and modified several times.

Article 36 of the current law extends disciplinary liability to prosecutors currently in office and, in some cases, to those "who have ceased labour relationship" before the expiration of specified time-limits. Art. 41 para (3) generally sets a one-year time limit from the date of the disciplinary offense for holding prosecutors liable. A notable contradiction has been identified: Article 41 para (3) states that disciplinary sanctions apply to prosecutors currently in office, which appears to conflict with the application to former employees (art. 36). Law No. 3 of 2016, as amended in August 2021 by Law No. 102, further defines specific grounds for disciplinary sanction in Article 38.

The disciplinary procedure typically begins with an Inspection, which decides whether to terminate proceedings or, if grounds are found, submit a file and report to the Disciplinary College. Decisions made by the Disciplinary College can be appealed to the SCP. Subsequently, the SCP's decision is subject to judicial review by the Supreme Court of Justice.

Identified Weaknesses

A primary weakness identified in the disciplinary framework is the lack of clarity and foreseeability regarding the grounds for dismissing prosecutors. For example, the law does not clearly define what constitutes "good" or "bad" performance, nor does it specify which types of underperformance could lead to the Prosecutor

¹⁷² International Monetary Fund, Republic of Moldova technical assistance report — country governance assessment, §63, <https://www.elibrary.imf.org/downloadpdf/view/journals/002/2021/167/article-A001-en.pdf#:~:text=%E2%80%A6%20Integrity%20is%20not,or%20PGO.%E2%80%A6&text=eight%20criteria%20assessed%20in,or%20PGO.%E2%80%A6&text=a%20prosecutor%2C%20appoint%20a,or%20PGO.%E2%80%A6&text=a%20prosecutor%20to%20the,or%20PGO.%E2%80%A6>.

General's dismissal. This ambiguity raises concerns about legal certainty and the predictable impact of the law.

International institutions, particularly the Council of Europe through its Venice Commission and the OSCE/ODIHR, have consistently assessed the disciplinary liability framework for prosecutors in the Republic of Moldova.

A joint opinion issued in 2015 by the Venice Commission, the Directorate of Human Rights (DGI) of the Council of Europe, and the OSCE/ODIHR welcomed a Draft Law on the Prosecution Service as a substantial improvement. This assessment specifically noted that the draft addressed various critical aspects, including "the performance evaluation and the disciplinary procedures" for prosecutors¹⁷³.

GRECO recommended that additional measures be taken in order to strengthen the objectivity, efficiency and transparency of the legal and operational framework for the disciplinary liability of prosecutors (Rec. xviii).

GRECO recalled that the recommendation was partly implemented, pending the adoption of draft amendments to the Law on the Prosecution Service which intended to bring about changes to certain disciplinary offences and to establish the Prosecutors' Inspection as an autonomous authority

GRECO concluded that Recommendation xviii has been dealt with in a satisfactory manner because of the establishment of the Prosecutors' Inspection, which is an autonomous specialised body of the SCP, as well as instances of actions which constitute disciplinary misconduct on the part of inspectors. Moreover, the Prosecutors' Inspection has become operational, and its capacity will continue to be strengthened with the addition of the remaining inspectors. GRECO expects that the inspectors will be adequately trained to carry out proactive and efficient investigations into misconduct of prosecutors. Decisions on disciplinary matters continue to be reasoned and published. Disciplinary offences appear to have benefitted from further clarity and precision as a result of certain amendments made to the law on disciplinary liability of prosecutors¹⁷⁴.

15. What are the stages of the appointment procedure for managerial positions in the prosecution (excluding the Prosecutor General)? Which offices at all levels does it apply to? Which entities are involved, and what is their role?

The appointment procedure for managerial positions in the prosecution, excluding the Prosecutor General, involves several stages and considerations. These include proposals, decisions by the Prosecutor General, and, in some specific cases like the chief prosecutor of ATU Gagauzia, a public competition with community involvement.

According with art. 23 from Law no. 3/2016 The College for the Selection and Evaluation of Prosecutors under the SCP shall evaluate the candidates entered in the Register on the basis of the criteria provided for by this law and in accordance with the regulations approved by the SCP.

¹⁷³ CDL-AD(2015)005, Venice Commission, Directorate of Human Rights of the Directorate General of Human Rights and Rule of Law (DGI) OSCE Office for Democratic Institutions and Human Rights (osce/odihhr) joint opinion on the draft law on the prosecution service of the Republic of Moldova, §§ 9-10, 13.

¹⁷⁴ GrecoRC4(2024)13 Fourth Evaluation Round, Corruption prevention in respect of members of Parliament, judges and prosecutors, Third interim compliance report Republic of Moldova, §§ 76-77, 81-82, <https://rm.coe.int/grecoRC4-2024-13-final-eng-3rd-interim-republic-of-moldova-public/1680b29b9d>.

In the competition, candidates shall be assessed on the basis of the following main criteria: level of knowledge and professional skills; ability to apply knowledge in practice; quality and efficiency of work as a prosecutor; compliance with the rules of professional ethics.

In the assessment of the candidate for managerial positions, the total score obtained in the competition shall be constituted as follows: at least 70% shall be the result of the professional evaluation and no more than 30% shall be the mark awarded by the SCP.

For the appointment of prosecutors to positions such as chief-prosecutor or deputy chief-prosecutor of a prosecutor's office, or chief-prosecutor or deputy chief-prosecutor of General Prosecutor's Office subdivisions, the process is initiated by a proposal from the SCP following the assessment of the abovementioned College. The Prosecutor General then issues an order for the appointment within 5 working days of receiving this proposal. The Prosecutor General has the authority to reject a submitted candidature in a motivated way, but the Superior Council of Prosecutors can repeatedly propose the same candidacy with a 2/3 vote of its members.

For the chief prosecutor of the ATU Gagauzia Prosecutor's Office, the selection involves a public competition organized and carried out according to the local law of the People's Assembly of Gagauzia. The People's Assembly of Gagauzia proposes the selected candidate to the SCP for verification. The Superior Council of Prosecutors then verifies the procedure and the candidate's suitability, and if satisfied, proposes the candidature to the Prosecutor General for appointment. If the SCP identifies violations or the candidate does not meet the criteria, they can reject the proposal, but the People's Assembly of Gagauzia can re-propose the same candidate with a 2/3 vote.

The legal provisions regarding the appointment of the chief prosecutor of the ATU Gagauzia were declared unconstitutional by a Decision of the Constitutional Court in April 2025. For now, the legislator has not modified them.

The deputies of the Prosecutor General and the deputies of the chief prosecutors of the specialized structures are appointed to office by the Prosecutor General, upon his proposal or, respectively, the heads of the specialized structures, with the written consent of the SCP. In addition to the general conditions, they must have 5 years of experience as a prosecutor, within the last 15 years (art. 18, 25² of the Law no. 3/2016).

16. What are the eligibility criteria for managerial candidates (excluding the Prosecutor General)? Can non-prosecutors be appointed (e.g., lawyers, judges, other legal professionals)? Which entities assess compliance with the criteria, and how?

Managerial candidates are primarily selected through a career progression system for existing prosecutors, emphasizing an objective, impartial, and transparent selection process through competition.

The candidate for the position of Chief Prosecutor must meet the following eligibility criteria (Art. 20 of Law No. 3/2016): Professional knowledge and skills- Assessed level of expertise; Practical application ability - Capacity to apply knowledge practically; Length of service - Seniority as a prosecutor or in other specified positions; Quality and effectiveness in office - Performance evaluation; Compliance with professional ethics - Adherence to ethical standards; Scientific and educational activity - Involvement in academic or training activities.

Furthermore, the law stipulates specific conditions for Chief Public Prosecutor of a Specialized Prosecution Service (Art. 25¹ of Law No. 3/2016): at least 10 years of professional legal experience, with at least 4 years as a judge, prosecutor, lawyer, or criminal prosecution officer; appropriate managerial and professional competence; no political activity or membership in a political party for three years prior to the competition announcement; no membership in the SCP for the last six months; irreproachable reputation, with specific disqualifying conditions if not met.

According to art. 20 paragraph 4 letter a of Law no. 3/2016, the candidate for a managerial position must be a prosecutor and have at least 4 years of experience as a prosecutor.

However, for the position of Chief Public Prosecutor of a Specialized Prosecution Service (Art. 25¹ of Law No. 3/2016), the candidate must have at least 10 years of professional experience in the field of law, obtained in the jurisdiction of the Republic of Moldova or foreign jurisdictions, including in international organizations, of which at least 4 years as a judge, prosecutor, lawyer or criminal investigation officer.

It follows that other legal professional can also apply for managerial positions in these specialized structures.

17. How is gender equality ensured in the appointment of managerial positions (excluding the Prosecutor General)? Are any positive measures applied for female candidates (e.g., quotas or provisions ensuring selection in cases of equal merit)? If yes, how are they implemented?

There are no specific provisions on how gender equality is ensured in the appointment of managerial positions, nor do they mention any positive measures such as quotas or specific provisions for female candidates. The selection process focuses on competition, professional experience, and scores obtained from assessments by the College for the Selection and Evaluation of Prosecutors and the National Institute of Justice Graduation Committee. In cases of a tie in scores, priority is given to the order of expiry of the term of office, and then to seniority in office.

See also Q 6.

18. How has the procedure for appointing prosecutors to managerial positions and the relevant criteria functioned over time? What weaknesses have been identified? How were they assessed by international institutions, primarily the Council of Europe and the EU?

In Moldova, the procedure for appointing prosecutors to managerial positions has evolved, with recent efforts focusing on integrity and transparency, though, over the time, historical issues of political influence and a lack of clear, objective criteria have been identified. International institutions, notably the Council of Europe and the European Union, have consistently highlighted these weaknesses, emphasizing the need for robust reforms to ensure judicial independence and combat corruption.

Historically, political influence has been a concern in the appointment procedures for prosecutors in Moldova. Efforts have been made to ensure the appointment of a politically independent prosecutor, with laws allowing prosecutors to elect their peers to administrative positions. However, appointments have sometimes occurred without transparent competition procedures.

The Law no. 3/2016 outlines the general framework for the prosecutor's office, emphasizing its autonomy within the judicial system and independence from legislative, executive, and judicial authorities.

Several weaknesses have been identified in the appointment procedure and criteria for prosecutors in managerial positions in Moldova over time:

Political Influence: There have been concerns about political influence in appointment procedures and decisions affecting the management and leadership of the Moldovan Prosecution Service being politically motivated¹⁷⁵.

Insufficient Objective Criteria: The appointment of judges and prosecutors has not always been entirely based on objective criteria. There has been a lack of clear and precise evaluation criteria, particularly regarding "ethical integrity," which could lead to arbitrary application¹⁷⁶.

Vetting Process Challenges: The ad-hoc integrity evaluation procedure for candidates to self-administration bodies of judges and prosecutors, though welcomed, needs further improvements in elaborating evaluation criteria, evidence-gathering means, access to information, timelines, and appeal procedures to ensure fairness and legal certainty¹⁷⁷.

Interim Appointments: The prolonged use of interims in management positions and even the position of prosecutor general creates imbalances within the institution's operations and the broader system. While interim prosecutors have the same legal powers, the absence of a stable mandate can diminish commitment and impact system management.

While some of these weaknesses have been addressed through repeated amendments to Law No. 3/2016, this weakness of interim appointments is still relevant.

The EU has closely monitored Moldova's justice sector reforms, particularly in the context of its application for membership.

The EU views justice reforms as a priority for the Moldovan government. The 2022 EU Commission Opinion on Moldova's application for membership noted that while the country has taken decisive steps towards reforms, including judicial reform, the appointment of judges and prosecutors is still not entirely based on objective criteria. The EU highlights the need for significant improvement in the integrity, independence, and accountability of the judiciary.

The EU supports the pre-vetting of judges and prosecutors and acknowledges the adoption of a law in March 2022 on pre-vetting candidates for judicial and prosecutorial councils to increase integrity and public

¹⁷⁵ COM(2022) 406 final, Communication from the Commission to the European Parliament, the European Council and the Council, Commission Opinion on the Republic of Moldova's application for membership of the European Union, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52022DC0406#:~:text=The%20appointment%20of%20judges,on%20the&text=and%20prosecutors%20is%20still,on%20the&text=entirely%20based%20on%20objective,on%20the&text=Undue%20internal%20and%20external,on%20the> .

¹⁷⁶ Ibidem.

¹⁷⁷ ODIHR, Opinion on the Law on Some Measures related to the Selection of Candidates for the Positions of Members in the Self-Administration Bodies of Judges and Prosecutors and the Rules of Procedure and Evaluation Rules of the Independent Evaluation Commission, https://legislationline.org/sites/default/files/2023-11/Final%20ODIHR%20Opinion%20Evaluation%20of%20Candidates%20to%20SCM%20and%20SCP_Moldova_28Sept2022_English.pdf#:~:text=line%20and%20the%20appeal%20procedure%20.%20This%20would%20help%20to%20ensure%20an%20objective%2C%20fair%20and

confidence. The EU report of 2023 indicated good progress in the extraordinary re-evaluation mechanism for judges and prosecutors, and parliament has acted to appoint new officials.

When recommending candidate status, the European Commission stipulated several steps, including completing essential steps of the comprehensive justice system reform to ensure independence, integrity, efficiency, accountability, and transparency. This includes filling all remaining vacancies in the SCP its specialized bodies¹⁷⁸.

Moldova continues implementing a comprehensive justice reform. The on-going vetting and appointments to top judicial and prosecutorial positions should be finalised in transparent and merit-based procedures¹⁷⁹.

19. Is a reserve list of candidates for managerial positions (excluding the Prosecutor General) maintained? If yes, what are the key elements and procedures? How effective is this practice? Have there been any appeals from those excluded, and what were the outcomes?

Yes, a reserve list of candidates for managerial positions, excluding the Prosecutor General, is maintained. This is specifically outlined in the Register of Candidates to fill vacancies. The Register, maintained by the Council Apparatus, includes a distinct list for prosecutors applying for appointment as Chief Prosecutor or Deputy Chief Prosecutor. This ensures a prepared pool of candidates for these managerial roles within the prosecution system. This list is part of a broader system that also includes candidates for vacant prosecutor positions and prosecutors seeking transfer or promotion, as detailed in Section 8.1 of the Regulation of the SCP.

Registration in the register takes place regardless of the existence of vacancies at that time.

Candidates for the positions of Chief Prosecutor, Deputy Chief Prosecutor, or Head of the Sub-Division of the General Prosecutor's Office are subject to a stringent appraisal process.

Candidates can be excluded from the Register of Candidates if verification confirms they do not meet the legal requirements for a prosecutor/chief prosecutor position or if they do not apply for a repeat nomination. However, according to the general procedure, they can re-register.

Any person affected by a decision of the College or of the SCP may lodge an appeal, according with general rules.

20. Describe the mandatory training for managerial candidates or newly appointed managers.

¹⁷⁸ COM(2022) 406 final, Communication from the Commission to the European Parliament, the European Council and the Council, Commission Opinion on the Republic of Moldova's application for membership of the European Union, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52022DC0406#:~:text=The%20appointment%20of%20judges,on%20the&text=and%20prosecutors%20is%20still,on%20the&text=entirely%20based%20on%20objective,on%20the&text=Undue%20internal%20and%20external,on%20the> .

¹⁷⁹ COM(2024) 690 final Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2024, Communication on EU enlargement policy, p. 25-26.

The law does not contain provisions about mandatory training specifically for managerial candidates or newly appointed managers within the prosecutor's office. The content primarily focuses on the continuous professional training for prosecutors in general (art. 32 of the Law no. 3/2016).

However, the law set forth continuous training for prosecutors, which may indirectly apply to those in or aspiring to managerial roles.

Prosecutors are required to participate in at least 40 hours per year of continuous training programs organized by the NIJ, other higher education institutions, or vocational training activities. This training emphasizes deepening knowledge of national legislation, European and international acts, and case-law. The responsibility for continuous training rests with the NIJ, heads of prosecutor's offices, and individual prosecutors. The curriculum and topics for continuous training should consider prosecutors' suggestions and individual needs, offering choices for improvement.

21. Do heads of prosecutor's offices (excluding the Prosecutor General) bear disciplinary liability for ineffective management (e.g., failure to achieve organizational goals, low performance of subordinates, or other organizational shortcomings)? If yes, what are the qualifying conditions and are there specific sanctions? If not, do they bear other forms of liability and under what procedures? Which entities assess compliance, and how?

The Law no. 3/2016 outline various disciplinary violations for prosecutors including "improper performance of official duties," "failure to apply or incorrect application of the law," and actions violating the Code of Ethics of Prosecutors, such as "undignified attitude, manifestations or way of life which are prejudicial to the honour, integrity, professional probity, prestige of the Prosecutor's Office." However, the text does not explicitly mention "ineffective management" (e.g., failure to achieve organizational goals, low performance of subordinates, or other organizational shortcomings) as a specific disciplinary violation for heads of prosecutor's offices.

C. Appointment and dismissal of the Prosecutor General

22. What are the stages in the appointment procedure for the Prosecutor General? Which entities are involved, and what is their role? Who holds de facto veto power over the selection?

The procedure for appointing the Prosecutor General is provided for by art. 17 of Law no. 3/2016.

The candidate to the position of Prosecutor General is selected based on a public competition organized by the SCP, which comprises the following stages:

- a) selection of the candidates on the basis of applications submitted;
- b) interview in front of the SCP. (art. 17 para 2 of the Law no. 3/2016)

Interviewing of the candidates shall take place in a public meeting (art. 17 para 9)

The candidates shall be assessed by each member of the SCP on the basis of the criteria approved by the SCP. The final score shall be the average score given by all members of the SCP. The candidate receiving the highest

score shall be proposed by the SCP to the President of the Republic of Moldova for appointment to the position of Prosecutor General. (art. 17 para 10).

The President of the Republic of Moldova can reject only once the candidacy proposed by the SCP for appointment to the position of Prosecutor General, if he/she finds compelling evidence of incompatibility of the candidate to the position in question, breach by the applicant of the legislation or violation of legal procedures for his/her selection. The refusal to appoint shall be reasoned and shall be made within 15 working days from the date of receipt of the proposal. (art. 17 para 11)

In case of repeated proposal of the same candidacy, made based on a vote of 2/3 of the members of the SCP, the President of the Republic of Moldova shall issue, within 5 working days, a decree on the appointment of the candidate to the position of Prosecutor General. (art. 17 para 12).

The analysis of the aforementioned texts reveals the determining role of the SCP in making this appointment. The president can refuse only once and for strictly legal reasons. Even this refusal can be overturned by a qualified majority of the SCP members.

23. What are the eligibility criteria for candidates for the Prosecutor General? Which entities assess compliance, and how?

According with art. 17 para 1 Law 3/2016, to the position of the Prosecutor General there can be appointed a person who meets the following conditions:

a) has at least 10 years of professional experience in the field of law, obtained in the jurisdiction of the Republic of Moldova or foreign jurisdictions, including international organizations, including at least 5 years as a judge, prosecutor, lawyer or prosecution officer;

b) compliance with the requirements provided in Article 20, paragraph 1, a), b), c), d), f), g) and h);

c) has other managerial abilities;

d) in the last 3 years before the announcement of the contest, was not a member of any political party and/or did not conduct any political activity as part of a political party- or socio-political organization;

e) in the last 6 months wasn't a member of the SCP (art. 17 para 1).

The evaluation of the candidates registered for the competition is done exclusively by the SCP members.

The candidates shall be assessed by each member of the SCP on the basis of the criteria approved by the SCP. The final score shall be the average score given by all members of the SCP. The candidate receiving the highest score shall be proposed by the SCP to the President of the Republic of Moldova for appointment to the position of Prosecutor General. (art. 17 para 10).

The appointment of the Prosecutor General is made according to a specific Regulation approved by the SCP.

According to that Regulation, the evaluation criteria are the following:

- Management concept and institutional development
- Motivation for the position
- Professional experience and competence
- Critical analysis and public communication skills
- Institutional commitment to professional values
- Integrity, ethics, and good reputation

Regarding the selection process, the SCP members evaluate candidates using a scoring system (1-10 points). The final score is calculated as an average of all evaluations. The candidate with highest score is nominated for appointment. In case of a tie, the SCP decides by majority vote. The SCP decisions can be contested according to the law.

24. How has the appointment procedure and the relevant criteria for the Prosecutor General functioned over time? What weaknesses have been identified? How were they assessed by international institutions, primarily the Council of Europe and the EU?

The appointment procedure for the Prosecutor General in the Republic of Moldova has evolved, with the President making the appointment based on recommendations from the Superior Council of Prosecutors, replacing an earlier system where Parliament made the appointment on presidential recommendation. Key criteria for the position include at least 10 years of professional experience in the law sector.

Historically, the Prosecutor General (PG) of the Republic of Moldova was appointed by Parliament based on the President's recommendation. This procedure has since changed, with the President of the Republic now appointing the Prosecutor General upon the proposal of the Superior Council of Prosecutors (SCP). This shift in procedure was formalized by Law no. 3/2016, which outlines the appointment process. The SCP plays a crucial role in proposing candidates, and the President then makes the final appointment. The term for the Prosecutor General is set for 7 years.

To be eligible for the position of Prosecutor General, a candidate must meet specific conditions, including having 10 years of professional experience in the law sector. This professional experience can be gained both within Moldova and abroad. The selection process for candidates for the Prosecutor General position is intended to be based on objective criteria and merit.

Weaknesses have been identified in the appointment process for the Prosecutor General and other prosecutors in Moldova, including practices that suggest bias and favoritism in selection and promotion. The appointment of judges and prosecutors is not entirely based on objective criteria, leading to concerns about undue internal and external interference¹⁸⁰.

¹⁸⁰ COM(2022) 406 final, Communication from the Commission to the European Parliament, the European Council and the Council, Commission Opinion on the Republic of Moldova's application for membership of the European Union,

The EU has also included judicial independence among its core requirements for accession countries. The EU has engaged in joint projects with the Council of Europe to support justice reform in Moldova, providing technical assistance to achieve a more independent, professional, and transparent judiciary. While steps taken towards judicial reforms, including amending rules on the appointment of the Prosecutor General, have been noted as positive, tangible progress remains a key focus. The Moldovan government is committed to ensuring the appointment of impartial judges and prosecutors through mechanisms like extraordinary re-evaluation. Reports indicate that appointment procedures are broadly in line with European standards¹⁸¹.

The Venice Commission has consistently recommended that excessive politicisation of the nomination of the PG should be avoided through provision for a professional and nonpolitical input as to the assessment of the professional qualifications of the candidate. In the Republic of Moldova, such input is provided in principle by the SCP. The mere involvement of an expert body such as the MoJ Committee before the SCP does not necessarily bring an unacceptable element of politicisation¹⁸².

While it acknowledged that an ad hoc evaluation of the PG's performance is "uncommon," it did not rule out terminating a PG's mandate for "evidently poor performance."¹⁸³

If a legislative amendment was adopted in order to prevent the SCP from nominating a particular candidate, or in order to ensure that certain specific persons may or may not participate in the new competition, or for any improper reasons, this could impinge on the constitutional "division of labour" between the legislator (whose main task is to adopt rules of general application) and the SCP (whose main task, in this context, is to select appropriate candidates for the prosecutorial positions). This would come close to *ad hominem* legislation previously criticised by the Venice Commission.

The Venice Commission acknowledges, at the same time, that a legislator may have good reasons to intervene in a pending recruitment procedure which is grossly unfair, inefficient, discriminatory etc. By redefining eligibility criteria and redesigning procedural rules the new legislation may exclude certain candidates from the competition or open the way to new ones who otherwise were not eligible or raise/reduce their chances of success. So, the question whether such legislative intervention into a pending procedure is constitutionally permissible does not have a simple and categorical answer. Most likely, to answer this question the Constitutional Court of the Republic of Moldova will have to decide whether the legislative intervention was justified by weighty considerations of public interest or pursued ulterior reasons¹⁸⁴.

<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52022DC0406#:~:text=The%20appointment%20of%20judges,on%20the&text=and%20prosecutors%20is%20still,on%20the&text=entirely%20based%20on%20objective,on%20the&text=Undue%20internal%20and%20external,on%20the> .

¹⁸¹ SWD(2024) 698 final Commission staff working document Republic of Moldova 2024 report accompanying the document communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions 2024, Communication on EU enlargement policy, https://enlargement.ec.europa.eu/document/download/858717b3-f8ef-4514-89fe-54a6aa15ef69_en?filename=Moldova%20Report%202024.pdf .

¹⁸² CDL-AD(2019)034, Venice Commission, Republic of Moldova: amicus curiae brief for the Constitutional Court of the Republic of Moldova on the amendments to the Law on the Prosecutor's Office, § 21.

¹⁸³ CDL-AD(2021)047, Venice Commission, Republic of Moldova - Opinion on the amendments of 24 August 2021 to the law on the prosecution service, § 63.

¹⁸⁴ CDL-AD(2019)034, Venice Commission, Republic of Moldova - Amicus Curiae Brief for the Constitutional Court of the Republic of Moldova on the amendments to the Law on the Prosecutor's Office, §§ 38-41

The law should also specify whether the same person can be reappointed again as an interim PG (or even as a permanent one), and what sort of procedure needs to be followed in case of re-appointment. The possibility of re-appointment affects the independence of the officeholder: previously the Venice Commission recommended that the Prosecutor General should not be eligible for re-appointment but enjoys a sufficiently long tenure. A scenario in which the prosecution system is governed by an interim PG, for a prolonged period of time, and where this interim PG has to seek and obtain re-appointments at regular intervals is very dangerous for the independence of the prosecutors. It would be more appropriate for one of the Deputies, selected by the SCP, to temporarily perform the duties of the PG (with the exclusions highlighted above), for the period of time necessary to complete a criminal investigation against the suspended PG or to fill the vacancy¹⁸⁵.

However, it criticized the design of Moldova's specific evaluation mechanism, citing vague grounds for evaluation, a lack of clear performance indicators, and the potential for automatic dismissal, noting similar reforms in Romania were controversial¹⁸⁶.

25. Are general grounds for disciplinary liability applicable to the Prosecutor General? If not, are there special grounds or procedures for holding the Prosecutor General accountable, including through dismissal?

The Prosecutor General is subject to the general rules regarding disciplinary liability (see Q 13,14).

In addition, The General Prosecutor may be released from office before the expiration of the mandate, by the President of the Republic, in the following cases which are also applicable to prosecutors:

Resignation; The application of the disciplinary sanction of release from the position of prosecutor; Registration as a candidate on the list of a political party or a socio-political organization in elections for Parliament or for local public administration authorities; State of incompatibility or violation of prohibitions; if he is considered medically unfit to perform his duties; the refusal to be subject to verification of public office holders and candidates; establishing, through the act of final determination, the conclusion directly or through a third party of a legal act, taking or participating in the taking of a decision without resolving the real conflict of interests in accordance with the provisions of the legislation on the regulation of the conflict of interests; Failure to submit the declaration of wealth and personal interests or refusal to submit it; Ordering by the court, through an irrevocable decision, of the confiscation of unjustified assets. (art. 58 para 6 Law no. 3/2016).

Additionally, dismissal can occur if the Prosecutor General receives an "unsatisfactory" rating in a performance evaluation conducted according to Art. 31¹ of Law no. 3/2016, or if the SCP decides to apply the disciplinary sanction of dismissal from office.

The performance of the Prosecutor General shall be evaluated by a performance evaluation commission of the Prosecutor General, set up ad hoc by the SCP. The performance evaluation of the Prosecutor General shall be initiated upon the request of the President of the Republic or at least 1/3 of the members of the SCP. The performance evaluation of the Prosecutor General may not take place more frequently than once

¹⁸⁵ CDL-AD(2021)047, Venice Commission, Republic of Moldova - Opinion on the amendments of 24 August 2021 to the law on the prosecution service, § 100.

¹⁸⁶ Ibidem, § 63.

every two years and only for the period preceding the date of the evaluation during which the person actually worked. No more than one evaluation procedure may be initiated for the same period of activity.

In the event of any appearance of disciplinary misconduct, the performance evaluation commission of the Prosecutor General shall refer the matter to the SCP.

Furthermore, Article 52¹ of the Law no. 3/2016 set forth specific rules on disciplinary liability of the Prosecutor General. Depending on the seriousness of the misconduct, the Public Prosecutor General may be subject to one of the following disciplinary sanctions by decision of the High Council of Public Prosecutors: warning; reprimand; removal from office.

26. What are the grounds for early dismissal of the Prosecutor General, and under which legal act are they defined?

The General Prosecutor may be released from office before the expiration of the mandate, by the President of the Republic, in the following cases which are also applicable to prosecutors:

Resignation; The application of the disciplinary sanction of release from the position of prosecutor; Registration as a candidate on the list of a political party or a socio-political organization in elections for Parliament or for local public administration authorities; state of incompatibility or violation of prohibitions; if he is considered medically unfit to perform his duties; the refusal to be subject to verification of public office holders and candidates; establishing, through the act of final determination, the conclusion directly or through a third party of a legal act, taking or participating in the taking of a decision without resolving the real conflict of interests in accordance with the provisions of the legislation on the regulation of the conflict of interests; Failure to submit the declaration of wealth and personal interests or refusal to submit it; ordering by the court order, through an irrevocable decision, of the confiscation of unjustified assets. (art. 58 para 6 Law no. 3/2016).

Additionally, dismissal can occur if the Prosecutor General receives an "unsatisfactory" rating in a performance evaluation conducted according to Art. 31¹ of Law no. 3/2016, or if the SCP decides to apply the disciplinary sanction of dismissal from office.

27. What are the stages in the early dismissal procedure for the Prosecutor General? Which entities are involved, and what is their role? Who holds de facto veto power over dismissal?

The early release from office of a prosecutor general is done by the President of the Republic through a decree. The legislation does not indicate the possibility of a de facto veto. In the case where the release occurs as a result of a state of incompatibility or violation of a prohibition, the early release from office is done through a final court decision or a decision of the SCP.

The early dismissal procedure for the Prosecutor General involves several stages, beginning with identifying grounds for dismissal, progressing through the SCP' actions, and concluding with a presidential decree. Key entities, including the President and the SCP, play distinct roles in this process, with the SCP effectively holding de facto veto power.

Disciplinary proceedings may be initiated by at least 3 members of the Superior Council of Public Prosecutors, by the President of the Republic following petitions/questions or, as the case may be, ex officio or, in the case

referred to in art. 31¹ para. (9), by the performance evaluation commission of the Public Prosecutor General, if there are reasonable suspicions of the commission of the disciplinary offenses referred to in art. 38. The verification of the shall be carried out by a disciplinary commission set up ad hoc by the SCP whose mandate shall cease upon the completion of the disciplinary proceedings. The disciplinary commission shall be constituted within 10 days and shall be composed of 5 members, one of whom shall be proposed by the President of the Republic, one by the Ministry of Justice, one by SCM, one by the SCP and one by the Prosecutor General. The fact that no proposals for the composition of the commission have been submitted shall not prevent it from being constituted if members have been proposed by at least 3 subjects. The proceedings of the commission shall be deliberative if a majority of the members indicated in the instrument of constitution take part. The members of the commission must have recognized professional activity in the field of justice, anti-corruption or human rights and at least 2 of them must have at least 7 years of professional experience as a prosecutor. The work of the Disciplinary Commission shall be assimilated to the inspection of prosecutors. The general rules regarding disciplinary procedure for prosecutors apply accordingly to disciplinary proceedings against the Prosecutor General. Once the Disciplinary Commission has completed its examination of the complaint regarding the act that may constitute disciplinary misconduct, it shall issue one of the following reasoned decisions:

- (a) to terminate the disciplinary proceedings if it identifies no grounds for disciplinary liability;
- (b) to refer the material to the High Council of Public Prosecutors if it identifies a ground for disciplinary liability.

The decision to terminate the disciplinary proceedings may be appealed by the complainant to the SCP within 10 working days from the date of its receipt.

The disciplinary case against the Prosecutor General shall be examined by the High SCP similar to the procedure established for ordinary prosecutors.

The decision of the SCP on the application of the sanction of dismissal from office shall be transmitted to the President of the Republic.

The procedure for the early dismissal of the Prosecutor General is structured in several distinct stages, ensuring a transparent and legally compliant process.

The process is initiated upon the identification of specific grounds for dismissal. These grounds include:
Disciplinary Sanction - Application of a disciplinary sanction of dismissal from office by the SCP.

Unsatisfactory Performance - Obtaining an "unsatisfactory" rating during a performance evaluation, as stipulated in Article 311 of Law no. 3/2016.

Objective Reasons - Other objective reasons specified in the Law on Prosecutor's Office, such as: a definitive ruling on incompatibility or violation of prohibitions; Registration as a candidate for political office etc.

Following the establishment of a valid ground, the SCP takes decisive action.

The SCP adopts a decision to apply the disciplinary sanction of dismissal or, in the case of an "unsatisfactory" performance rating, formally decides on this rating.

The SCP formally proposes the dismissal of the Prosecutor General to the President of the Republic. This proposal is a critical step, indicating the Council's recommendation for termination of office.

The SCP and the President of the Republic of Moldova are the key entities involved in the early dismissal procedure of the Prosecutor General, each with specific responsibilities.

Upon receiving the proposal from the SCP, the President of the Republic of Moldova dismisses the Prosecutor General from office before the expiry of their term. This dismissal is carried out according to the law, for objective reasons, and based on a transparent procedure, as specified in Article 125 (2) of the Constitution of the Republic of Moldova by issuing a Decree.

The President is the ultimate authority for dismissing the Prosecutor General before the end of their term. This action is taken upon the proposal of the SCP, in accordance with the law and for objective reasons, following a transparent procedure.

The SCP plays a crucial role by proposing the dismissal of the Prosecutor General to the President.

The SCP holds de facto veto power over the dismissal of the Prosecutor General. This is because the President of the Republic of Moldova can only dismiss the Prosecutor General at the proposal of the SCP.

28. How has the early dismissal procedure and relevant grounds for the Prosecutor General functioned over time? What weaknesses have been identified? How were they assessed by international institutions, primarily the Council of Europe and the EU?

The early dismissal procedure for the Prosecutor General in the Republic of Moldova has evolved over time, with instances of dismissal based on various grounds and ongoing efforts to reform the system. Weaknesses in this procedure have been identified, particularly concerning issues of political motivation and insufficient adherence to international standards. International institutions like the European Court of Human Rights (ECHR), the Council of Europe, and the European Union (EU) have assessed these weaknesses and provided recommendations for improvement.

Historically, the Prosecutor General in Moldova could be dismissed by Parliament without requiring specific reasons. In more recent times, the dismissal procedure for the Prosecutor General is explicitly stipulated in the Law no 3/2016. For example, Alexandr Stoianoglo was dismissed as Prosecutor General by presidential decree on September 26, 2023, following a two-year investigation. This decree was based on a proposal from the SCP, which in turn relied on a commission's report that found his job performance "unsatisfactory". Stoianoglo had been accused of abuse of office, passive corruption, and misrepresentations in declarations, though he denied the charges, claiming political motivation. His suspension was appealed to the Chisinau Appeals Chamber, and his lawyers also challenged it with the European Court of Human Rights. The law also specifies that an acting prosecutor general can serve for a maximum of one year. The President of the Republic of Moldova can dismiss the Prosecutor General before their term in cases provided by law.

Legal developments

Significant procedural changes were introduced in 2021 through Law No. 102, amending Law No. 3 of 2016. These amendments established a special procedure for the removal of the Prosecutor General (PG) through

disciplinary proceedings, involving a specially created Disciplinary Commission as outlined in Article 52¹. Additionally, Article 55¹ provides for the automatic suspension of the Prosecutor General if a criminal case is initiated against them.

Several weaknesses have been identified in the early dismissal procedure for the Prosecutor General in Moldova. These include practices suggesting bias and favoritism in the selection and promotion of judges and prosecutors. There has been a perception of pervasive corruption within the justice sector, leading to a widespread lack of trust in the system. Inconsistent application of existing laws has also affected the quality of justice. Decisions affecting the management and leadership of the Moldovan Prosecution Service have at times been politically motivated, as seen with the removal, temporary replacement, and arrest of the Prosecutor General in 2021. Furthermore, there is a need to ensure transparent and standardized appointment and dismissal procedures for efficient functioning of institutions. The criminal prosecution procedure itself has weaknesses in Moldova's human rights protection system.

International institutions, including the ECHR, the Council of Europe, and the EU, have closely monitored and assessed Moldova's early dismissal procedure for the Prosecutor General.

Venice Commission

A 2015 opinion of the Venice Commission stated that it is recommended to include in the Draft Law a specific mechanism for the dismissal of the Prosecutor General, distinct from the provisions regulating dismissal of other prosecutors and based on clear conditions and criteria¹⁸⁷.

From the rule of law perspective, entrusting the SCP with a virtually unlimited power to define the material conditions in which the PG can be dismissed is a highly contestable approach. Such rules need to have the highest possible level of legitimacy. In the previous paragraphs the Venice Commission has already argued that the lack of constitutional entrenchment may be prejudicial to the stability of the prosecution system, and certain matters should be regulated not by an ordinary law but by an organic law adopted by a qualified majority or even in the Constitution itself. This approach applies a fortiori to the essence of the evaluation process. It may be necessary to keep certain rules flexible, and it is perfectly acceptable if the SCP develops substantive and procedural rules contained in the law. However, to give the SCP a carte blanche in devising such rules seems to be excessive¹⁸⁸.

Indeed, only the SCP may propose the removal of the PG “for objective reasons” and “based on a transparent procedure” (see Article 125 (2) of the Constitution). The Venice Commission admits that the term “objective reasons” may be construed broadly. It is not excluded that, in addition to the dismissal of the PG for a crime or a disciplinary offence, the mandate of the PG may be terminated in cases of evidently poor performance – similarly to the mandate of the lower prosecutors. However, the mechanism of performance of evaluation proposed by the amendments has too many flaws to satisfy the constitutional precept of “objective” evaluation based on the “transparent procedure”. This mechanism should be reviewed: most importantly,

¹⁸⁷ CDL-AD(2015)005, Venice Commission, Joint Opinion on the draft Law on the Prosecution Service of the Republic of Moldova, §§ 113, 127 and 128

¹⁸⁸ CDL-AD(2021)047, Venice Commission, Republic of Moldova - Opinion on the amendments of 24 August 2021 to the law on the prosecution service, § 66

the law should provide for more specific indicators of underperformance, the EC should include prosecutorial members, and the report of the EC should be clearly of an advisory nature¹⁸⁹.

European Court of Human Rights (ECHR)- Stoianoglo vs. Republic of Moldova case

The Court emphasized the importance of judicial protection and review for measures affecting prosecutors, similar to judges, especially in states where laws place prosecutors in a similar position to judges regarding independence. The ECHR has highlighted issues such as uneven judicial practices and a lack of uniformity in decisions within Moldova's justice system. It has also clarified its stance on the vetting process for judges, emphasizing aspects of independence and disciplinary rules.

The Court acknowledged that the suspension itself could be justified due to the Prosecutor General's broad powers, but procedural safeguards should be in place to prevent arbitrary use. The lack of any form of judicial protection for over two years was deemed to impair the applicant's right of access to a court in its very essence. Thus, the Court unanimously found a violation of Article 6 § 1 of the Convention.

European Union (EU)

The EU has made the reform of the justice system a priority for Moldova, especially in the context of its application for EU membership (Chapter 23). The EU identified a lack of clear and transparent procedures for dismissal of the Prosecutor General based on objective grounds, which could exclude political or undue influence. The European Commission noted in its 2022 opinion that Moldova needs to complete essential steps of its comprehensive justice system reform to ensure the independence, integrity, efficiency, accountability, and transparency of justice and prosecution chains. This includes filling vacancies in the Supreme Council of Magistracy and its specialized bodies, and effectively using asset verification and democratic oversight. In March 2022, Moldova adopted a law on pre-vetting candidates for judicial and prosecutorial councils, which largely implemented Venice Commission recommendations and aimed to increase the integrity of these bodies. The EU continues to monitor Moldova's progress in fulfilling these steps and reported on them by the end of 2022¹⁹⁰.

In 2024, according to European Commission, the country made some progress in reforming the justice sector. Progress was achieved on vetting and appointing top judges and prosecutors. The two main self-governing judicial and prosecutorial bodies are fully functional in a new composition, with 11 out of 12 members of the Superior Council of Magistracy and all members of the Superior Council of Prosecutors appointed. A new vetted Prosecutor General was appointed, and first appointments to the Supreme Court of Justice took place. A new judicial map has been drawn up by law to improve the network of courts in the country; its implementation is pending. Vetting for the four specialised colleges of the judicial and prosecutorial governance bodies is ongoing, no appointments have been made yet.

¹⁸⁹ Ibidem, §§ 83 and 84

¹⁹⁰ COM(2022) 406 final, Communication from the Commission to the European Parliament, the European Council and the Council, Commission Opinion on the Republic of Moldova's application for membership of the European Union, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52022DC0406#:~:text=The%20appointment%20of%20judges,on%20the&text=and%20prosecutors%20is%20still,on%20the&text=entirely%20based%20on%20objective,on%20the&text=Undue%20internal%20and%20external,on%20the> .

The Commission's recommendations from last year were mostly implemented. In the coming year, Moldova should, in particular:

- continue making progress on the vetting process and on appointing top judges and prosecutors in line with European standards, especially the remaining member of the Superior Council of Magistracy and the Supreme Court of Justice, and the members of the four specialised bodies of the Superior Councils of Magistracy and of Prosecutors¹⁹¹;

In 2024, the European Commission also noted Moldova's steady progress on its EU accession path, acknowledging its comprehensive justice reform and deoligarchisation efforts. The EU emphasized the need for continued reforms to ensure the efficient functioning of institutions and enforce transparent appointment and dismissal procedures¹⁹².

D. Prosecutorial Self-Government Bodies

29. List the prosecutorial self-governing bodies, their legal status, and their relationship with each other and with the prosecution service.

According to the Law no. 3/2016, the main prosecutorial self-governing body in the Republic of Moldova is the SCP (SCP), whose activity is expressly provided for by this law.

The self-administration of the Public Prosecution Service is structured around several key bodies that uphold principles of representativeness, eligibility, and accountability. These bodies collectively contribute to the self-management of the prosecution system.

The General Assembly of Prosecutors

This body is composed of prosecutors from the Prosecutor's Office and is a crucial part of the self-administration process.

The Superior Council for Prosecutors (SCP)

This is a central self-governing body within the prosecution system.

Subordinate Colleges of the SCP: These specialized colleges operate under the authority of the Superior Council.

The College for the selection and evaluation of prosecutors - Manages the selection, the career and assesses the performance of prosecutors.

The College of discipline and ethics - Handles matters related to prosecutor discipline and ethical conduct. The legal texts define the status of these bodies, highlighting their roles in ensuring independence and impartiality.

¹⁹¹ SWD(2024) 698 final Commission staff working document Republic of Moldova 2024 report accompanying the document communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions 2024, Communication on EU enlargement policy p.5, https://enlargement.ec.europa.eu/document/download/858717b3-f8ef-4514-89fe-54a6aa15ef69_en?filename=Moldova%20Report%202024.pdf .

¹⁹² COM(2024) 690 final Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2024, Communication on EU enlargement policy, p. 25-26.

The SCP holds the status of an independent legal entity. It functions as a collegial body in plenary session and is the guarantor of the independence and impartiality of prosecutors, acting as a self-governing and representative body that participates in the establishment, operation, and self-administration of the prosecution system.

General Assembly of Prosecutors - While a crucial self-administration body, its legal status is not explicitly defined as an independent body or a separate legal entity in the provided texts. It plays a significant role in electing members to the SCP and its colleges, and in approving regulations.

Subordinate Colleges (two) - These colleges - the College for the selection and evaluation of prosecutors, and the College of discipline and ethics - are described as bodies operating under the SCP. They are part of the self-administration structure but are not granted the status of independent legal entities; instead, they are subordinate to the SCP.

Furthermore, the Inspection of Prosecutors is acting also under the SCP' coordination.

Even though the domestic law designates all of the above as self-governing bodies, however, in the sense of international standards, only the SCP truly has this competence.

The self-governing bodies operate in an integrated manner, with defined relationships to ensure a cohesive and independent prosecution service.

The SCP has a central role. The SCP oversees and coordinates the activities of its subordinate colleges. It is responsible for drafting and approving regulations that govern its own activities and the functioning of these colleges. The Council also convenes the General Assembly of Prosecutors and reviews the annual reports of its subordinate colleges, providing recommendations as needed.

The General Assembly of Prosecutors is responsible for electing members to the SCP and its colleges. Its decisions are binding and enforceable for both the self-administration bodies and individual prosecutors.

Relationship with the Prosecution Service

These self-governing bodies are fundamental to the autonomy and functional independence of the Prosecution Service, allowing it to manage its operations independently and responsibly.

The SCP acts as a safeguard for the independence and impartiality of prosecutors, actively participating in the establishment, operation, and self-management of the entire Public Prosecution Service system.

The SCP' extensive competencies include approving regulations for its own functioning and that of its colleges, managing the selection and career progression of prosecutors, and making recommendations for appointments, transfers, promotions, and disciplinary sanctions. It also influences the strategic development and budgetary aspects of the Prosecutor's Office.

The Prosecutor General is appointed and dismissed based on the proposal of the SCP (see Q 22-28). Similarly, the appointment, transfer, promotion, and dismissal of subordinate prosecutors are carried out by the Prosecutor General based on the SCP' proposals.

30. Describe their composition, terms of office, and the procedures for selecting their members.

The SCP comprises 11 members (10 from 1st of January 2026), including ex-officio members, elected prosecutors, and civil society representatives, with elected members serving six-year terms. Selection procedures involve general assembly votes for prosecutors and public competitions for civil society representatives, adhering to specific eligibility criteria.

There are two ex-officio members: The President of the Superior Council of Magistracy (including interim) and The Minister of Justice (including interim) until 1st of January 2026 when the legal provision regarding its membership in the SCP will be repealed.

Elected Prosecutors: Five members are elected by the General Assembly of Prosecutors through a secret, direct, and freely expressed vote: One member from the prosecutors of the Office of the Prosecutor General and Four members from the prosecutors of the territorial and specialized prosecutors' offices. Prosecutor members are elected by the General Assembly of Prosecutors, with the top vote-getters considered elected.

Civil Society Representative: Four members are elected through a competition process: one chosen by the President of the Republic, one chosen by the Parliament, one chosen by the Government, one chosen by the Academy of Sciences of Moldova

Terms of Office: The mandate for all elected members of the SCP is six years.

31. What are the eligibility criteria for candidates for self-governing bodies? Which entities assess compliance, and how?

The candidates for SCP from prosecutors must have at least 3 years of actual work experience as a prosecutor, have not been subject to disciplinary sanctions or the term of the disciplinary sanction has expired, and have passed the integrity assessment carried out by the Independent Commission for the Evaluation of the Integrity of Candidates for the Position of Member of the Self-Administration Bodies of Judges and Prosecutors, established under the law.

Candidates for the SCP from civil society must meet specific eligibility criteria, including higher legal education, at least three years of professional legal experience, successful integrity evaluation, and a minimum age of 65. Compliance with these criteria is assessed by several entities, including the Independent Commission for the Evaluation of the Integrity of Candidates for the Position of Member of the Self-Administration Bodies of Judges and Prosecutors, through a multi-faceted process involving integrity checks, application reviews, and scored interviews.

Several entities are involved in the rigorous assessment of SCP candidates to ensure they meet all eligibility criteria, covering aspects from integrity to professional conduct:

Independent Commission for the Evaluation of the Integrity of Candidates for the Position of Member of the Self-Administration Bodies of Judges and Prosecutors - This commission is crucial for evaluating the integrity of candidates for membership in the self-administrative bodies of judges and prosecutors. Candidates who do not pass this assessment are automatically deemed ineligible for the SCP.

SCP - The Council plays a multifaceted role in the assessment process. It is responsible for excluding candidates who do not meet required conditions or whose application files are incomplete or submitted after the deadline.

General Assembly of prosecutors for elected prosecutors.

The President of the Republic, the Parliament, the Government and the Academy of Sciences of Moldova for the members elected in respect of the Civil Society.

32. How has the procedure for selecting members of self-governing bodies and the relevant criteria functioned over time? What weaknesses have been identified? How were they assessed by international institutions, primarily the Council of Europe and the EU?

The procedure for selecting members of the Superior Council of Prosecutors (SCP) in the Republic of Moldova has evolved, with recent laws focusing on integrity assessments, while persistent weaknesses in the selection criteria and process have been identified by various bodies, including international institutions.

Currently, the SCP in the Republic of Moldova consists of 11 members (10 from 1st of January 2026) as mentioned above.

Over the years, the number of SCP members has varied. At one time there were 12 or 15 members. The difference was given by the number of ex officio members or those appointed by civil society. Thus, in the past, in addition to the Minister of Justice or the President of the SCM, the Prosecutor General, the chief prosecutor of ATU Gagauzia or the Ombudsman were also ex officio members. The waiver of ex officio members was made following GRECO recommendations. Thus, although the Minister of Justice is currently still an ex officio member, from January 1, 2026 the legal provision that will eliminate him from the SCP structure will enter into force. Other changes concerned the duration of the SCP members' mandate (in the past, the mandate was 4 years; currently, it is 6 years) or the duration of the SCP President's mandate.

Moreover, in the past, in respect of the civil society, four law professors were selected by the Parliament from among tenured law professors.

The weaknesses addressed by different international evaluations were resolved through various legislative amendments. Thus, the SCP acquired a central role in the career of prosecutors (appointment, promotion, disciplinary liability), including high-ranking chief prosecutors (the Prosecutor General and the chiefs of specialized structures), acquired its own budget and efficient self-administration capacity. In disciplinary matters, the reform of the Inspection for Prosecutors played an important role. This body was subordinated to the SCP. However, certain logistical measures still had to be taken to ensure the practical efficiency of these structures. It was also necessary to fill the vacancies at the level of the subordinate colleges and the Inspection for prosecutors in order to ensure the efficiency of these structures. Another important aspect that must be emphasized is the continuation of the occupation of management positions at the Prosecutor General's Office and territorial prosecutors' offices through interim mandates. Thus, the activity of the SCP and the specialized college is imperative to fill these vacancies.

International institutions, primarily the Council of Europe and the European Union, have assessed the selection procedure and criteria for the Superior Council of Prosecutors in the Republic of Moldova. The

Council of Europe has been actively involved in assisting with the implementation of new procedures for the evaluation and selection of prosecutors.

The Action against Corruption in the Republic of Moldova, an initiative by the Council of Europe, presented the results of an assessment on the composition and operation of the SCP. Furthermore, the Council of Europe's anti-corruption body, GRECO, published a follow-up report in November 2024, assessing Moldova's compliance with 18 recommendations from an earlier evaluation report¹⁹³.

In a 2021 Opinion, the Venice Commission noted that in the past years the composition of the SCP was changed twice. Such frequent changes may give the impression that each respective parliamentary majority tried to change the balance of power in the SCP in its favour. Legislative changes should not be *ad hominem*, i.e. should not aim at the replacement of specific office-holders under the pretext of an institutional reform. To reduce the risk of such arbitrary changes, it would be useful to regulate the composition of the SCP in the Constitution, so as to require a qualified majority of votes for such important changes in the rules on the SCP. But this would require a constitutional amendment, and this recommendation may be only implemented in a longer perspective. The key element of the reform – namely the new balance between prosecutorial and lay members in the SCP – is not as such contrary to the standards and the previous recommendations of the Venice Commission. Although two prosecutors have now been excluded from the SCP, five prosecutors elected by their peers still represent a substantive part of this body. As to the non-prosecutorial members, this component of the SCP remains pluralistic enough to ensure that neither of the three groups (prosecutors, lay members, or *ex officio* members) can govern alone. The choice of the *ex officio* members to sit in the SCP may be criticised, but there are also arguments in favour of this choice. Thus, the Venice Commission invited the authorities of the Republic of Moldova to consider returning the Prosecutor General to the SCP as an *ex officio* member (with a corresponding adjustment of the composition of the SCP, if necessary). In addition, the Venice recommended that the legitimate expectation of the members to finish their mandate should not be perturbed without very serious reasons¹⁹⁴.

Then, in a new Opinion, the Venice Commission welcomed that the draft amendments implemented most key recommendations of the 2021 Opinion. Thus, in particular: the Prosecutor General (the PG) will henceforth be a member of the SCP *ex officio*, albeit with limited rights; the composition of the SCP will remain compatible with the previous recommendations of the Venice Commission: it is pluralistic enough and the number of prosecutors elected by their peers remains a “substantive part” in the overall composition of the SCP¹⁹⁵.

Overall, the Council of Europe contributes to reforms in the criminal justice system, including procedures for prosecutor selection.

The European Union has also monitored judicial reforms in Moldova. In June 2022, the EU noted the adoption of the law on pre-vetting of candidates to judicial and prosecutorial councils in March 2022, which mandates an assessment of the integrity of candidates. This pre-vetting law regulates the procedure for assessing the

¹⁹³ GrecoRC4(2024)13 Fourth Evaluation Round, Corruption prevention in respect of members of parliament, judges and prosecutors, Third interim compliance report Republic of Moldova, § 83, <https://rm.coe.int/greco-rc4-2024-13-final-eng-3rd-interim-republic-of-moldova-public/1680b29b9d>.

¹⁹⁴ CDL-AD(2021)047, Venice Commission, Republic of Moldova - Opinion on the amendments of 24 August 2021 to the law on the prosecution service, §§ 103-105

¹⁹⁵ CDL-AD(2022)018, Venice Commission, Republic of Moldova - Opinion on draft amendments to law no 3/2016 on the public prosecution service, § 41.

integrity of candidates for SCP positions. The EU's 2024 Moldova Report indicates that the disciplinary responsibility of prosecutors and the composition of the Superior Council of Prosecutors are areas under review.

33. Provide a comprehensive list of powers of self-governing bodies regarding:

- Initial selection of prosecutors (See Q 4, 5)
- Transfer of prosecutors (including to higher-level positions) (See Q 9, 10),
- Selection of candidates for managerial positions (excluding the Prosecutor General) (See Q 15,16),
- Disciplinary functions (See Q 13,14),
- Participation in selection of the Prosecutor General (See Q 22,23),
- Participation in early dismissal of the Prosecutor General (See Q 26,27).

34. Do prosecutorial self-governing bodies have formal procedures (beyond legislation) and/or soft tools (guidelines, methodologies, best practices) that structure the execution of powers listed above in point 33? If yes, list and briefly describe them, indicating who adopted them and for what purpose.

In addition to Law no. 3/2016 and the Regulation of the Superior Council of Prosecutors, the SCP approved regulations which stipulate of the competencies listed above.

35. Do other institutions assist the self-governing bodies in executing the powers listed in point 33? If yes, list them and explain their status, relationship with the self-governing bodies and prosecution, and their role.

The SCP ensures cooperation with public institutions in accordance with the law. This indicates a collaborative relationship where other public entities contribute to the Council's functions. Furthermore, the Council plays a role in the drafting of the Prosecutor's Office budget and strategic development plans, implying cooperation with relevant financial and planning institutions.

The Council also engages with other authorities by endorsing draft legislative and regulatory documents they produce. This interaction demonstrates that the Council's authority and operations are intertwined with the work of other governmental bodies.

Furthermore, NIJ supports SCP with ongoing training of prosecutors.

36. Do the prosecutorial self-governing bodies have separate funding and a secretariat staffed with personnel outside the prosecution service?

The SCP is funded separately and has its own staff under its authority.

37. Who approves the structure of the secretariat and selects its personnel? What units comprise the secretariat, and what are their functions?

The SCP is responsible for approving the structure and regulations concerning the staffing of its secretariat, known as the administrative apparatus. (art. 81 of the Law no. 3/2016). The Head of the Apparatus is specifically elected by the Council through public competition. The Head of the Apparatus has a deputy.

The Apparatus is divided in the following sections: Legislation and Documentation Section; Litigation Section; Finance and Accounting Section; Logistics, Public Procurement and Information Technologies Section; International Relations, Protocol and Communication Service; Public Relations, Secretariat and Archives Service.

The responsibilities of these sections concern the competencies that also arise from their name.

The administrative apparatus of the SCP functions as its secretariat and is composed of civil servants and technical staff. This body is specifically designed to organize and support the activities of the Council and its subordinate colleges, ensuring their effective operation.

The administrative apparatus primarily ensures the work of the Council and its subordinate boards. These subordinate bodies include:

The College for the Selection and Evaluation of Prosecutors - This board is involved in processes related to the selection and professional development of prosecutors.

The College for Disciplinary and Ethics - This body addresses matters of discipline and ethical conduct among prosecutors.

Inspection for Prosecutors

According with art. 89¹ of the Law 3/2016, the Inspection of prosecutors is a body subordinated to the SCP, which is composed of 9 inspectors and has functional autonomy. The term of office of an inspector shall be 6 years. The inspector may be appointed for one term only.

A person who meets the following conditions may be appointed as an inspector through a competition:

- a) holds a bachelor's degree in law or its equivalent;
- b) has at least 10 years of seniority in the legal specialty;
- c) has not previously been convicted of a criminal offense;
- d) has a good reputation.

The competition for the selection of inspectors is organized by the SCP.

No prosecutors in office may be appointed to the position of inspector.

The Inspection for prosecutors is headed by a chief inspector appointed through a competition organized by the SCP.

The Inspection for Prosecutors has following powers:

- to control the work of prosecutors and the organizational work of prosecutor's offices;

- to examine the complaints on the facts that may constitute disciplinary offenses;
- to take into own-initiative proceedings in respect of acts that may constitute disciplinary misconduct;
- submit disciplinary cases to the College for Disciplinary and Ethics, the and the courts, with the right to appeal against the decisions taken in accordance with the law;
- to control, at the request of SCP, on the independence and reputation of prosecutors;
- to study the grounds for the rejection by the President of the Republic of Moldova of the candidate proposed by the SCP for appointment as Prosecutor General or, as the case may be, interim Prosecutor General, submitting an informative note to the SCP;
- to submit to the SCP the annual report on its activity in the previous year, which shall be published on the official website of the High Council of Prosecutors;

38. Do self-governing bodies have a unit responsible for interaction with the parliament, government, or president? If yes, briefly describe its role and functions.

The Law does not specifically mention a dedicated unit within the SCP responsible for direct interaction with the Parliament, Government, or President. However, the Council does engage in activities that involve these bodies. For instance, the Council participates in the drafting of the Prosecutor's Office budget and approves it, and also endorses draft legislative and regulatory documents from other authorities. Additionally, the Council submits its draft budget to the Ministry of Finance and can endorse referrals of the Prosecutor General to the Constitutional Court concerning the constitutionality of parties.

The President of the SCP also represents the Council in internal and international relations, which would likely include interactions with these governmental bodies.

VII. Country Report – Montenegro (Milica Kolaković-Bojović)

A. General Overview of the Prosecution Service and its Self-Governance

- 1. Briefly describe the constitutional status of the prosecutor's office and its key elements (its place within the system of state authorities, its functions, the nature of the position and role of the Prosecutor General, the role of prosecutorial self-governing bodies, etc.). If the constitutional provisions are limited, describe these aspects based on the key legislative acts.**

The Constitution of Montenegro (2007) regulates the State Prosecutor's Office in a dedicated section (Article 134-138). It defines it as an autonomous state authority responsible for prosecuting perpetrators of criminal offences and other punishable acts and undertaking other duties prescribed by law. The State Prosecutor's Office represents one of the key factors in safeguarding legality and the rule of law.

The Supreme State Prosecutor is the head of the prosecutorial system. Appointed and dismissed by the Parliament of Montenegro, following a proposal by the Prosecutorial Council (Art. 135 Constitution). Holds a pivotal role in ensuring the autonomy and management of all prosecutor's offices (Art. 17 Law on the State Prosecution Office).

The Constitution (Art. 136) and the Law on the State Prosecution Office (Art. 18-42a, Official Gazette of Montenegro, no. 11/2015, 42.2015, 10/2018, 59/2021, 54.2024) establish the Prosecutorial Council as the self-governing body. The Council is tasked with safeguarding prosecutorial autonomy, deciding on the recruitment, promotion, transfer and disciplinary responsibility of prosecutors. It consists of both prosecutors and lay members, which provides a balance between professional autonomy and democratic oversight. The Constitution leaves the composition, method of appointment, term of office of the Prosecutorial Council to be regulated by statute. This solution is not in line with the requirement that the key matters relating to the status of prosecutors should be regulated on the highest level.¹⁹⁶

While the Constitution provides only a framework, the Law on the State Prosecution Office and the Law on the Special State Prosecutor's Office regulate in detail internal organisation (hierarchical structure of offices: Supreme, High, Basic, Special); mandates of the prosecutors, grounds for appointment, evaluation and termination; functional independence of individual prosecutors in handling cases.

- 2. List the prosecutorial self-governing bodies, their key areas of competence, and the periods of their establishment and reform.**

The Prosecutorial Council was introduced by the Law on State Prosecutor from 2003 (Official Gazette of Republic of Montenegro, no. 69/2003). Constitution that was in force in 2003 (official Gazette of Republic of Montenegro, no. 48/92) vest the power of appointment and dismissal of state prosecutors in the Parliament and additionally prescribes that the state prosecutor is appointed for a period of 5 years (Art. 105). More detailed criteria for the appointment procedure were elaborated in the relevant law. Due to the said constitutional limitations, the law could only entrust the Prosecutorial Council with nominating candidates for appointment and dismissal to the Parliament.

¹⁹⁶ For more detailed info. On the competences of the Council see questions no.2 and 29

The Prosecutorial Council was included in the 2007 Constitution, which enables legislator stronger ground for regulating composition and competences. The recent reforms of the Prosecutorial Council in relation to the composition and appointment procedure were 2015, 2021 and consequently in 2024.

According to the applicable legal framework, the Prosecutorial Council has a wide range of powers to carry out both “traditional” and “new” functions in line with the European standards. According to the European standards, “traditional” functions include competences for appointment of prosecutors and heads of its offices and other human resource management functions. The “new” functions are related to management and budget matters.

Specifically, the competences of the Prosecutorial Council are regulated by the Law on State Prosecutorial Office, Article 37:

- establishing the number of state prosecutors;
- establishing a proposal for the dismissal of the Supreme State Prosecutor;
- rendering decisions on the disciplinary liability of the state prosecutors and heads of State Prosecution Offices;
- undertakes international cooperation in the affairs under its jurisdiction;
- monitoring the use, functioning and uniformity of the Judicial Information System in its part that is related to the State Prosecution Office;
- keeping records of data related to the state prosecutors and heads of the State Prosecution Offices;
- adopting the Rules of Procedure of the Prosecutorial Council;
- issuing opinions on the incompatibility of performing certain duties with the prosecutorial office;
- considering complaints about the work of the state prosecutors and heads of the State Prosecution Offices and taking positions regarding any jeopardy to their independence;
- considering complaints against the work of the state prosecutors and heads of the State Prosecution Offices regarding the lawfulness of their work;
- forming the Commission for Evaluating the Performance of State Prosecutors;
- appointing the disciplinary panel;
- appointing the disciplinary plaintiff and his/her deputy;
- defining the methodology for the preparation of reports on the work of the Prosecutorial Council and the State Prosecution Office and on annual work distribution;
- issuing official identity cards to state prosecutors and the heads of State Prosecution Offices and keeping records of the official identity cards;
- giving opinions on draft regulations relating to the State Prosecution Office, as well as draft regulations relating to salaries and exercising other rights and obligations of state prosecutors;
- adopts the specific rules for the evaluating referred to in Article 100 of this Law;
- performing other tasks prescribed by law.

3. Describe the reasons for the establishment and reform of the prosecutorial self-governing bodies, and how the results were assessed by international institutions, primarily the Council of Europe and the EU.

The 2007 constitutional introduced a Prosecutorial Council as a self-governing body of the prosecutorial service. However, the Prosecutorial Council was for the first time regulated in the Law on State Prosecutor from 2003 (Art. 83-90). The first composition of the Council included Supreme State Prosecutor *ex officio*, six prosecutors elected by the Parliament based on proposal of the extended session of the Supreme State Prosecutor Office, one from the rank of professors from the Law faculty in Podgorica, one from the rank of

attorneys at law, and one distinguished lawyer proposed by the Ombudsperson and representative of the Ministry of Justice.

Over the last 22 years several reforms occur, and the most recent are from 2008, 2015, 2021, 2024). Across all reforms, the consistent issue has been the tension between limiting political influence and ensuring prosecutorial self-governance. While incremental improvements, particularly NGO involvement and incompatibility rules, have been welcomed, international bodies continue to emphasise that true independence requires prosecutors to constitute the majority of the Council, elected by their peers, in line with European standards.

The Law on State Prosecutor's Office was amended in 2008, following adoption of 2007 Constitution. In line with the constitutional limitations, the Law envisaged that the Parliament was to nominate state prosecutors, whilst the Prosecutorial Council was vested with the power to nominate deputy state prosecutors. Their mandate was permanent but subject to an initial 3-year probation period. The amendments also included a change in the composition of the Prosecutorial Council – one member from among attorneys at law and one reputable jurist were replaced by two reputable jurists to be appointed at the proposal of the President of Montenegro who had previously obtained the opinion of the Ombudsman; one of the two had to have experience in human rights protection. The shifting of the right of nomination from the Ombudsman was assessed by the Venice Commission as a further weakening of this institution; additionally, it stated that the right of nomination gave the impression that the choice of the Council is widely politically influenced (CDL(2008)026-2 Comments on the Draft Law amending the Law on the State Prosecutor's Office of Montenegro).

The 2015 Law on the State Prosecutorial Office aimed to strengthen prosecutorial independence, but the method of appointment of members soon raised concerns about political influence. Although prosecutors held a formal majority, only part of them were elected by their peers, contrary to the CCPE's Opinion No. 18 (2023) that the majority of members in such bodies should be peer-elected. Prosecutorial Council had 11 members: five prosecutors elected by their peers, four 'distinguished lawyers' elected by Parliament, one representative of the Ministry of Justice, and the Supreme State Prosecutors as an *ex officio* member.

International institutions, including the Council of Europe and the EU, noted that while the composition was broadly compatible with European standards (at least half prosecutors), the method of election remained problematic. The Venice Commission repeatedly warned that the appointment of lay members by simple majority of in Parliament, without restrictions on political engagement, risked politicization. The Supreme State Prosecutor's *ex officio* role (elected by the Parliament) further diluted the standards of peer election.

Amendments in 2021 attempted to respond to international criticism by addressing politicisation and introducing safeguards. Key innovations included: incompatibility rules of lay members (no recent political functions or family ties with senior political officials), and the introduction of an NGO nominated member with proven expertise in rule of law, which was seen as a way to increase pluralism and limit parliamentary dominance.

Yet, the reform simultaneously reduced the number of prosecutors elected by their peers from five to four, meaning prosecutors no longer held a majority. This was contrary to the CCPE standard, which insists on a prosecutorial majority to guarantee both independence and professional expertise within self-governing bodies.

The Venice Commission (CDL(2021)016 & CDL-PI(2021)08) welcomed the NGO element and the incompatibility rules as positive innovations but expressed concern that reducing the proportion of prosecutors weakened independence, shifting the balance toward external actors. The Venice Commission considered it more pragmatic and country-specific, noting that Montenegro's political environment necessitated limits on parliamentary dominance. At the same time, it stressed that the lack of a clear prosecutorial majority remains in tension with European standards. Thus, while some risks of political capture were mitigated, the reform created a new structural imbalance: insufficient weight for prosecutors in their own governance.

The most recent 2024 reforms again reconfigured the Prosecutorial Council to ensure prosecutorial majority. The Council now includes Supreme State Prosecutor *ex officio*; five prosecutors elected by their peers; three 'distinguished lawyers', two elected by Parliament and one by the Bar Association; one NGO-nominated lawyer, continuing the pluralist model introduced in 2021, and one representative of the Ministry of Justice. This reform reflects a balancing prosecutorial self-governance with external oversight (Venice Commission, CDL-PI(2024)012).

B. Prosecutors' Career

4. What are the stages in the procedure for first-time appointment as a prosecutor? Which entities are involved, and what is their role?

The process for the first-time appointment as a prosecutor starts with publishing of vacancies. Candidates must submit their applications, with supporting documentation proving compliance with legal requirements, to the Prosecutorial Council within **15 days** of publication. The Council dismisses untimely or incomplete applications, though candidates may challenge such decisions through administrative dispute proceedings.

Eligible candidates undergo a **written test** and interview administered by the Prosecutorial Council. Results of this test, or alternatively the candidate's bar exam score, and interview are taken into account in the assessment process.

Successful applicants are employed as **prosecutor candidates** in the Basic State Prosecutor's Office. Candidates must complete an **initial training program** lasting **12 months**, consisting of: 3 months of **Theoretical training** provided by the Center for Training in Judiciary and State Prosecution in Montenegro; and 9 months of **Practical training** in a prosecution office, under supervision of a **mentor** appointed by the Prosecutorial Council.¹⁹⁷

At the conclusion of training, the Prosecutorial Council issues a final **evaluation** (*satisfactory* or *unsatisfactory*) based on reports from the mentor and training provider.

Only candidates graded as **satisfactory** are formally appointed as state prosecutors for the four-year period by the Prosecutorial Council. Decision on appointment to the permanent office is taken by the Prosecutorial Council.

¹⁹⁷ Program of the Initial training for candidates for judges and state prosecutors adopted on 11 February 2025. Available at: <http://cosdt.me/programi-centra/>

5. What are the eligibility criteria for first-time candidates for the position of prosecutor, and which legal act provides for them? Which entities involved in the selection procedure assess compliance with these criteria, and how?

The first-time election of prosecutors is designed as a multi-stage process that combines strict eligibility requirements, merit-based evaluation, professional training, and final confirmation by the Prosecutorial Council. The eligibility and selection process for first-time prosecutors in Montenegro is formally codified in the Law on State Prosecutorial Office, ensuring that candidates possess the necessary academic qualifications, professional examinations, and relevant work experience. The Prosecutorial Council serves as the main body overseeing compliance with these criteria, combining formal verification with merit-based assessment through testing and interviews, and assessment of the success during initial training.

The eligibility criteria and procedure for the first election is regulated by articles 49, 57-67 of the Law. In line with Article 49, a candidate may be appointed as a state prosecutor if meets the general requirements for employment in state authorities, hold a law degree (Level VII1 of education qualifications), and have successfully passed the bar exam.

For the first time appointment at the position of a Basic State Prosecutor, additional experience is required: at least two years of work after the bar exam as an adviser in a prosecution office or court, as an attorney, notary, deputy notary, or professor of law; or at least four years of legal work in other capacities.

The first election procedure is governed by Articles 57-67 of the Law on the State Prosecutorial Office. The Prosecutorial Council plays a central role in administering and assessing compliance with eligibility criteria. Its responsibilities include:

- verification of formal requirements, ensuring candidates meet the educational and professional criteria;
- written test administration, where performance is scored or considered the candidate's bar exam results;
- conducting interviews with candidates to assess motivation of the candidate to work in the State Prosecutorial Office, communication skills, ability to make decisions and resolve conflicts, and understanding of the role of a state prosecutor in society.

In addition to general eligibility requirement, the Prosecutorial Council evaluates candidates based on: performance on the written test (or bar exam score, as applicable), and interview results, reflecting both substantive legal knowledge and professional competences.

Following the selection process, candidates for state prosecutor are formally employed in the **Basic State Prosecution Office** for a limited period while awaiting a decision on their permanent appointment. During this period, they receive a salary amounting to **70% of that of a basic state prosecutor**, and their employment rights are regulated in line with the rules applicable to civil servants.

The decisive element of this stage is the **initial training**, which lasts **12 months** and consists of both theoretical and practical parts. The theoretical training is provided by an authorized training institution, while the practical training is conducted in a prosecution office under the supervision of a **mentor assigned by the Prosecutorial Council**. The training concludes with an assessment, graded as *satisfactory* or *unsatisfactory*, based on reports from both the mentor and the training institution.

Only candidates who achieve a **satisfactory grade** are elected by the **Prosecutorial Council** to the office of state prosecutor. Appointments are then made according to a ranking list, with candidates choosing their office of deployment in order of merit. If a candidate receives an unsatisfactory grade, or refuses deployment, their employment is terminated by virtue of law.

The appointment of a state prosecutor to **permanent office** is determined on the basis of two key criteria: **performance appraisal score** during the **initial four-year term**; and **interview score** assessed by the **Prosecutorial Council**. The law establishes a structured points-based system: **Satisfactory grade** = 60 points; **Good grade** = 70 points; **Excellent grade** = 80 points. The interview further supplements the overall score, providing a comprehensive evaluation that balances documented professional performance with personal competencies assessed directly by the Council. Prosecutorial Council shall render the decision on the appointment of the state prosecutor to the permanent office in the basic state prosecution office on the basis of the ranking in the ranking list.

6. How is gender equality ensured in the appointment process? Are any positive measures applied for female candidates (e.g., quotas or provisions ensuring selection in cases of equal merit)? If yes, how are they implemented?

Gender equality in the appointment of prosecutors in Montenegro is addressed in the **Law on the State Prosecutorial Office**. Specifically, **Article 40** provides that when deciding on the appointment of heads of State Prosecution Offices and state prosecutors, the **Prosecutorial Council** must take into account: the proportional representation of ethnic minorities and other national minority communities, and **gender-balanced representation**.

This provision introduces an **obligation of consideration** rather than a strict quota. In practice, it means that the Prosecutorial Council, when making appointments, must factor gender balance into its decisions, alongside other representational concerns. However: there are **no explicit quotas** requiring a minimum percentage of female prosecutors; and there is also **no “tie-break” rule** that would automatically favour women (or men) in cases of equal merit between candidates. The provision serves primarily as a **guiding principle**, aiming to ensure that both genders are adequately represented in the prosecutorial system over time.

7. Describe the mandatory training required for first-time candidates or newly appointed prosecutors.

First-time candidates for the state prosecutors must complete initial training, which is both theoretical and practical and lasts at least 12 months and is closely supervised and formally evaluated to ensure professional readiness before full appointment.

The theoretical component is delivered by the Center for Training in Judiciary and State Prosecution in Montenegro, in accordance with the official initial training curriculum. This part of the training provides candidates with structured legal knowledge and practical skills necessary for prosecutorial work.

The practical part is conducted in the Basic State Prosecution Office corresponding to the candidate’s place of residence or habitual residence. It is carried out under the supervision of a mentor appointed by the Prosecutorial Council. The mentor plays a key role in guiding the candidate through daily prosecutorial tasks and ensuring proper application of legal and procedural standards.

8. How has the procedure for first-time appointment and the relevant criteria functioned over time? What weaknesses have been identified? How were they assessed by international institutions, primarily the Council of Europe and the EU?

Since the adoption of the 2015 Law on the State Prosecution Office, **the core procedure and criteria for first-time appointment of prosecutors have remained unchanged**. Candidates are still required to meet the general legal requirements, undergo written testing and interviews before the Prosecutorial Council, and subsequently complete mandatory initial training. Only minor textual clarifications were introduced over time, without altering the fundamental design of the procedure.

The **most significant change** concerns the **initial training phase**. Originally, the training lasted **18 months** and was conducted uniformly in the Basic State Prosecution Office in Podgorica. Amendments reduced the duration to **12 months** and allowed the **practical part of the training** to be carried out in the Basic State Prosecution Office corresponding to the candidate's place of residence or habitual residence. This adjustment was justified as a measure to streamline the process, lower logistical burdens, and bring training closer to candidates' local contexts.

9. What are the stages in the procedure for transferring a prosecutor to another office, particularly to a higher-level position? Which entities are involved, and what is their role?

The promotion of prosecutors in Montenegro follows a **structured, merit-based process** combining objective performance appraisals with subjective evaluation through an interview. The **Prosecutorial Council** has the decisive role, while performance appraisals by prosecution offices provide the factual basis for eligibility. Although the procedure ensures transparency through public advertisement, international monitoring bodies have sometimes raised concerns that interview scoring leaves room for discretion, which could affect perceptions of objectivity.¹⁹⁸ The new rules were adopted in June 2025, and their practical impact remains to be seen.¹⁹⁹

The process begins with an assessment of whether the prosecutor meets the basic legal prerequisites for promotion. This includes holding a **performance appraisal grade of "good" or "excellent"**, as well as fulfilling any specific statutory conditions for the higher-level office (e.g., years of service or expertise required for the High or Supreme State Prosecution Offices).

Vacancies at the **High State Prosecution Offices** and the **Supreme State Prosecution Office** are filled through a **public advertisement procedure**. The Prosecutorial Council publishes the vacancies in the **Official Gazette of Montenegro** and in a printed media outlet, ensuring transparency and equal access.

Interested candidates submit applications within 15 days, providing documentation proving compliance with the eligibility criteria. The Prosecutorial Council dismisses incomplete or untimely applications, with the possibility of initiating an administrative dispute against such dismissal.

¹⁹⁸ 2025 Rule of Law Report – Country Chapter on Rule of Law situation in Montenegro, SWD(2025)929, p. 1; BTI Transformation Index 2024 Montenegro Country Report Available at: https://bti-project.org/en/reports/country-report/MNE?utm_source=chatgpt.com#pos5

¹⁹⁹ See: <https://www.coe.int/en/web/podgorica/-/montenegro-adopts-new-appraisal-rules-for-judges-and-prosecutors-to-enhance-transparency-and-merit-based-evaluation>

The Prosecutorial Council evaluates candidates through: verification of performance appraisal records received from their employing prosecution offices; and structured interviews.

Scores from the performance appraisals and the interviews are combined into a ranking list. Based on this list, the Prosecutorial Council makes the final decision on promotion and appoints the prosecutor to the higher-level office.

Involved entities are Prosecutorial Council which leads the entire process (advertisement, applications, interviews, ranking, and appointment) and Evaluation commission established by the Prosecutorial Council that provides performance appraisals that serve as the primary criterion for eligibility.

10. What are the criteria for candidates being transferred to a higher-level position? Which entities assess compliance with these criteria, and how?

The criteria for promotion are both **qualitative** and **quantitative** and includes:

- **Performance Appraisal**
 - Grade “good” = **60 points**
 - Grade “excellent” = **80 points**
 - Promotion to the Supreme State Prosecution Office requires an “excellent” grade.
- **Interview**
 - Each candidate undergoes an interview before the Prosecutorial Council, worth up to **20 points**.
 - The interview evaluates motivation, communication skills, decision-making, and understanding of the prosecutor’s societal role.
- **Experience Requirements**
 - **High State Prosecution Office:** Candidate must have at least **six years** of professional experience as a prosecutor or judge.
 - **Supreme State Prosecution Office:** Candidate must have at least **15 years** of experience as a prosecutor or judge.
- **Final Scoring**
 - Maximum achievable score: **100 points** (performance appraisal + interview).
 - Candidates are ranked by total points.

Prosecutorial Council conducts interview and assigns points, and compiles the ranking list and makes the final appointment decision.

11. How has the procedure for transferring prosecutors and the relevant criteria functioned over time? What weaknesses have been identified? How were they assessed by international institutions, primarily the Council of Europe and the EU?

The **procedure for transferring prosecutors to higher positions** in Montenegro has been closely tied to the development of **performance evaluation systems**. Initially, performance evaluations were based on a combination of quantitative and qualitative indicators, including metrics such as the number of indictments upheld on appeal and the proportion of convictions achieved. Over time, however, these criteria were revised in response to **Venice Commission recommendations**, which highlighted that overly quantitative measures

risked encouraging prosecutors to prioritise statistics over the quality of their legal reasoning and respect for due process.

As a result, the **quantitative indicators of “success on appeal” and “number of convicting judgments” were removed**, with the framework shifting towards more qualitative assessments (CDL(2014)055 para 86-87; CDL-PI(2024)012 para 53). This change reflected a broader effort to balance accountability with prosecutorial independence, in line with European standards.

Another important development concerned **which body is competent to perform evaluations**. Originally, the Prosecutorial Council itself was entrusted with this function. However, the Venice Commission raised concerns about potential conflicts of interest and excessive concentration of powers, cautioning that entrusting the same body with both governance and performance evaluation could compromise objectivity (CDL(2014)055 para 83).

To address this, the law established a two-tiered mechanism:

- An **Evaluation Commission**, composed of the Supreme State Prosecutor and five members of the Prosecutorial Council (three prosecutors and two eminent lawyers).
- A **Panel of State Prosecutors**, functioning as a technical body formed by the Prosecutorial Council, with the task of carrying out the actual evaluations.

This institutional arrangement was assessed as a step forward, as it introduced a more technical and peer-based component to the evaluation process, while keeping the Prosecutorial Council in an oversight capacity.

12. Do individuals have the right to appeal decisions denying them appointment or transfer (particularly to higher-level positions)? If yes, on what grounds and what are the outcomes of such appeals?

The Law on State Prosecution Office establishes clear procedural rights for individuals who applied for prosecutorial positions but were not appointed. **Article 64** provides applicants for the first-time appointment with two layers of protection:

- **Right of Access to Information** - Within 15 days of the Prosecutorial Council’s decision on the assignment of candidates, all applicants have the right to review the relevant documentation. This includes **application files, written tests, and grades** of all candidates who competed for the vacancy. This transparency mechanism allows unsuccessful candidates to understand the reasons behind their non-selection and to verify whether the procedure was conducted fairly.
- **Right to Initiate Administrative Dispute** - If a candidate considers that the Prosecutorial Council’s decision was unlawful or procedurally flawed, they may initiate an **administrative dispute**. This legal remedy is aimed at reviewing the legality of the decision, not at substituting the Council’s discretionary assessment. Grounds for initiating such a dispute could include **procedural irregularities, discrimination, violation of statutory criteria, or lack of transparency** in evaluation.

Beyond the first-time appointment procedure, **Article 40 paragraph 3** expands this safeguard by providing that **any prosecutor** may challenge Prosecutorial Council decisions through an administrative dispute. This includes decisions not only on selection, but also on **reassignment, transfer, termination of prosecutorial functions, dismissal of heads of prosecution offices, and other rights and obligations** of prosecutors. The

deadline for initiating such a dispute is **15 days from receipt of the contested decision**, and the law obliges the court to render a judgment within **45 days** of receiving the case file.

Administrative Court reviews appeals in the form of administrative disputes. Its role is to examine whether the decision of the Prosecutorial Council complied with the law and relevant procedural safeguards. The potential **outcomes** of an administrative dispute are: **confirmation of the Prosecutorial Council's decision**, leaving the original appointment in place; or **annulment of the decision**, in which case the Prosecutorial Council is obliged to repeat the procedure in compliance with the court's findings.

Although the appeal mechanism exists, it is important to note that the administrative dispute is confined to **legality review** rather than substantive reassessment of candidates' qualifications. This means that courts do not replace the Council's evaluative role but ensure that appointments are made in a **lawful, transparent, and non-discriminatory manner**.

Thus, the system balances the **independence of the Prosecutorial Council** in selecting candidates with a **judicial safeguard** against arbitrary or unlawful decision-making.

13. What are the grounds and sanctions for disciplinary liability of prosecutors? What are the stages of the disciplinary procedure? Which entities are involved, and what is their role?

This framework reflects a **structured and hierarchical system of disciplinary accountability**. Its strengths lie in the clear gradation of offences and sanctions, multiple channels for initiating proceedings, and judicial review by the Supreme Court. However, certain challenges emerge:

- the dual role of the Prosecutorial Council as both appointing body and disciplinary tribunal raises concerns about impartiality;
- the involvement of the Minister of Justice in initiating proceedings risks politicisation;
- the performance-based thresholds (e.g., achieving 60% of average caseload) could be criticized as overly quantitative, potentially disregarding case complexity.

Nevertheless, the combination of procedural safeguards (investigation, hearing, appeal) and substantive proportionality (graduated sanctions) aligns Montenegro with **European standards** on disciplinary accountability for prosecutors.

Montenegrin prosecutors, including heads of prosecution offices, may incur **disciplinary liability** for minor, severe, or the most severe disciplinary offences.

- **Minor offences** involve less serious breaches of duty, such as repeated unjustified delays in handling cases, failing to attend mandatory training or hearings, or neglecting reporting obligations.
- **Severe offences** encompass more damaging conduct, including causing case dismissal by statute of limitations, failure to recuse when required, inappropriate public behaviour, disclosing confidential information, or unjustified prolonged absence.
- **The most severe offences** include criminal conviction for crimes that disqualify one from prosecutorial office, or unprofessional/unconscientious performance, such as repeated poor performance evaluations, significant underachievement in workload benchmarks, holding incompatible offices, or repeated severe disciplinary violations.

These categories reflect a **graduated system of liability**, calibrated to the seriousness of the breach and its impact on the functioning and reputation of the prosecution service.

Disciplinary sanctions shall include reprimand, fine, prohibition of promotion and dismissal. Sanctions vary in severity and correspond to the type of offence:

- **Minor offences:** reprimand or a fine of up to 20% of salary for three months.
- **Severe offences:** fines between 20–40% of salary for three to six months, and prohibition of promotion for two years.
- **Most severe offences:** dismissal from office.

The law also allows multiple minor offences to be aggregated and sanctioned as a severe offence, reflecting the principle of proportionality and deterrence.

Disciplinary proceedings are triggered by a **motion for establishing disciplinary liability**, which can be filed by: the head of the relevant prosecution office, the head of the higher-level prosecution office, the Supreme State Prosecutor, the Minister of Justice, or the Commission for Monitoring the Application of the Code of Prosecutorial Ethics.

This reflects a **pluralistic model of initiation**, allowing both institutional and ethics-based oversight to ensure accountability.

The **disciplinary plaintiff**, elected by the Prosecutorial Council from among experienced prosecutors, plays a crucial role. They:

- investigate allegations within 45 days,
- are not bound by the motion's factual description,
- may propose rejection of unfounded motions, or file an indictment for disciplinary offence.

The plaintiff thus acts as both an **investigating authority and a prosecuting authority** in disciplinary matters.

For **minor and severe offences**, cases are adjudicated by a **disciplinary panel**, composed of three members of the Prosecutorial Council (two prosecutors and one eminent lawyer, with an eminent lawyer presiding). The Supreme State Prosecutor may not be a member of the disciplinary panel. For **the most severe offences**, the **Prosecutorial Council as a whole** decides on the case.

This system attempts to balance **peer review** (prosecutors) and **external scrutiny** (eminent lawyers), safeguarding both independence and accountability.

Stages of the Procedure:

1. **Filing of the motion** by authorized entities.
2. **Investigation by the disciplinary plaintiff** (within 45 days).
3. **Decision to indict or reject** (plaintiff may propose dismissal or submit an indictment).
4. **Hearing before the disciplinary panel/Prosecutorial Council:** both sides present evidence, prosecutors may defend themselves personally or via counsel.
5. **Decision on liability and sanction:** must be issued within 60 days of receiving the indictment.

6. **Appeal:** both prosecutor and disciplinary plaintiff may appeal to a panel of three Supreme Court judges, which must decide within 30 days.
7. **Enforcement and record-keeping:** sanctions are enforced, and erased from records after four years.

The law also includes **temporary removal provisions**, permitting suspension during detention, initiation of criminal procedure or pending serious disciplinary procedures. Decision on temporary removal is rendered by the Prosecutorial Council.

14. How have the grounds and procedure for disciplinary liability of prosecutors functioned over time? What weaknesses have been identified? How were they assessed by international institutions, primarily the Council of Europe and the EU?

One of identified weakness was lack of an effective legal remedy, which was addressed through the 2021 amendments to the Law and welcomed by the Venice Commission. Under the revised framework, if the Prosecutorial Council decides on the dismissal of prosecutor, including the Special State Prosecutor, the affected prosecutor has the right to appeal against this decision before a panel of three judges of the Supreme Court. These guarantees significantly reduce the risk of arbitrary removal of a prosecutor for political or other ulterior motives (CDL-PI(2021)008 para. 22).

The reforms also addressed the **list of disciplinary offences**, introducing both removals and additions in order to clarify and modernize the framework. Certain offences previously included in the law were abolished as redundant or overlapping with other categories, while new ones were introduced to capture forms of misconduct that had previously fallen into a legal grey zone. At the same time, the 2021 amendments introduced a new category of disciplinary offences: “unprofessional or unconscientious performance of the prosecutorial function”, which may result in dismissal. This includes “committing a serious disciplinary offence which caused significant damage to the reputation of the State Prosecutor's Office”. The Venice Commission noted that these formulations too broad yet acknowledged the inherent difficulty of narrowing them down and underlining that their precise scope will need to be through interpretation by the Prosecutorial Council and, ultimately, judicial bodies (CDL-PI(2021)008 para. 23).

15. What are the stages of the appointment procedure for managerial positions in the prosecution (excluding the Prosecutor General)? Which offices at all levels does it apply to? Which entities are involved, and what is their role?

The appointment procedure for managerial positions in Montenegro's prosecution service (excluding the Supreme State Prosecutor) applies to all levels of prosecution offices (Art 52-55 of the Law). It involves a public advertisement of vacancies, submission of applications and a mandatory Programme of Work, evaluation of candidates through performance appraisals, interviews, and programme assessment, followed by ranking and final appointment by the Prosecutorial Council. The Prosecutorial Council is the central entity throughout the process, ensuring merit-based and transparent appointments.

The process begins with a **public advertisement of vacancies**, which is conducted by the Prosecutorial Council in accordance with the law. Candidates are required to submit formal applications together with a **Programme of Work**, outlining their vision for the organisation of the office during a five-year mandate. This programme functions as both a managerial plan and a policy statement, and it is subject to evaluation by the Prosecutorial Council.

The selection procedure consists of several stages of assessment. First, the **Programme of Work** is evaluated, with candidates able to receive up to 40 points based on the quality, feasibility, and vision it demonstrates. Second, candidates are assessed on the basis of their **previous professional performance**. Here, performance appraisal plays a central role: those with a grade of “good” receive 30 points, while candidates with an “excellent” grade are awarded 40 points. This ensures that only those with a proven record of strong prosecutorial or judicial work are eligible for leadership roles. The third stage is the **interview**, also conducted by the Prosecutorial Council, which carries up to 20 points. The interview is designed to test not only professional knowledge but also managerial skills, leadership capacity, communication, and understanding of the role of a prosecutor in society.

Once all elements are scored, the Prosecutorial Council compiles a **ranking list**. If two candidates achieve the same total score, the candidate with the higher performance appraisal grade is given priority. The Prosecutorial Council then makes the final decision on the appointment. Importantly, the same person may serve as head of a particular prosecution office for a maximum of two terms. After their mandate, they continue to serve as state prosecutors in their office, thereby ensuring continuity of prosecutorial work.

The entire process applies across **Basic State Prosecution Offices, and High State Prosecution Offices**. At every stage, the **Prosecutorial Council is the central entity**, responsible for advertisement, evaluation, interviewing, ranking, and appointment.

16. What are the eligibility criteria for managerial candidates (excluding the Prosecutor General)? Can non-prosecutors be appointed (e.g., lawyers, judges, other legal professionals)? Which entities assess compliance with the criteria, and how?

The Montenegrin framework for appointment to managerial prosecutorial positions combines **formal eligibility requirements, merit-based evaluation, and structured decision-making** by the Prosecutorial Council. The three pillars of the process, Programme of Work, performance appraisal, and interview, are designed to balance managerial vision with proven prosecutorial or judicial competence. While the framework allows both prosecutors and judges to apply, it excludes other legal professions, thus narrowing eligibility to ensure practical experience in adjudication or prosecution.

At the same time, the system has built-in safeguards against politicisation through a points-based scoring method and transparent procedures, although the Prosecutorial Council retains significant discretion in evaluating Programmes of Work and interviews. This design reflects an attempt to align with European standards on prosecutorial self-governance while also addressing the particular challenges of Montenegro’s institutional context.

Eligibility criteria for managerial positions are codified in the Law on the State Prosecution Office. In addition to general conditions required for all prosecutors, such as a law degree and bar exam, the law prescribes **specific requirements for candidates aspiring to managerial roles (Art. 51)**.

For the **head of a Basic State Prosecution Office**, a candidate must have at least **ten years of experience in the legal field**, of which a minimum of **six years must be served as a state prosecutor or judge**. For the **head of a High State Prosecution Office**, the threshold is higher: **twelve years of professional legal experience**, with at least **eight years as a prosecutor or judge**. For both levels, the candidate must have received at least a **“good” or “excellent” performance appraisal** under the legal framework governing prosecutorial evaluations.

This means that, in principle, **non-prosecutors such as judges can also be appointed**, provided they meet the statutory experience and appraisal requirements. The law does **not** explicitly exclude other legal professionals (such as lawyers, notaries, or academics). Rather, it sets **experience thresholds** that, in practice, make prosecutors and judges the main pool of candidates, but still allow others provided they have **substantial prior judicial or prosecutorial experience**. The rationale is to maintain professional continuity and ensure that those who lead prosecution offices have direct prosecutorial or judicial experience.

Compliance with these criteria is assessed by the **Prosecutorial Council**, which verifies the candidate's qualifications, professional record, and appraisal scores. The Council also evaluates the Programme of Work and conducts the interview, thereby integrating eligibility verification into the broader appointment process.

17. How is gender equality ensured in the appointment of managerial positions (excluding the Prosecutor General)? Are any positive measures applied for female candidates (e.g., quotas or provisions ensuring selection in cases of equal merit)? If yes, how are they implemented?

Same as for question no. 6.

18. How has the procedure for appointing prosecutors to managerial positions and the relevant criteria functioned over time? What weaknesses have been identified? How were they assessed by international institutions, primarily the Council of Europe and the EU?

2013 constitutional amendments divested the Parliament of its general power to appoint state prosecutors, retaining this authority only with respect to the Supreme State Prosecutor. Under the amended constitutional framework, the appointment and dismissal of head of prosecutor offices fall within the competence of the Prosecutorial Council, which also nominates the candidates for appointment to the office of the Supreme State Prosecutor. The criteria for the election of head of prosecutor offices have remained unchanged for the past decade.

19. Is a reserve list of candidates for managerial positions (excluding the Prosecutor General) maintained? If yes, what are the key elements and procedures? How effective is this practice? Have there been any appeals from those excluded, and what were the outcomes?

In Montenegro, **no reserve list of candidates is maintained for managerial positions in the prosecution service**, with the **sole exception of the procedure for the election of the Supreme State Prosecutor**. In this case, the Prosecutorial Council submits to the Parliament a reasoned proposal for election, accompanied by a **list of all candidates** who meet the statutory requirements.

For other managerial positions (heads of Basic and High State Prosecution Offices), the procedure is limited to the **evaluation and selection of candidates responding to a specific vacancy advertisement**. Once the selection decision is taken by the Prosecutorial Council, the procedure concludes. There is no formal mechanism to create or maintain a list of reserve candidates who could later be appointed should another vacancy arise.

The absence of such a reserve list means that each managerial appointment requires a new advertisement, evaluation process, and decision, without relying on previously vetted candidates. This ensures fresh competition and transparency for each vacancy, but also results in **longer recruitment timelines** and potential inefficiencies if multiple vacancies occur within a short period.

20. Describe the mandatory training for managerial candidates or newly appointed managers.

The Law on the State Prosecution Office (Article 6) provides that state prosecutors shall have the right to and the duty of professional advancement so that they can ensure the more successful carrying out of the duties of their office.

In parallel, Art. 6 of the Law on Training Centre for Judiciary provides that judges and state prosecutors have the right and obligation to receive professional training, in accordance with this law. The same Law (art. 37, point 3) recognises the training program for presidents of courts, that is, heads of state prosecution offices as a modality of continuous training. In art. 48 the Law lists the fields/topics of this training:

- 1) organization and internal operations of the court, that is, the state prosecutor's office;
- 2) case management;
- 3) the problem of resolving the backlog of cases;
- 4) human resources management;
- 5) alternative ways of resolving disputes;
- 6) public relations, access to information and protection of personal data;
- 7) rights, obligations and responsibilities of civil servants and employees;
- 8) financial and material operations; and
- 9) other areas of importance for their work.

A more precise planning of these training sessions is done on annual basis through the Annual Training Program of the Centre as well as through the separate, special Training Program for presidents of courts and heads of state prosecution offices.

21. Do heads of prosecutor's offices (excluding the Prosecutor General) bear disciplinary liability for ineffective management (e.g., failure to achieve organizational goals, low performance of subordinates, or other organizational shortcomings)? If yes, what are the qualifying conditions and are there specific sanctions? If not, do they bear other forms of liability and under what procedures? Which entities assess compliance, and how?

The comprehensive list of acts that, if committed by both, state prosecutors and heads of state prosecution offices as state prosecutors shall lead to disciplinary liability for committing minor, severe and the most severe disciplinary offences.²⁰⁰ However, none of these reasons refers specifically to the managerial role of the head of the Prosecution Office, but rather to their prosecutorial role.

Differently, art. 125 of the same law governs **reasons for dismissal** of the head of a state prosecution office, by providing a comprehensive list of acts closely related to the managerial role the head of the prosecution office, namely if:

- 1) he/she changes annual allocation of tasks in the state prosecution office contrary to the law;
- 2) he/she renders impossible the supervision in the state prosecution office that is required under the law;
- 3) he/she treats parties and employees in the State Prosecution Office in an inappropriate manner;
- 4) without any justified reason he/she fails to deliver or delivers incomplete and inaccurate activity reports and other data required under the law;

²⁰⁰ See question 13 for the list of disciplinary offences.

- 5) he/she fails to handle complaints against work of state prosecutors according to legislation;
- 6) he/she withdraws randomly assigned cases contrary to the law;
- 7) supervision of the state prosecution management duties identifies unlawfulness and irregularities in performance of the state prosecution office management duties which are harmful to the regular and timely discharge of duties and to the function of the state prosecution office;
- 8) he/she fails to file motion for establishing disciplinary liability of the state prosecutor, i.e. head of the state prosecution office in cases prescribed by the law, although he/she is aware or that there are reasons for disciplinary liability;
- 9) he/she is temporarily removed from the office of the state prosecutor;
- 10) he/she is given the grade unsatisfactory.

In addition to this, according to art. 99 of the Law, the dismissal can result from the performance evaluation process. Namely, the Prosecutorial Council shall adopt special rules to regulate the procedure of evaluation and the indicators for composing the report and the draft grade on the basis of the criteria defined for state prosecutors, as well as the criteria for evaluation and indicators for composing the report and draft grade for the heads of the state prosecution offices. If the head of the state prosecution office is given the grade unsatisfactory, he/she shall be dismissed from the office of the head of the state prosecution office.²⁰¹

Arts. 127-128 of the same Law provide that the provisions of this Law that govern the procedure of establishing disciplinary liability of the state prosecutor shall be applied accordingly to the procedure of dismissal of the head of the state prosecution office, which means that the motion for dismissal of the head of the state prosecution office may be filed by the head of an immediately higher state prosecution office, supreme state prosecutor, Minister of Justice or at least three members of the Prosecutorial Council, immediately upon learning that disciplinary offence has been committed. The members of the Prosecutorial Council who filed the motion for dismissal cannot participate in the work of Prosecution Council in this procedure.

C. Appointment and dismissal of the Prosecutor General

22. What are the stages in the appointment procedure for the Prosecutor General? Which entities are involved, and what is their role? Who holds de facto veto power over the selection?

²⁰¹ "Performance evaluation of the heads of state prosecution offices shall be performed by Evaluation Commission.

Performance evaluation of the heads of state prosecution offices shall be carried out on the basis of the draft grade given by the panel of state prosecutors for performance evaluation composed by the state prosecutors referred to in Article 87 paragraph 3 of this Law and the head of an immediately higher state prosecution office from the territory of that state prosecution office.

The draft grade referred to in paragraph 2 of this Article shall contain the evaluation of performance of the head of the state prosecution office as the head of the office and as the state prosecutor.

When evaluated as the head of office, the head of the state prosecution office shall be given the grades good or unsatisfactory.

If the head of the state prosecution office is given the grade unsatisfactory, he/she shall be dismissed from the office of the head of the state prosecution office.

Performance evaluation of the head of state prosecution office as state prosecutors shall be carried out according to the procedure and in the manner stipulated in this Law."

In accordance with arts. 82 and 91 of the Constitution and arts. 44-47 of the Law on the State Prosecution Office there is an eight-step appointment procedure, where the main power is in the hands of the Prosecutorial Council, despite the Parliament is in charge of his/her election.

Stage 1: Public advertisement

Two months before the expiry of the term of office of the Supreme State Prosecutor, or immediately after termination of office or dismissal of the Supreme State Prosecutor, the Prosecutorial Council shall advertise the vacant position of the Supreme State Prosecutor in the “Official Gazette of Montenegro” and in one of the printed media based in Montenegro. The time-limit for the application of candidates shall be 15 days from the day of publishing the advertisement.

Stage 2: Submitting applications:

Applications in response to the public advertisement with evidence that the applicant meets the requirements for election to the position of the Supreme State Prosecutor shall be submitted to the Prosecutorial Council within 15 days from the day of the advertisement.

Candidates for the position of the Supreme State Prosecutor, along with the application in response to a public advertisement, are required to submit a work program containing a vision of the organization of the State Prosecution Office for a term of five years. The standardized structure (required points/issues to be addressed in the program of work of the candidates) is determined by the Prosecutorial Council.

Stage 3: Technical/formal control of applications

The Prosecutorial Council shall dismiss untimely and incomplete applications. Applicants may initiate an administrative dispute against the decision to dismiss an untimely or incomplete application.

Stage 4: Shortlisting

The Prosecutorial Council shall make a list of candidates who meet the statutory requirements for the election of the supreme state prosecutor.

Stage 5: Opinion of the Extended session of the Supreme State Prosecution Office

The list of candidates shall be further submitted to the extended session of the Supreme State Prosecution Office to give its reasoned opinion for each of the candidates within eight days from the day of delivery of the candidate list. The extended session is a special, consultative *ad hoc body*/modality of work governed by art 146 of the Law of the State Prosecution Office. Namely, in order to discuss certain issues of particular importance for operation of the State Prosecution and in other cases required in this law, the Supreme State Prosecutor shall convene an extended session of the Supreme State Prosecution Office, composed of the Supreme State Prosecutor, state prosecutors from the Supreme State Prosecution Office, heads of high state prosecution offices and head of the Special State Prosecution Office. Therefore, the purpose of this step is to get feedback from the main actors in the prosecution service, which contributes to the inclusiveness, integrity and the quality of the process through providing additional insight into the candidates’ professional reputation among their peers.

Stage 6: Proposal

In its closed session, the Prosecutorial Council shall establish a proposal for the election of the Supreme State Prosecutor based on the list of candidates, the opinion of the extended session of the Supreme State Prosecution Office about the applied candidates and the candidate interview. The order of the steps is provided in art. 47 of the Law, which means that the interviews are conducted after receiving the opinion of the Extended Session. The proposal for the election of the Supreme State Prosecutor shall contain one candidate and it has to be reasoned.

The Prosecutorial Council shall submit to the Parliament the reasoned proposal for the election of the Supreme State Prosecutor with the list of candidates.

Stage 7: Hearing

The candidate proposed by the Prosecutorial Council attends the public hearing in the competent working body of the Parliament where he/she can present his/her views/vision/program and answer the questions of the parliamentarians.

Stage 8: Election

In accordance with arts. 82 and 91 of the Constitution, the Parliament is in charge of election of the Supreme State Prosecutor. In the first vote, the Assembly elects the Supreme State Prosecutor on the proposal of the Prosecutorial Council. If the proposed candidate does not get the required majority, the Assembly in a second vote elects the supreme state prosecutor from among all the candidates who meet the legal requirements (from the List of candidates). When it comes to the necessary majority, in the first vote it should be a two-thirds majority and in the second vote a three-fifths majority of all deputies.

23. What are the eligibility criteria for candidates for the Prosecutor General? Which entities assess compliance, and how?

In accordance with art. 43 of the Law on the State Prosecution Office, to be elected Supreme State Prosecutor, a candidate shall:

- 1) meet the general requirements for the office of a state prosecutor;
 - 2) have work experience of at least 15 years as a state prosecutor or judge, or at least 20 years in other duties in the field of law;
 - 3) be characterised by professional impartiality and high professional and moral qualities.
- The same person may not be elected as a Supreme State Prosecutor more than two times. (art. 48)

For the assessment of compliance see steps 2-5 in the previous answer describing the procedure and the division of competences.

24. How has the appointment procedure and the relevant criteria for the Prosecutor General functioned over time? What weaknesses have been identified? How were they assessed by international institutions, primarily the Council of Europe and the EU?

In accordance with arts. 82 and 91 of the Constitution, the Parliament is in charge of election of the Supreme State Prosecutor. In the first vote, the Assembly elects the Supreme State Prosecutor on the proposal of the Prosecutorial Council. If the proposed candidate does not get the required majority, the Assembly in a second vote elects the supreme state prosecutor from among all the candidates who meet the legal requirements (from the List of candidates). When it comes to the necessary majority, in the first vote it should be a two-thirds majority and in the second vote a three-fifths majority of all deputies.

Such a design of the election mechanism resulted in the past in a four-year period (2019-2024) without possibility to elect the Supreme Prosecutor, as the multiple attempts to elect a Supreme Prosecutor were unsuccessful due to the lack of so-called antideadlock mechanism. This “election crisis” in Montenegro judiciary has triggered the decision of Serbian authorities to incorporate an anti-deadlock mechanism in its own Constitution in 2021 to avoid similar scenario. See e.g. [European Commission Report for 2023](#), but also reports for 2020-2022. For the Venice Commission assessment see previously cited reports on Montenegro.

25. Are general grounds for disciplinary liability applicable to the Prosecutor General? If not, are there special grounds or procedures for holding the Prosecutor General accountable, including through dismissal?

See questions no. 21 and 26.

26. What are the grounds for early dismissal of the Prosecutor General, and under which legal act are they defined?

In line with art. 110 of the Law on Public Prosecution Office the Supreme State Prosecutor may be dismissed due to unconscientious or unprofessional performance of function. Art. 108 of the same law provides that it shall be deemed that the state prosecutor performs prosecutorial function unprofessionally and unconscientiously if:

- 1) he/she unjustifiably fails to achieve at least 60% of the results in terms of quantity of the work done which is measured against average quantity benchmarks in a specific type of cases set by the Prosecutorial Council, unless the state prosecutor can provide valid reasons for not achieving the quantitative results;
- 2) he/she starts holding the office of a Member of Parliament or any other public office or starts professionally dealing in some other activity;
- 3) he/she received the grade unsatisfactory twice in a row;
- 4) he/she was imposed disciplinary sanctions for severe disciplinary offences two times;
- 5) he/she commits a severe disciplinary offence which caused significant damage to the reputation of the State Prosecution Office.

27. What are the stages in the early dismissal procedure for the Prosecutor General? Which entities are involved, and what is their role? Who holds de facto veto power over dismissal?

Stage 1:

The initiative for dismissing the supreme state prosecutor may be filed by the extended Session of the Supreme State Prosecution Office, Minister of Justice and 25 Members of Parliament. The Supreme State Prosecutor may be dismissed due to unconscientious or unprofessional performance of function.

Stage 2:

The disciplinary plaintiff elected by the Prosecutorial Council shall conduct the investigation upon a motion for establishing disciplinary liability and he/she shall represent the motion to indict in the procedure of establishing disciplinary liability of a state prosecutor.

The provisions of the Law governing the proceeding conducted based on the motion for establishing disciplinary liability of state prosecutors for the most severe disciplinary offences will be applied accordingly to the proceeding conducted based on the initiative for dismissal of the Supreme Prosecutor. (art. 110 of the Law).

Stage 3:

The procedure for establishing disciplinary liability for minor and severe disciplinary offences shall be conducted before disciplinary panel upon the motion to indict issued by the disciplinary plaintiff.

The disciplinary panel shall comprise three members of the Prosecutorial Council, two of them from among the state prosecutors and one from among the eminent lawyers who shall be the president of the disciplinary panel.

The Supreme State Prosecutor may not be a member of the disciplinary panel.

Members of the disciplinary panel and their deputies shall be appointed by the Prosecutorial Council upon the proposal of the Prosecutorial Council president.

The procedure for establishing disciplinary liability for the most severe disciplinary offences shall be conducted before Prosecutorial Council upon the motion to indict of the disciplinary plaintiff. (art. 113) In the procedure for establishing disciplinary liability, the disciplinary panel, i.e. Prosecutorial Council, shall hold a hearing.

The disciplinary plaintiff, state prosecutor and his/her defence counsel shall be summoned to the hearing. (art. 116) The disciplinary panel submits decisions referred to in paragraph 1 of this Article to the Prosecutorial Council. (art. 117)

Stage 4:

In accordance with arts. 82 and 91 of the Constitution, the decision on dismissal shall be made by the Parliament (in the first vote by a two-thirds majority and in the second vote by a three-fifths majority of all deputies). This decision can be made only upon the proposal for dismissal established by the Prosecutorial Council (art. 37 of the Law on the State Prosecution Office).

28. How has the early dismissal procedure and relevant grounds for the Prosecutor General functioned over time? What weaknesses have been identified? How were they assessed by international institutions, primarily the Council of Europe and the EU?

This procedure has never been used in the past. However, if happens, the same problem can occur as explained for the election of the Supreme Prosecutor, namely, it can happen that despite the serious ground for dismissal, the Parliamentary majority necessary for dismissal cannot be reached. Namely, In accordance

with arts. 82 and 91 of the Constitution, the decision on dismissal shall be made by the Parliament (in the first vote by a two-thirds majority and in the second vote by a three-fifths majority of all deputies).

That such a design of the election & dismissal mechanism can result in a full blockade, it has been proven in the past when Montenegro judiciary was “locked” in a four-year period (2019-2024) without possibility to elect the Supreme Prosecutor, as the multiple attempts to elect a Supreme Prosecutor were unsuccessful due to the lack of so-called antideadlock mechanism. This “election crisis” in Montenegro judiciary has triggered the decision of Serbian authorities to incorporate an anti-deadlock mechanism in its own Constitution in 2021 to avoid similar scenario. See e.g. [European Commission Report for 2023](#), but also reports for 2020-2022. For the Venice Commission assessment see previously cited reports on Montenegro.

D. Prosecutorial Self-Government Bodies

29. List the prosecutorial self-governing bodies, their legal status, and their relationship with each other and with the prosecution service.

The competences in governing the prosecutorial service are divided between the Supreme State Prosecutor and the Prosecutorial Council.

The State Prosecutor’s Office

The Constitution of Montenegro (2007) regulates the State Prosecutor’s Office in a dedicated section (Article 134-138). It defines it as an autonomous state authority responsible for prosecuting perpetrators of criminal offences and other punishable acts and undertaking other duties prescribed by law. The State Prosecutor’s Office represents one of the key factors in safeguarding legality and the rule of law.

The Supreme State Prosecutor is the head of the prosecutorial system. Appointed and dismissed by the Parliament of Montenegro, following a proposal by the Prosecutorial Council (Art. 135 Constitution). Holds a pivotal role in ensuring the autonomy and management of all prosecutor’s offices (Art. 17 Law on the State Prosecution Office).

The competences of the Supreme State Prosecutor are regulated by the Law on State Prosecutorial Office, Article 129 which stipulates that Supreme State Prosecutor shall be responsible for performing the tasks of the State Prosecution Service and for taking measures and activities for the purpose of ensuring efficient and lawful operation of the State Prosecution Service.

For the purpose of uniform application of the law in operations of the State Prosecution Service, mandatory operating instructions may be issued by the Supreme State Prosecutor while the head of the state prosecution office may initiate their adoption as he/she considers needed. The mandatory operating instruction, in terms of this law, shall mean the instruction of general nature and instructions to proceed in individual cases.

The instruction for proceeding in an individual case shall be issued by:

- 1) Supreme state prosecutor for state prosecutors from the Supreme State Prosecution Office and for the Chief special prosecutor, as well as for the heads of high and basic state prosecution offices;
- 2) Chief special prosecutor for special prosecutors from that prosecution office;

- 3) Head of the high state prosecution office for state prosecutors from that prosecution office and for heads of basic state prosecution offices from its territory;
- 4) Heads of basic state prosecution offices for state prosecutors from these prosecution offices.

State prosecutors, and heads of prosecution offices, may initiate issuance of the instructions referred to in paragraph 4 of this Article if they consider it is needed for their work. (art. 131 of the Law)

When it comes to the relations in the State Prosecution Office:

- Supreme State Prosecutor can directly exercise all the authorities and undertake all the actions for which the head of the Special State Prosecution Office, of the high state prosecution office or the head of the basic state prosecution office are authorised by law.
- Supreme State Prosecutor can, due to recusal or for other justified reasons that may have impact on further conduct of the proceedings, delegate certain cases or actions taken in relation to these cases that fall within competence of the high state prosecution office or basic state prosecution office to the other state prosecution office with subject-matter jurisdiction.
- Supreme State Prosecutor can, due to recusal or for other justified reasons that may have impact on further conduct of the proceedings, delegate certain cases or certain actions taken in relation to these cases that fall within competence of the Special Prosecution Office to the Supreme State Prosecution Office. (art. 133 of the Law)
- Supreme State Prosecution Office shall exercise supervision over work of the Special State Prosecution Office, high state prosecution office and basic state prosecution office by gaining direct insight into the work of each individual state prosecution office and by taking other appropriate measures for ensuring efficient and lawful work of the State Prosecution Service. (art. 134 of the Law).

The Prosecutorial Council

The Constitution (Art. 136) and the Law on the State Prosecution Office (Art. 18-42a, Official Gazette of Montenegro, no. 11/2015, 42.2015, 10/2018, 59/2021, 54.2024) establish the Prosecutorial Council as the self-governing body. The Council is tasked with safeguarding prosecutorial autonomy, deciding on the recruitment, promotion, transfer and disciplinary responsibility of prosecutors. It consists of both prosecutors and lay members, which provides a balance between professional autonomy and democratic oversight. The Constitution leaves the composition, method of appointment, term of office of the Prosecutorial Council to be regulated by statute. This solution is not in line with the requirement that the key matters relating to the status of prosecutors should be regulated on the highest level.

The competences of the Prosecutorial Council are regulated by the Law on State Prosecutorial Office, Article 37:

- establishing the number of state prosecutors;
- establishing a proposal for the dismissal of the Supreme State Prosecutor;
- rendering decisions on the disciplinary liability of the state prosecutors and heads of State Prosecution Offices;
- undertakes international cooperation in the affairs under its jurisdiction;

- monitoring the use, functioning and uniformity of the Judicial Information System in its part that is related to the State Prosecution Office;
- keeping records of data related to the state prosecutors and heads of the State Prosecution Offices;
- adopting the Rules of Procedure of the Prosecutorial Council;
- issuing opinions on the incompatibility of performing certain duties with the prosecutorial office;
- considering complaints about the work of the state prosecutors and heads of the State Prosecution Offices and taking positions regarding any jeopardy to their independence;
- considering complaints against the work of the state prosecutors and heads of the State Prosecution Offices regarding the lawfulness of their work;
- forming the Commission for Evaluating the Performance of State Prosecutors;
- appointing the disciplinary panel;
- appointing the disciplinary plaintiff and his/her deputy;
- defining the methodology for the preparation of reports on the work of the Prosecutorial Council and the State Prosecution Office and on annual work distribution;
- issuing official identity cards to state prosecutors and the heads of State Prosecution Offices and keeping records of the official identity cards;
- giving opinions on draft regulations relating to the State Prosecution Office, as well as draft regulations relating to salaries and exercising other rights and obligations of state prosecutors;
- adopts the specific rules for the evaluating referred to in Article 100 of this Law;
- performing other tasks prescribed by law.

30. Describe their composition, terms of office, and the procedures for selecting their members.

Term of Office of the Prosecutorial Council is five years. The same person may not be elected as a member of the Prosecutorial Council more than two times. (art. 28 of the Law)

The Composition of the Prosecutorial Council and the procedure of their election (arts. 18, 23 and 24 of the Law on the State Prosecution Office)

The Prosecutorial Council shall have a president and ten members. The Supreme State Prosecutor shall be the President of the Prosecutorial Council.

The following shall be members of the Prosecutorial Council:

1) The state prosecutors:

- **five state prosecutors** who have permanent function and at least five years of work experience in performing the prosecutorial function, four of whom are from the Supreme State Prosecution Office, Special State Prosecution Office and High State Prosecution Offices and one from a Basic State Prosecution Offices, who are elected and dismissed by the Prosecutorial Conference in a secret vote. The Conference is composed of all the heads of the State Prosecution Offices and all state prosecutors. A session of the Prosecutorial Conference can take place if at least two-thirds of its members are present, while the decisions of the Prosecutorial Conference shall be made by the majority of votes of the members present in the session. If there are several candidates with the same number of votes, based on which they can enter the second round of voting, a list of those candidates shall be prepared and the vote shall be repeated, and only one candidate may be appointed from one State Prosecution Office. The Conference elects the Council members among candidates nominated by the sessions of the prosecutors' offices that are allowed to nominate candidates (each office max. two candidates). The list of eight (based on the no.

of nominations) candidates is prepared by the Election Commission. If, after obtaining the initial proposals by prosecutors' offices, there are more than four candidates with the same number of initial proposals, the Election Commission shall make a list consisting of all the candidates with the highest or the same number of initial proposals.

The Election Commission shall have a chairman and two members, who shall have their deputies. Members of the Commission cannot be candidates for members of the Prosecutorial Council. The extended session of the Supreme State prosecution Office shall elect the chairman, members of the Election Commission and their deputies from among the state prosecutors, upon the proposal of the session of state prosecutors of all State Prosecution Offices.

A member of the Prosecutorial Council from the rank of state prosecutors may not be: a marital or extramarital partner, a partner in a same-sex community of life or a relative of a member of the Parliament, member of the Government and of the President of Montenegro, or a person elected or appointed by the Parliament, the President of Montenegro or the Government, in the straight line regardless of the degree of kinship, in the collateral line up to the second degree of kinship or in-law kinship up to the first degree.

A state prosecutor who was given an unsatisfactory grade or a state prosecutor who has been imposed a disciplinary sanction cannot be elected to the position of a member of the Prosecutorial Council from among the state prosecutors.

The composition of the Prosecutorial Council shall be promulgated by the President of the Parliament.

2) The eminent lawyers:

A person who has at least 40 years of age and 15 years of work experience as a judge, state prosecutor, lawyer, notary public, public bailiff, professor of legal sciences or performed other legal affairs in the field of criminal, administrative and civil law, distinguished by professional competences and enjoys a good personal and professional integrity and has not been convicted for criminal offences that render state prosecutors unworthy of performing the duties of the prosecutorial office in accordance with this law may be appointed as a member of the Prosecutorial Council from among the eminent lawyers.

- **two eminent lawyers who are not attorneys-at-law**, elected and dismissed by the Parliament of Montenegro, at the proposal of the competent working body of the Parliament upon a public call.

- **one eminent lawyer from among the attorneys-at-law**, who has at least five years of work experience as a lawyer and who is elected and dismissed by the Assembly, at the proposal of the Bar Association of Montenegro on the basis of a public call issued by the Bar Association of Montenegro. The competent working body of the Parliament shall, after an interview with the candidate, submit to the Parliament proposal for election member of Prosecutorial council of among the representatives of attorneys-at-law, for with an explanation and a report on the interview with candidate.

- **one representative of the state administrative body responsible for judicial affairs** (the Ministry of Justice) appointed by the Minister of Justice from among the employees of the Ministry of Justice;

- **one eminent lawyer from among the representatives of non-governmental organisations** in the field of the rule of law, the work of the State Prosecution Office or the fight against corruption and organised crime,

who is not attorney-at-law nominated by non-governmental organisations that meet the requirements prescribed by this law²⁰², who is elected and dismissed by the Parliament. A member of the Prosecutorial Council from among the representatives of non-governmental organisations is proposed on the basis of a public call issued by the competent working body of the Parliament.

A member of the Prosecutorial Council from the eminent lawyers cannot be:

- 1) a marital or extramarital partner, a partner in the same-sex community of life or a relative of a member of the Parliament, member of the Government or the President of Montenegro or a person elected or appointed by the Parliament, the President of Montenegro or the Government in a straight line regardless of the degree of kinship, in the lateral line to the second degree of kinship or in-law kinship to the first degree;
- 2) official of political parties (presidents, members of the presidency, their deputies, members of executive or main committees), or a person who was directly elected in elections or held the position of a member of the Government, deputy or councillor in the last five years;
- 3) a person who has performed the office of a judge or a prosecutor in the last eight years.

31. What are the eligibility criteria for candidates for self-governing bodies? Which entities assess compliance, and how?

See answers to question 30. It covers all required points.

32. How has the procedure for selecting members of self-governing bodies and the relevant criteria functioned over time? What weaknesses have been identified? How were they assessed by international institutions, primarily the Council of Europe and the EU?

The challenges experienced in the previous period regarding the election of the Council's members were associated to two, interconnected issues:

²⁰² Article 26b : A non-governmental organisation may nominate a candidate for a member of the Prosecutorial Council from among the representatives of non-governmental organisations, if it meets the following criteria: 1) it was registered with the competent state administrative body for at least three years prior to the publication of the public call for candidates for a member of the Prosecutorial Council from among the representatives of non-governmental organisations; 2) it has in the founding act and the statute, as basic goals and activities, issues in the areas prescribed by Article 18, Paragraph 3, Item 4 of this law and to have continuously worked in this area in the previous three years; 3) in the previous three years, prior to the publication of the public call for proposing candidates for a member of the Prosecutorial Council, it has implemented projects in the area referred to in Article 18, Paragraph 3, Item 4 of this law. The proposer referred to in Paragraph 1 of this Article may nominate one candidate for a member of the Prosecutorial Council. Notwithstanding paragraph 2 of this Article a non-governmental organization may propose two candidates if it meets the following criteria: 1) it was registered with the competent state administrative body for at least ten years prior to the publication of the public call for candidates for a member of the Prosecutorial Council from among the representatives of non-governmental organisations; 2) it has in the founding act and the statute, as basic goals and activities, issues in the areas prescribed by Article 18, Paragraph 3, Item 4 of this law and to have continuously worked in this area in the previous ten years; 3) in the previous five years, prior to the publication of the public call for proposing candidates for a member of the Prosecutorial Council, it has implemented projects in the area referred to in Article 18, Paragraph 3, Item 4 of this law. The proposal of a candidate for a member of the Prosecutorial Council from the representatives of non-governmental organisations should contain: the name and surname, address and a short biography of the proposed candidate and must be signed and certified by the responsible person in the non-governmental organisation that submitted the proposal.

- The composition: namely, the share of the members elected by the parliaments (including both, lay members, the minister and the Supreme Prosecutor) and those elected by their peers, and
- The qualified majority necessary to elect those members who should be elected in the Parliament.

The predominance of those members elected by the Parliament, combined with the high threshold in terms of the qualified majority, brings two kinds of concern:

- The risk of political influence
- The possibility to enter into the blockade of the Council's work if not possible to reach the necessary majority to elect lay members in the Parliament.

1. As previously explained in the section dedicated to the election of the Supreme Prosecutor, the required **qualified majority** necessary for the election of the member of the Council, combined with the absence of an anti-deadlock mechanism can result in a blockade of the work of the Council.

Namely, In accordance with arts. 82 and 91 of the Constitution, the decision on the election of four members of the Prosecutorial Council (eminent lawyers) shall be made by the Parliament (in the first vote by a two-thirds majority and in the second vote by a three-fifths majority of all deputies).

That such a design of the election & dismissal mechanism can result in a full blockade, it has been proven in the past when Montenegro judiciary was "locked" in a four-year period (2019-2024) After entry into force of the May 2021 amendments to the Law on State Prosecution Service, the procedure for appointment of a new Prosecutorial Council was launched in June 2021. In August 2021, the Speaker of Parliament proclaimed a new Prosecutorial Council that functioned in incomplete composition until the appointment of the lay members that was pending in Parliament due to the struggle to reach necessary majority.

2. However, the May 2021 amendments to the Law on the State Prosecution Service, which entered into force in June 2021, failed to fully address the Venice Commission's recommendations concerning **risks of politicisation** of the Prosecutorial Council. Namely, Amendments in 2021 attempted to respond to international criticism by addressing politicisation and introducing safeguards. Key innovations included: incompatibility rules of lay members (no recent political functions or family ties with senior political officials), and the introduction of an NGO nominated member with proven expertise in rule of law, which was seen as a way to increase pluralism and limit parliamentary dominance.

Yet, the reform simultaneously reduced the number of prosecutors elected by their peers from five to four, meaning prosecutors no longer held a majority. This was contrary to the CCPE standard, which insists on a prosecutorial majority to guarantee both independence and professional expertise within self-governing bodies.

The Venice Commission (CDL(2021)016 & CDL-PI(2021)08) welcomed the NGO element and the incompatibility rules as positive innovations but expressed concern that reducing the proportion of prosecutors weakened independence, shifting the balance toward external actors. The Venice Commission considered it more pragmatic and country-specific, noting that Montenegro's political environment necessitated limits on parliamentary dominance. At the same time, it stressed that the lack of a clear prosecutorial majority remains in tension with European standards. Thus, while some risks of political capture were mitigated, the reform created a new structural imbalance: insufficient weight for prosecutors in their own governance.

The most recent 2024 reforms again reconfigured the Prosecutorial Council to ensure prosecutorial majority. The Council now includes Supreme State Prosecutor *ex officio*; five prosecutors elected by their peers; three 'distinguished lawyers', two elected by Parliament and one by the Bar Association; one NGO-nominated lawyer, continuing the pluralist model introduced in 2021, and one representative of the Ministry of Justice. This reform reflects a balancing prosecutorial self-governance with external oversight (Venice Commission, CDL-PI(2024)012).

33. Provide a comprehensive list of powers of self-governing bodies regarding:

- Initial selection of prosecutors,
- Transfer of prosecutors (including to higher-level positions),
- Selection of candidates for managerial positions (excluding the Prosecutor General),
- Disciplinary functions,
- Participation in selection of the Prosecutor General,
- Participation in early dismissal of the Prosecutor General.

The competences of the Prosecutorial Council are regulated by the art 136 of the Constitution and the Law on State Prosecutorial Office (Article 37) and in terms of the selected areas relevant for this question it has competence over the following tasks:

- establishing the number of state prosecutors;
- appointing and dismissing the state prosecutors;
- appointing and dismissing the heads of the state prosecutors offices;
- establishing a proposal for the appointment and dismissal of the Supreme State Prosecutor;
- rendering decisions on the disciplinary liability of the state prosecutors and heads of State Prosecution Offices;
- considering complaints about the work of the state prosecutors and heads of the State Prosecution Offices and taking positions regarding any jeopardy to their independence;
- considering complaints against the work of the state prosecutors and heads of the State Prosecution Offices regarding the lawfulness of their work;
- forming the Commission for Evaluating the Performance of State Prosecutors;
- appointing the disciplinary panel;
- appointing the disciplinary plaintiff and his/her deputy;

34. Do prosecutorial self-governing bodies have formal procedures (beyond legislation) and/or soft tools (guidelines, methodologies, best practices) that structure the execution of powers listed above in point 33? If yes, list and briefly describe them, indicating who adopted them and for what purpose.

Yes. This approach is a part of the Western Balkans legal tradition. Namely, whenever is necessary to regulate some procedure in depth, the law says: "the rules of and the procedure on this/that shall be governed by the rulebook renders: the name of the authority, e.g. the Minister, the Council, etc:".

The same applies here, so the Prosecutorial Council has adopted, among others, the following acts based on its competence to do so given in the Law on the State Prosecution Office:

- The Rules of Procedure of the Council
- The Rulebook on internal organization and systematization of the Secretariat of the Council

- The Rules for evaluation of the prosecutors' work
- The Rulebook ruling the public procurement procedure
- The Rulebook for the anonymization of the documents

The Council also implements the Code of Ethics adopted by the Prosecutorial Conference. The Conference is composed of all the heads of the State Prosecution Offices and all state prosecutors.

In addition to this, whenever there is no legal ground in the Law to adopt a bylaw, there is a possibility to adopt e.g. guidelines or the Methodology. So, the Prosecutorial Council has e.g:

- Guidelines for conducting interviews with the candidates
- Methodology for the preparation of the reports

Also, on the website of the Council the consultative opinions of the CCPE could be found as a form of soft law/interpretative instruments.

35. Do other institutions assist the self-governing bodies in executing the powers listed in point 33? If yes, list them and explain their status, relationship with the self-governing bodies and prosecution, and their role.

- 1) Yes, with regards to the **budget**. Namely, in accordance with art. 179. of the Law, financial resources for the work of the State Prosecutor's Office and the Prosecutor's Council are provided in a special section of the budget of Montenegro. The Prosecutorial Council proposes a division of the annual budget for the work of each State Prosecutor's Office, and the Prosecutor's Council separately. The Council submits the annual budget proposal to the Government of Montenegro. The President of the Council has the right to participate in the work of the Assembly session where the budget proposal for the work of the State Prosecutor's Office and the Prosecutor's Council is discussed.
- 2) Also, the preparation and adoption of the **Rulebook on the internal operations of the State prosecution** is divided between the Council and the Ministry. Namely, the Rulebook shall be issued by the Ministry of Justice with the previously obtained opinion of the Prosecutor's Council.
- 3) The process of the **preparation of the donor-funded projects** is usually joint task of the Council and the Ministry, but a detailed division of competences depends on the nature and scope of the project as well as on the applicable procedures on the side of the donor.
- 4) **The EU accession processes:** Chapter 23 Negotiation Group is led by the Ministry of Justice, but the Council and all relevant judicial bodies are taking part in its work.
- 5) **Policy planning and legislation:** Those processes are primarily led by the Ministry of Justice, but with active participation of all relevant judicial bodies are taking part in the work through the membership in the working groups, but also through providing official opinions on all draft laws and policy documents (strategies, action plans, etc.).
- 6) **ICT system in the prosecution service:** The Council monitors the use, functionality and uniformity of the Judicial Information System in the part related to the State Prosecutor's Office, while the Ministry of Justice is in charge of: tasks related to: centralized management and planning of the development of the unified information system of the judiciary (hereinafter referred to as ISP) are carried out, consisting of: subsystem of the Ministry, subsystem of the courts, subsystem of the prosecution and

subsystem of the Administration for the Execution of Criminal Sanctions, in communication with competent ICT departments/services of judicial institutions; preparation of new and implementation of existing strategic documents in order to establish ISP; planning a centralized budget for the implementation of Action Plans of strategic documents related to the ICT segment of the judiciary; providing conditions for constant planned improvement and uniform development of all ISP subsystems and their interoperability and more.

36. Do the prosecutorial self-governing bodies have separate funding and a secretariat staffed with personnel outside the prosecution service?

Yes, it has its own budget and the Secretariat which is composed of 34 civil servants specialized in various fields (human resources, finance, IT, public procurement, communications, normative affairs, etc)

37. Who approves the structure of the secretariat and selects its personnel? What units comprise the secretariat, and what are their functions?

Pursuant to Article 167 of the Law on State ("Official Gazette of Montenegro", Official Gazette of Montenegro, No. 11/15, 42/15, 80/17, 10/18, 76/20, 59/21 and 54/24)), the Secretariat of the Prosecutor's Council (hereinafter: the Secretariat) was established for the professional performance of professional, financial, administrative, IT, analytical and other tasks Prosecutor's Council and affairs of common interest for all state prosecutor's offices.

The structure of the organizational units, the number and the qualifications of the personnel is governed by the Rulebook on internal organization and systematization of the Secretariat of the Council adopted by the Council itself.

Therefore, based on Article 171 paragraph 2 of the Law on State Prosecution ("Official Gazette of Montenegro", number 11/15, 42/15, 80/17,10/18, 76/20,59/21 and 54/24), on the proposal of the secretary of the Secretariat of the Prosecutorial Council, on December 20, 2024, the Prosecutorial Council adopted the Rulebook on the internal organization and systematization of the Secretariat of the Prosecutorial Council, which entered into force on December 30, 2024.

In the Secretariat of the Prosecutor's Council, in accordance with the aforementioned Rulebook, 5 organizational units with 34 employees are foreseen, namely:

1. Department for professional support in the work of the Prosecutor's Council, with the following competences:

- preparation of the agenda for Council sessions in accordance with the instructions of the President of the Council;
- preparation of materials for Council sessions;
- distribution of invitations and materials to members of the Council;
- participation in the drafting and preparation of draft decisions of the Council;
- realization of the Council's conclusions and decisions;
- providing support to the work of all committees and working bodies of the Council;
- providing support to the work of the Commission for the Code of Ethics and the Conference of State Prosecutors;

- the procedure for determining the proposal for the election and dismissal of the supreme state prosecutor;
- selection and dismissal procedure of state prosecutors and heads of state prosecution offices and termination prosecutorial functions;
- the procedure of sending state prosecutors to work in another state prosecutor's office with or without consent of state prosecutors;
- the procedure of referring state prosecutors to another body;
- evaluation procedure of state prosecutors and heads of state prosecution offices;
- the procedure for complaints about the work of state prosecutors and heads of state prosecutor's offices in regard to the legality of work and according to the complaints of state prosecutors and heads of state prosecution offices in connection jeopardizing their independence;
- the procedure for disciplinary responsibility of state prosecutors and heads of state prosecution offices;
- the procedure for the temporary removal of state prosecutors and heads of state prosecution offices from duties;
- incompatibility of function and functional immunity;
- keeping records of data on state prosecutors and heads of state prosecution offices;
- tasks related to the issuance of official identification cards to state prosecutors and state managers prosecutor's offices, as well as keeping records of issued official identification cards;
- preparation of statistical reports on the work of the Prosecutor's Council and other relevant statistical reports in connection with the work of state prosecutor's offices
- cooperation of the Prosecutor's Council with other state bodies and media representatives;
- organization and reception of foreign and domestic delegations;
- notification to the public about matters of importance for the work of the Prosecutor's Council;
- monitoring public information about the work of the Prosecutor's Council.

This department performs other tasks related to the fulfillment of obligations arising from the procedure of European integration and international cooperation, and in particular:

- monitoring and participating in the preparation of documents related to the joining process to the European Union, which are of interest to the Prosecutor's Council and state prosecutor's offices,
- participation in the work of working groups for the implementation of strategic documents and action plans;
- preparation, implementation and reporting on obligations arising from membership in international projects;
- preparing information of importance for the Prosecutor's Council and state prosecutor's offices related to participation in the work of international organizations.

2. Service for information - communication technologies and multimedia is in charge of:

- installation and maintenance of computer equipment in the Secretariat of the Prosecutor's Council and the state prosecution offices;
- preparation and presentation of audio-video material;
- providing support to users in the application of software solutions;
- updating the web portal of the Secretariat and the Prosecutor's Council;
- development of information security in the Secretariat and the Prosecutor's Council;
- preparation of documents in accordance with the MEST ISO standard through IEC 27001;
- cooperation with the information service of the Supreme State Prosecutor's Office in accordance with the guidelines, programs and methods of this service

3. Service for general and personnel affairs, is in charge of the following tasks:

- tasks important for the organization of the work of the Secretariat;
- keeping all records in the field of labor relations and cooperation with the Administration for Human Resources in connection with advertising, training and management of CKE, ie HRMIS;
- preparation of individual acts on exercising rights from labor relations;
- general office, typing, technical and other auxiliary jobs;
- reception and sorting of mail, complaints, applications and other submissions;
- maintaining registers, directories and records in the Secretariat;
- administrative flow of files from the moment of reception at the Secretariat to the expedition;
- providing notices to interested parties from official records;
- archival affairs;
- delivery of invitations and decisions of the Prosecutor's Council;
- receipt of complaints, applications and other submissions;
- processing requests for Free Access to Information.

4. Service for accounting and finance is in charge of the following tasks:

- tasks of preparing budget proposals for the work of each state prosecutor's office, especially the Prosecutorial Council;
- analytical - financial affairs of financing monitoring;
- monthly business reviews;
- review of investment realization of funds;
- review of equipment costs;
- preparation of periodic calculations and final accounts;
- making a financial plan;
- timely and dedicated use of funds for purposes provided for in the budget i financial plan;
- census work;
- accounting affairs of budgetary and extra-budgetary operations;
- liquidation activities;
- monitoring of financial operations;
- payment of costs of criminal proceedings;
- calculation and payment of fees to witnesses, experts, interpreters and lawyers;
- compensation work for consumer items of all prosecutor's offices;
- preparation of a draft of the necessary funds for state prosecutions and the Prosecutor's Council;
- keeping business books;
- processing records of all expenses;
- execution of accounting orders of the President of the Prosecutor's Council;
- other accounting and liquidation tasks;
- salary calculation for employees in the Secretariat and control of salary calculation for all state employees prosecution offices;
- monitoring the financial realization of concluded public procurement contracts based on accounting documentation.

5. Public procurement service:

- monitoring and application of legal regulations in the field of public procurement;
- preparation of the text of the decision on the initiation of the public procurement procedure, statement on the absence of conflict interest and tender documentation;
- management of public procurement procedures in accordance with the law and by-laws;
- preparation of public procurement contracts,
- Issuing to interested business entities a part of the tender documentation that contains secrets data in accordance with the law,
- preparation of the plan and changes and additions to the public procurement plan;
- access, publication and submission to the EJN of public procurement procedures on the forms that prescribed by the Ministry;
- preparing reports on public procurement procedures,
- keeping public procurement documentation,
- performing administrative tasks related to the implementation of public procurement procedures,
- carrying out procurement of office and other materials, keeping records of needs and spending, managing electronic reports regarding public procurement contracts and monitoring implementation of these contracts,
- and other tasks in accordance with the Law on Public Procurement and by-laws.

38. Do self-governing bodies have a unit responsible for interaction with the parliament, government, or president? If yes, briefly describe its role and functions.

No. The President of the Council is authorized to represent the Council, and he/she signs all the decision made by the Council.

VIII. Country Report – Serbia (Milica Kolaković-Bojović)

A. General Overview of the Prosecution Service and its Self-Governance

1. Briefly describe the constitutional status of the prosecutor's office and its key elements (its place within the system of state authorities, its functions, the nature of the position and role of the Prosecutor General, the role of prosecutorial self-governing bodies, etc.). If the constitutional provisions are limited, describe these aspects based on the key legislative acts.

The Constitution of Serbia of 2006, as amended in 2022, establishes the Public Prosecutor's Office as an autonomous state authority of *sui generis* character, distinct from both the executive and judiciary. The Constitution regulates the Public Prosecutor's Office in a dedicated section (Articles 155–161). Its constitutional role is to prosecute perpetrators of criminal offences and other punishable acts, initiate and conduct criminal proceedings before competent court, and take legal actions to protect public interest and ensure legality. The Public Prosecutor's Office is thus a central guarantor of legality and one of the pillars of the rule of law.

The Supreme Public Prosecutor is the head of the prosecutorial system. Appointed by the National Assembly on the proposal of the High Prosecutorial Council (Art. 158 Constitution, as amended in 2022), the Prosecutor General has a pivotal role in ensuring the autonomy and uniformity of prosecutorial practice across the country (Art. 31 Law on Public Prosecution, Official Gazette RS, no. 10/2023).

The Constitution (Art. 162) and the Law on Public Prosecution establish the **High Prosecutorial Council (HPC)** as the prosecutorial self-governing body. The Council is tasked with safeguarding autonomy, overseeing recruitment, promotion, transfer, and disciplinary responsibility of prosecutors. It consists of a mix of prosecutors elected by their peers, eminent legal experts, and ex officio members, balancing professional independence with external oversight. The Serbian Constitution explicitly prescribes the composition and election of the Council, reflecting the Venice Commission's recommendations that fundamental guarantees of prosecutorial independence should be enshrined at the constitutional level.

While the Constitution provides the general framework, the **Law on Public Prosecution (2023)** and the **Law on the High Prosecutorial Council (2023)** regulate in detail the internal organisation of the prosecution system. This includes the hierarchical structure (Republic, appellate, higher, and basic prosecution offices), the mandate and evaluation of prosecutors, disciplinary proceedings, and safeguards for the functional independence of individual prosecutors in casework.

2. List the prosecutorial self-governing bodies, their key areas of competence, and the periods of their establishment and reform.

The constitutional and institutional framework of the High Prosecutorial Council in Serbia has undergone significant transformation over the past two decades. The **2006 Constitution** formally introduced the **State Prosecutorial Council** as a self-governing body of the prosecution service. Its design largely mirrored that of the High Judicial Council, both in terms of competences and composition. The State Prosecutorial Council was entrusted with safeguarding the autonomy of public prosecutors, deciding on appointments, promotions, transfers, and disciplinary proceedings. However, in practice, the role of Parliament in appointments

remained dominant, which undermined the Council's independence and exposed the prosecutorial system to political influence.

This institutional architecture was fundamentally restructured through the **2022 constitutional amendments**, adopted as part of Serbia's judicial reform agenda under EU accession negotiations. The amendments not only **changed the name of the State Prosecutorial Council into the High Prosecutorial Council** but also redefined its **composition and competences**. The composition was redesigned to reduce political dominance by increasing the share eminent legal professionals, while limiting the role of political institutions (National Assembly).

The implementation of these constitutional changes was ensured through the **2023 Law on the Public Prosecution and the Law on the High Prosecutorial Council**, which operationalised the new structure. The High Prosecutorial Council thus became the **central self-governing authority** of the prosecutorial system, charged with protecting its autonomy and ensuring transparent, merit-based management of prosecutorial careers.

According to Article 17 of the Law on the High Prosecutorial Council (Official Gazette no 10/2023), the body exercises a very wide set of competences. These include proposing to the National Assembly the election and termination of the function of the Supreme Public Prosecutor, as well as appointing and dismissing public prosecutors and chief prosecutors. It decides on reassignment, permanent transfers, and temporary appointments, evaluates prosecutors' performance, and determines their number per office. The Council also has the authority to resolve conflicts relating to general instructions, substitution, and delegation, to appoint disciplinary prosecutors and commissions, and to adjudicate in disciplinary matters. Furthermore, it adopts the Code of Ethics, decides on cases of undue influence, and approves and oversees programs of initial and continuous training for prosecutors. Its responsibilities extend to budgetary planning and oversight, issuing internal acts, collecting statistical data, and preparing strategic plans for managing human, financial, and material resources of the prosecution service. The Council also maintains transparency by reporting publicly on its work and cooperating with international counterparts.

This evolution demonstrates a shift from a body that was initially modelled on judicial self-governance but heavily constrained by parliamentary influence, toward a reformed institution that aspires to meet European standards of prosecutorial independence. The reform of the Council's composition and mandate reflects Serbia's effort to align with the **Venice Commission's recommendations**²⁰³ and the requirements of **Chapter 23 of the EU accession negotiations**, placing the High Prosecutorial Council at the heart of prosecutorial governance and policy in Serbia.

3. Describe the reasons for the establishment and reform of the prosecutorial self-governing bodies, and how the results were assessed by international institutions, primarily the Council of Europe and the EU.

²⁰³ CDL-AD(2007)004 Opinion on the Constitution of Serbia adopted by the Commission on its 70th plenary session, Venice, 17-18 March 2007; CDL-AD(2021)048 Urgent opinion on the revised draft constitutional amendments on the judiciary, endorsed by the Venice Commission at its 129th Plenary session, Venice and online 10-11 December 2021; CDL-AD(2022)042 Opinion on two draft laws implementing the constitutional amendments on the prosecution service, adopted by the Venice commission at its 133rd Plenary session, Venice, 16-17 December 2022.

The establishment and reform of Serbia's prosecutorial self-governing bodies were shaped by both domestic reform needs and the consistent recommendations of international institutions.

The 2006 Constitution introduced the *State Prosecutorial Council* as a body designed to ensure prosecutorial autonomy and mirror the competences of the High Judicial Council. Its composition included the Supreme Public Prosecutor as *ex officio* chair, six prosecutors elected by their peers, one law professor, one representative of the Bar Association, and members elected by the National Assembly, including a representative of Parliament and the Minister of Justice. This arrangement, however, raised concerns about the extent of political influence, particularly through parliamentary and governmental representation, and about the concentration of power in the hands of the Supreme Public Prosecutor as chair.

The 2022 constitutional amendments and the adoption of the Law on the High Prosecutorial Council significantly changed both the composition and competences of the body. The Council was renamed the *High Prosecutorial Council*, and its structure was adjusted to reduce direct political presence. The representative of Parliament was removed, thereby lowering the number of *ex officio* members. However, four "distinguished lawyers" were introduced, elected by the National Assembly, to replace the earlier combination of a law professor and a representative of the Bar. At the same time, the number of elected prosecutors was reduced from six to five. Another key change was that the Supreme Public Prosecutor was no longer the chair of the Council, addressing a long-standing concern about the excessive concentration of authority.

The 2022 constitutional amendments and the Law on the High Prosecutorial Council not only redefined the composition of the prosecutorial self-governing body but also introduced new procedural safeguards to enhance legitimacy and reduce political influence. A crucial innovation concerns the election of the four *distinguished lawyers* who now sit on the High Prosecutorial Council. These members must have at least ten years of professional legal experience and are chosen from a shortlist of eight candidates proposed by the competent parliamentary committee following a public competition. Importantly, their election requires a **two-thirds majority in the National Assembly**, which is designed to ensure broad political consensus and prevent domination by a single ruling majority (Art. 163 of the Constitution).

Equally significant is the **deadlock mechanism** that applies if the Assembly fails to elect all four members within the legally prescribed timeframe. In such cases, the responsibility shifts to a special commission composed of the President of the National Assembly, the President of the Constitutional Court, the President of the Supreme Court, the Supreme Public Prosecutor, and the Ombudsman. This commission makes the selection by majority vote from among all candidates who meet the eligibility criteria. The introduction of this mechanism was welcomed by the Venice Commission as a safeguard against institutional paralysis and as an instrument to guarantee that the Council can be fully constituted even in highly polarized political circumstances.

The Venice Commission, in its 2021 Opinion,²⁰⁴ welcomed several of these changes, particularly the removal of the Supreme Public Prosecutor as chair and the reduction of *ex officio* members, both of which were

²⁰⁴ CDL-AD(2021)032 Opinion on the draft constitutional amendments on the judiciary and the draft constitutional law on the implementation of constitutional amendments, adopted by the Venice Commission at its 128th Plenary session, Venice and online 15-16 October 2021, para 110 (in the composition of the HPC, there are now fewer prosecutors than in the past – this is not to be recommended; there is a difference between the HJC and the HPC with respect to the inclusion of *ex officio* members – ideally, the

considered steps toward greater independence. At the same time, the Commission noted that the Serbian authorities should reconsider whether the Minister of Justice ought to remain a member of the Council, as this still leaves an avenue for executive influence. While the introduction of four distinguished lawyers was seen as broadening external perspectives, it also shifted the balance by reducing the number of prosecutors directly represented, raising concerns about the weight of professional self-governance.

The European Union, in its Enlargement Reports, echoed the Venice Commission's findings. It recognized the 2022 reforms as a significant improvement toward depoliticization but emphasized that credibility will depend on transparent implementation, particularly in appointments, disciplinary decisions, and safeguards against undue influence.

The reforms of 2022 marked a turning point for Serbia's prosecutorial self-governance. By reducing political presence, redefining composition, and strengthening competences, the High Prosecutorial Council has been brought closer to European standards. Yet, as international assessments underline, its success will ultimately be judged by practice: whether it operates transparently, independently, and in line with the constitutional goal of safeguarding prosecutorial autonomy.

B. Prosecutors' Career

4. What are the stages in the procedure for first-time appointment as a prosecutor? Which entities are involved, and what is their role?

The procedure for the **first-time appointment as a public prosecutor in Serbia** is regulated primarily by the *Law on Public Prosecution* and involves several distinct stages, as well as multiple actors with specific roles. It begins with a **public call for applications**, issued to ensure transparency and equal access to the profession. Interested candidates submit their applications together with documentation proving that they meet the prescribed legal requirements.

Once applications are received, the **High Prosecutorial Council** undertakes the evaluation process. The HPC first verifies whether candidates formally meet the statutory conditions, such as nationality, education, bar exam, and required professional experience. For candidates who have not completed the Judicial Academy, the HPC organizes a **special professional examination** to assess their legal knowledge and practical skills, as foreseen by law. In contrast, candidates who have successfully completed the Judicial Academy's initial training program are exempt from this examination, as their final grade at the Academy is treated as proof of competence.

After evaluating competence and suitability, the HPC makes the final decision on the appointment of first-time prosecutors. Unlike appointments to Supreme Public Prosecutor, the **National Assembly does not play a role** in this process, which reflects the aim of insulating initial prosecutorial appointments from political influence and preserving professional autonomy.

two positions of ex officio members of the HPC should be abolished and there should be six public prosecutors elected by their peers; the members elected by the National Assembly should also not have any present or future hierarchical (or de facto) subordination links to the Supreme Public Prosecutor and represent other legal professions.).

5. What are the eligibility criteria for first-time candidates for the position of prosecutor, and which legal act provides for them? Which entities involved in the selection procedure assess compliance with these criteria, and how?

Eligibility criteria for aspiring prosecutors are set out in **Articles 81–84 of the Law on Public Prosecution**. They require that a candidate must be a **citizen of the Republic of Serbia**, hold a **law degree**, and have passed the **bar examination**. The candidate must also be deemed **professionally competent and personally worthy** of holding prosecutorial office. Beyond these general conditions, additional requirements exist concerning professional legal experience: for appointment as a prosecutor in **basic public prosecutor's office**, the law prescribes a minimum of **three years of legal practice after passing the bar exam**.

A critical part of eligibility is the **verification of professional competence and readiness for prosecutorial work**. Candidates who have not attended the **Judicial Academy** must undergo a special examination organized by the HPC, designed to test their knowledge of substantive and procedural law, their analytical skills, and their readiness to perform prosecutorial duties. Performance in this exam is graded on a scale from one to five. By contrast, candidates who have successfully completed the Judicial Academy's initial training program are exempt from this examination. For them, the **final grade obtained at the Academy serves as a substitute assessment**, formally recognized by the law as evidence of competence and preparedness. After these assessments, the HPC makes the decision on appointment.

The **High Prosecutorial Council** is the main body responsible for assessing compliance with eligibility criteria, both by verifying formal requirements and by organizing or recognizing the relevant assessments of professional competence. The role of the Judicial Academy is indirect, providing the training and final evaluation that may replace the Council's special examination.

The eligibility framework combines **formal conditions of citizenship, education, and legal experience** with a **substantive assessment of competence** carried out either by the High Prosecutorial Council directly or indirectly through the Judicial Academy. This system is intended to professionalize first-time appointments and insulate them from political influence, underscoring the Council's central role in safeguarding the quality and independence of the prosecutorial service.

6. How is gender equality ensured in the appointment process? Are any positive measures applied for female candidates (e.g., quotas or provisions ensuring selection in cases of equal merit)? If yes, how are they implemented?

In the appointment process for prosecutors in Serbia, **gender equality is not ensured through any specific positive measures such as quotas or preferential treatment for female candidates**. The framework is grounded instead in the principle of **non-discrimination**, as provided by **Article 85 of the Law on Public Prosecution**. This provision explicitly prohibits discrimination on any grounds during the selection and nomination of candidates for prosecutorial functions.

This means that male and female candidates formally compete on an equal footing, and the selection process must remain neutral with respect to gender, ethnicity, religion, political orientation, or any other personal attribute. The law does not, however, foresee **affirmative action mechanisms**, for example, provisions ensuring the selection of a female candidate in cases of equal merit, or statutory quotas to balance gender representation.

7. Describe the mandatory training required for first-time candidates or newly appointed prosecutors.

Special training for first-time candidates or newly appointed prosecutors in Serbia is governed by the provisions of the Law on Judicial Academy (Official Gazette no. 104/2009, 322/2014, 106/2015) and the Law on Public Prosecution. According to Article 45 of the Law on Judicial Academy, prosecutors who are appointed for the first time to positions in basic public prosecutor's offices, but who have not previously completed the initial training program at the Judicial Academy, are obliged to attend a **special program of continuous training**.

The content and duration of this program are determined by the **Program Council of the Judicial Academy**, taking into account the professional experience of each candidate. The program is designed to provide essential practical skills and knowledge needed for effective prosecutorial work, tailored to the individual's prior background. To enable newly appointed prosecutors to fully dedicate themselves to training, their workload and working hours may be reduced by up to **30%**, based on a decision of the High Judicial Council or the High Prosecutorial Council.

This system ensures that all first-time prosecutors, regardless of whether they come through the Judicial Academy's initial training program or not, receive a standardized level of preparation. The focus is on equipping them with the competencies necessary for handling cases independently, while also strengthening their understanding of prosecutorial ethics, procedural rules, and case management practices. This approach reflects Serbia's commitment to harmonizing prosecutorial training with European standards of professional development and judicial independence.

8. How has the procedure for first-time appointment and the relevant criteria functioned over time? What weaknesses have been identified? How were they assessed by international institutions, primarily the Council of Europe and the EU?

The procedure for the first-time appointment of prosecutors in Serbia has undergone substantial changes since the adoption of the **2006 Constitution**. Under this framework, the **State Prosecutorial Council** played the role of selecting candidates, but the final decision on appointments rested with the **Parliament**. Prosecutors were initially appointed to a **three-year probationary mandate**, after which the State Prosecutorial Council was tasked with deciding on permanent tenure based on an evaluation of their work. However, in practice, these evaluations were not conducted, and virtually all prosecutors transitioned automatically to permanent tenure, raising concerns about the credibility of the merit-based system.²⁰⁵

An important, though ultimately unsuccessful, reform was introduced in **2011**, when amendments to the **Law on the Judicial Academy** sought to strengthen merit-based recruitment. These amendments made completion of the Academy's vocational training programme a **general precondition** for the appointment of judges in basic and misdemeanour courts, as well as for deputy prosecutors in basic prosecutor's offices. The goal was to establish the Judicial Academy as the **exclusive entry point** to judicial and prosecutorial careers, aligning with European recommendations for transparent, merit-driven recruitment. However, in **2014 the Constitutional Court annulled this provision**, ruling that the Academy as the sole entry channel was inconsistent with the Constitution. This decision reopened access to prosecutorial posts through a parallel

²⁰⁵ Serbia Progress Report 2013, p. 38.

track of professional experience in courts and prosecutor's offices, diluting the intended reform and creating continuing tensions over the integrity of recruitment standards.

The **2022 constitutional amendments** addressed several longstanding criticisms. Parliament was completely **removed from the appointment procedure**, eliminating a central source of political influence. Simultaneously, the system of **three-year probationary mandates** was abolished, meaning that newly appointed prosecutors are now granted permanent tenure immediately upon selection. The decisive role in appointments is now vested in the **High Prosecutorial Council**, which oversees the examination and selection of candidates.

Nevertheless, the **dual entry system** persists: candidates can qualify either by completing the Judicial Academy's initial training or by accumulating sufficient professional experience in the judiciary or prosecution. International observers, including the Council of Europe and the European Union, have repeatedly underlined that this two-track approach creates inconsistencies in standards and undermines the role of the Judicial Academy as the central institution for professional preparation.

International institutions have assessed these reforms with both recognition and caution. The **Venice Commission**, in its 2021 Opinion, welcomed the removal of Parliament from the process and the abolition of the probationary period as key steps toward strengthening independence. It nonetheless stressed that the persistence of dual entry routes risks weakening transparency and meritocracy.²⁰⁶ Similarly, the **European Commission** has noted progress in aligning Serbia's appointment procedures with EU standards but has emphasized that effective implementation is crucial for credibility.²⁰⁷

9. What are the stages in the procedure for transferring a prosecutor to another office, particularly to a higher-level position? Which entities are involved, and what is their role?

The transfer of prosecutors can be in a form of the permanent transfer and temporary transfer/referral.

In accordance with Article 68 of the Law on Public Prosecution Office, a public prosecutor may be **permanently transferred** to another public prosecutor's office of the same level, with his written consent, based on the decision of the High Prosecutorial Council.

A public prosecutor may be permanently transferred to another public prosecutor's office of the same level without his consent if the number of public prosecutors in the public prosecutor's office is reduced, based on the decision of the High Prosecutorial Council. He/she can appeal against such decision to the Constitutional Court, which excludes the right to submit a constitutional appeal. The public prosecutor continues to permanently perform the public prosecutor's function in the public prosecutor's office to which he was permanently transferred.

In accordance with Article 69 of the Law on Public Prosecution Office, a public prosecutor may be **temporarily transferred**, for justified reasons, with his written consent, to another public prosecutor's office of the same or an immediately lower level for a maximum of three years, without the possibility of being reassigned to the same public prosecutor's office. As an exception to this, a public prosecutor of a higher or appellate public prosecutor's office may, with his written consent, if he meets the conditions prescribed by law for selection

²⁰⁶ CDL-AD(2021)032, Para 97-98.

²⁰⁷ EU Progress report 2022.

to the public prosecutor's office to which he is temporarily referred, be temporarily referred to a public prosecutor's office of special jurisdiction for a maximum of three years, without the possibility of re-referral to the same public prosecutor's office. The decision on temporary referral is made by the Supreme Public Prosecutor. The decision must be justified.

In addition to previously explained, the public prosecutor may be referred, for the purpose of professional work, to the High Prosecutorial Council, the ministry responsible for justice, the Judicial Academy and an international organization in the field of justice. This referral is made on the proposal of the head of the body, that is, the institution or international organization to which the public prosecutor is referred, based on the obtained opinion of the chief public prosecutor in which the public prosecutor performs the public prosecutor's function, with the written consent of the public prosecutor. Referral can last for a maximum of three years, i.e. a maximum of six years to an international organization, without the possibility of re-referral to the same body, institution or international organization. The decision on referral is made by the High Prosecutor's Council.

The procedure for transferring a prosecutor to a higher-level position, is governed by the **Law on Public Prosecution** and is essentially structured as a competitive appointment process. The **High Prosecutorial Council** plays the central and decisive role, overseeing each stage of the procedure to ensure transparency and merit-based advancement.

The process begins with the **HPC publishing a public competition** (Article 86 of the Law on Public Prosecution). For the post of chief public prosecutor, the competition must be announced at least six months before the end of the incumbent's mandate, or within 15 days of an early termination of office. Similarly, for public prosecutors, the announcement is made within the same timeframes depending on whether the mandate ends due to retirement or other legal reasons. The competition is published in the *Official Gazette of the Republic of Serbia*, in a national media outlet, and on the HPC's website, ensuring public visibility.

Candidates submit their applications to the HPC within 15 days of publication (Article 87). The application is reviewed by a **three-member commission** formed by the HPC, which checks timeliness, admissibility, and completeness. Applications found inadmissible or incomplete, or where the candidate has a criminal record involving imprisonment of six months or more, are rejected. Candidates have a right to appeal such a decision to the HPC within three days.

For admissible applications, HPC collects information on the candidate's **expertise, competence, and integrity** (Article 88). Data and opinions are sought from institutions where the candidate has worked. For prosecutors, the HPC obtains evaluations of previous performance and mandatory opinions from the collegium of the prosecution office where the candidate worked. For prosecutorial assistants, a formal work evaluation is required. For those who have not held prosecutorial office, particular attention is paid to the type of legal work carried out after passing the bar exam.

Before making a decision, the HPC conducts **interviews with all candidates** (Article 89). The purpose is to assess communication skills, readiness for prosecutorial duties, and professional integrity. The interview process and scoring are governed by an internal act of the HPC, ensuring uniform criteria.

The law explicitly guarantees the **public nature of the process** (Article 90). Once all evaluations and interviews are complete, the HPC compiles a **ranked list of candidates** based on expertise, competence, and integrity (Article 91). This ranking is published on the Council's website.

The **HPC makes the final appointment decision** (Article 92). The decision must be reasoned and is published in the *Official Gazette of the Republic of Serbia* as well as on the Council's website. This ensures accountability and allows the public to understand the grounds of each appointment or transfer.

High Prosecutorial Council manages the entire process, from publishing the competition to making the final appointment.

10. What are the criteria for candidates being transferred to a higher-level position? Which entities assess compliance with these criteria, and how?

The criteria and procedure for transferring a prosecutor to a higher-level position in Serbia are clearly defined in the **Law on Public Prosecution**. The central element of this process is the **regular evaluation of the work of public prosecutors and chief prosecutors**, which serves as the formal basis for transfer and advancement.

According to **Article 109**, prosecutors are evaluated on the basis of **publicly available, objective, uniform, and comprehensive criteria**. These criteria combine **quantitative indicators** (such as efficiency, timeliness, and workload management) with **qualitative indicators** (such as legal reasoning and decision-making skills). The key dimensions of assessment include:

- professional knowledge and ability to apply it in practice,
- analytical thinking and problem-solving in legal matters,
- capacity to make decisions within reasonable deadlines,
- oral and written expression and ability to argue,
- skills in managing hearings and questioning,
- organizational and leadership abilities in prosecutorial work,
- willingness to take on additional tasks and responsibilities.

These indicators ensure that advancement to a higher-level position is based not only on seniority but also on proven competence and integrity.

The evaluation is conducted **every three years** (Article 111) and expressed in one of four grades:

- “performs prosecutorial function with exceptional success,”
- “performs prosecutorial function successfully,”
- “performs prosecutorial function satisfactorily,”
- “performs prosecutorial function unsatisfactorily.”

Evaluations are entered into the prosecutor's personal file and can be challenged before the **High Prosecutorial Council** within 15 days of receipt, ensuring procedural fairness.

The evaluation itself is carried out by a **three-member commission** appointed by the HPC (Article 112). This commission is composed of prosecutors from higher-level offices, who assess the work of prosecutors from lower levels. In this way, the system introduces a form of hierarchical professional oversight while maintaining the autonomy of the HPC as the main decision-making body.

The **HPC** plays the decisive role in this process. It appoints the evaluation commissions, defines the methodology and indicators of assessment through its by-laws, and decides on appeals. The Council also uses these evaluations as the basis for compiling rankings in transfer or promotion procedures.

11. How has the procedure for transferring prosecutors and the relevant criteria functioned over time? What weaknesses have been identified? How were they assessed by international institutions, primarily the Council of Europe and the EU?

The procedure for transferring prosecutors and the relevant criteria in Serbia have undergone significant changes. Under the earlier framework, established by a bylaw adopted in 2014, the evaluation of deputy prosecutors was primarily based on three criteria: **timeliness in handling cases, expertise and success in work, and professional commitment and cooperation**. While these criteria provided a basic structure, they relied heavily on quantitative indicators such as clearance rates and workload data. This mechanistic approach was criticized for failing to capture the complexity of prosecutorial work, especially in cases requiring substantial legal analysis or cross-institutional coordination.²⁰⁸

In practice, the evaluation process also included anonymous questionnaires completed by colleagues, intended to capture qualitative aspects of a prosecutor's performance. However, this method raised concerns about fairness and transparency, as noted by the Venice Commission, which highlighted the risk that anonymous assessments could lead to biased or unjust outcomes. Furthermore, the workload imposed on evaluators and the then State Prosecutorial Council made consistent and thorough evaluations difficult to achieve.

The **2022 constitutional amendments** and accompanying legislative reforms shifted responsibility decisively to the **High Prosecutorial Council**. The evaluation framework was broadened to include a stronger emphasis on **qualitative criteria**, such as professional knowledge and ability to apply it in practice, analytical thinking and problem-solving in legal matters, oral and written expression and ability to argue, and skills in managing hearings and questioning. Evaluations now involve a deeper review of selected cases, rather than relying only on statistical data. This development has been welcomed as more consistent with a merit-based system but has also placed a heavy burden on the Evaluation commissions, raising concerns about delays and uneven implementation.

International monitoring bodies have provided mixed assessments. The **Venice Commission** welcomed the shift toward qualitative criteria but cautioned against over-reliance on statistics and anonymous peer questionnaires, stressing the need for safeguards and structured reasoning in evaluations. The **European Union** has emphasized in its reports that, despite reforms, the system for recruitment, transfer, and promotion is still not fully merit-based, highlighting the lack of transparency, detailed reasoning in decisions, and effective remedies for candidates.²⁰⁹

The evolution from the 2014 bylaw-based system to the current HPC-led framework shows progress toward merit-based evaluation, but remains to be seen how it will be implemented.

²⁰⁸ CDL-AD(2009)022 Opinion on rules of procedure on criteria and standards for the evaluation of the qualification, competence and worthiness of candidates for bearers of public prosecutor's function of Serbia, adopted by the Venice commission at its 79th Plenary session, Venice, 12-13 June 2009, para 51-52.

²⁰⁹ EU Progress report 2024, p. 5.

12. Do individuals have the right to appeal decisions denying them appointment or transfer (particularly to higher-level positions)? If yes, on what grounds and what are the outcomes of such appeals?

Individuals do have the right to appeal decisions denying them appointment or transfer to higher-level prosecutorial positions, but the mechanism is strictly regulated.

According to **Article 93 of the Law on Public Prosecution**, a candidate who has not been selected as a *public prosecutor* or *chief public prosecutor* may lodge an appeal before the **Constitutional Court**. This appeal must be submitted within **15 days** from the publication of the appointment decision in the *Official Gazette of the Republic of Serbia*. Importantly, the law specifies that this right excludes the possibility of filing a separate constitutional complaint, meaning the appeal is the sole legal remedy available in such cases.

The **Constitutional Court** is required to act swiftly: it must render its decision within **30 days** from the expiry of the deadline for submitting the appeal. This short time frame is intended to ensure legal certainty and avoid prolonged vacancies in prosecutorial offices.

The Constitutional Court may:

1. **Reject the appeal as unfounded**, thereby confirming the validity of the High Prosecutorial Council's decision on appointment.
2. **Uphold the appeal**, in which case it will annul the appointment decision. Such annulment obliges the High Prosecutorial Council to repeat the procedure and issue a new decision in line with the Court's findings.

The Court's decision, with reasoning, is published in the *Official Gazette*, thereby ensuring transparency and public scrutiny of the process.

This framework provides a **judicial remedy against discretionary or potentially arbitrary decisions** in appointment and transfer procedures. However, international monitoring bodies such as the **European Commission** have repeatedly stressed that the effectiveness of this remedy depends on the independence and capacity of the Constitutional Court to exercise genuine oversight.²¹⁰

13. What are the grounds and sanctions for disciplinary liability of prosecutors? What are the stages of the disciplinary procedure? Which entities are involved, and what is their role?

According to the **Law on Public Prosecution**, prosecutors may be held disciplinarily liable for **unscrupulous performance of prosecutorial duties** or **conduct unbecoming of a prosecutorial function** (Art. 114). These encompass failures to comply with professional obligations, breaches of ethical standards, or behavior that undermines public confidence in the prosecution service. Article 115 provides a detailed catalogue of disciplinary offenses, ranging from **failure to prepare prosecutorial decisions within deadlines, not filing legal remedies, repeated delays or absences from hearings, disobedience to lawful instructions, breach of impartiality, to improper media communication or conflict of interest situations**. Serious disciplinary

²¹⁰ 2024 Progress report on Serbia on page 31 stated that Constitutional Court has high number of pending cases (42,725 cases) and should be reformed to improve efficiency.

offenses arise when such misconduct causes substantial disruption to prosecutorial work, undermines public trust, or when there are repeated violations.

Sanctions vary depending on the seriousness of the misconduct (Art. 116). They include:

- **Reprimand** (for first-time minor offenses),
- **Salary reduction of up to 50% for a period of up to one year,**
- **Temporary prohibition on transfer to a higher-level prosecution office for up to three years.**

In cases of **serious disciplinary offenses**, these sanctions may be combined. Moreover, if a prosecutor is found guilty of a serious disciplinary breach, the **High Prosecutorial Council** or its Disciplinary Commission may initiate proceedings for removal from office (Art. 117).

The law establishes **two key bodies** (Art. 118):

1. **Disciplinary Prosecutor** (and deputies) – responsible for receiving complaints, examining allegations, and submitting proposals for disciplinary proceedings.
2. **Disciplinary Commission** – a three-member body appointed by the HPC from among prosecutors, which adjudicates the case and imposes sanctions.

Both bodies are appointed for five years by the HPC, ensuring their accountability within the prosecutorial self-governing structure.

The disciplinary process is regulated in detail (Arts. 119–124) and consists of several stages:

1. **Initiation:** A complaint may be filed by any individual, or proceedings may be initiated ex officio by the Disciplinary Prosecutor.
2. **Examination by the Disciplinary Prosecutor:** The prosecutor may dismiss the complaint as unfounded or submit a proposal to the Disciplinary Commission to open proceedings.
3. **Adjudication by the Disciplinary Commission:** The Commission conducts hearings, ensures due process rights (right to be informed, to respond, to legal representation), and decides whether a disciplinary offense occurred.
4. **Decision:** The Commission can reject the proposal or impose sanctions. Decisions must be reasoned and recorded.
5. **Appeal:** Both the prosecutor concerned and the Disciplinary Prosecutor may appeal to the **High Prosecutorial Council**, which acts as a second-instance body (Art. 123). The HPC may dismiss, confirm, or amend the decision.
6. **Judicial Review:** The HPC's final decision may be challenged in the **Administrative court**, ensuring judicial oversight.

The process must be conducted swiftly and in accordance with fair trial standards. Proceedings are generally closed to the public unless the prosecutor under investigation requests otherwise. Importantly, disciplinary proceedings are subject to a **three-year statute of limitations** (Art. 119). Final disciplinary decisions are recorded in the prosecutor's personal file but are deleted after three years if no further offenses occur (Art. 124).

14. How have the grounds and procedure for disciplinary liability of prosecutors functioned over time? What weaknesses have been identified? How were they assessed by international institutions, primarily the Council of Europe and the EU?

The disciplinary liability of prosecutors in Serbia has been regulated for more than a decade, but the scope and precision of the offenses have evolved considerably. Under the **previous Law on Public Prosecution**, disciplinary offenses were defined in broad terms and primarily included failures such as missing deadlines for prosecutorial decisions, failing to attend hearings, refusing assigned tasks, disobeying written instructions, engaging in inappropriate relations with parties, providing false or incomplete information to the State Prosecutorial Council, breaching impartiality, performing incompatible functions, accepting gifts, failing to respect working hours, and neglecting mandatory training (Art. 104, Official Gazette no. 116/2008, 104/2009, 101/2010, 78/2011, 101/2011, 38/2012, 121/2012, 101/2013, 111/2014, 117/2014, 106/2015, 63/2016). These provisions, while covering core misconduct, were relatively general and often left space for interpretation.

The **2023 Law** considerably expanded and specified the list of offenses. In addition to retaining many of the original grounds, it introduced new categories such as failure to execute general instructions of the Supreme Public Prosecutor, unjustified delays in filing appeals, misuse of hierarchical powers, unjustified refusal to perform duties under the annual work schedule, unauthorized disclosure of information to the media, failure to comply with High Prosecutorial Council decisions (e.g., mandatory medical examination), and failure to respect oversight measures. The inclusion of detailed subcategories reflects an effort to close gaps and ensure more comprehensive accountability.

Despite these improvements, challenges remain. Earlier provisions were criticized for their **ambiguity**, especially in defining what constituted “serious breaches” or “ethical violations.” This created risks of inconsistent or selective application. While the new law clarifies and enumerates offenses more systematically, it still remains to be seen whether these provisions will be applied consistently and whether safeguards will prevent disciplinary mechanisms from being misused as instruments of pressure.

International monitoring bodies, including the **OSCE**,²¹¹ and the **European Union**, have repeatedly emphasized that vagueness in disciplinary standards can undermine both fairness and prosecutorial independence.²¹² The EU in particular has linked clear, objective, and consistently applied disciplinary rules to broader rule of law benchmarks in Serbia’s accession negotiations.

Reforms in disciplinary law clearly demonstrate a trend towards **greater precision and accountability** by expanding the list of offenses and detailing prohibited conduct, and including the necessary procedural safeguards, especially for violation of adopted standards of professional ethics.²¹³ However, the effectiveness of these changes will depend on their practical implementation. While the new framework

²¹¹ Legislation and practice in determining disciplinary liability of prosecutors in Serbia, OSCE, 2017 and Functional Review of Prosecution System in Serbia, World Bank, 2019, <https://www.mdtfjss.org.rs/archive//file/SRB%20Prosecution%20FR%20December%202018.pdf>.

²¹² EU 2021 Report, p. 21 (The disciplinary rules for judges and prosecutors and the ethical codes need to be revised with a view to, among other things, better defining the offences, strengthening the capacity of the disciplinary bodies and clarifying which provisions in the codes should entail disciplinary liability for non-compliance.)

²¹³ EU 2023 Report, p. 24.

appears stronger on paper, only consistent, transparent, and impartial application will determine whether it successfully balances **prosecutorial accountability with independence**.

The procedure was entrusted to specialized bodies: the **Disciplinary Prosecutor** (with deputies) responsible for initiating cases, the **Disciplinary Commission** tasked with adjudication, and the **State Prosecutorial Council** (since 2022, the **High Prosecutorial Council**) holding supervisory and appellate competence.

15. What are the stages of the appointment procedure for managerial positions in the prosecution (excluding the Prosecutor General)? Which offices at all levels does it apply to? Which entities are involved, and what is their role?

The procedure for the appointment of managerial positions (heads of prosecution offices) in the prosecution in Serbia (excluding the Supreme Public Prosecutor) follows the same framework as for the appointment of public prosecutors, as regulated by the **Law on Public Prosecution**. This procedure applies to all levels of prosecution offices, **basic, higher, appellate, and specialized prosecution offices**, whenever a position of head prosecutor or public prosecutor becomes vacant.

The process begins with the **High Prosecutorial Council** publishing a public competition in the *Official Gazette of the Republic of Serbia*, in a nationwide media outlet, and on its website (Art. 86). The announcement must be made no later than six months before the expiry of the incumbent prosecutor's term, or within fifteen days of an early termination.

Candidates then submit applications to the HPC within 15 days of the announcement (Art. 87). Alongside their application, candidates for the position of head prosecutor must include a **program for improving the functioning of the prosecution office** to which they are applying. These applications are first reviewed by a three-member commission appointed by the HPC, which checks timeliness, admissibility, and completeness. Applications that do not meet the requirements, or where the candidate has a criminal record, are rejected, with the possibility of appeal to the HPC.

Once applications are admitted, the HPC gathers additional information and opinions concerning the candidate's **professional qualifications, competence, and integrity** (Art. 88). These data are obtained from institutions where the candidate has worked. For those already serving as prosecutors, evaluations of prior work and opinions from their prosecution office are mandatory. For prosecutorial assistants, work assessments are also required.

Before any decision is made, the HPC conducts an **interview with candidates** to assess their communication skills, professional readiness, and ethical integrity (Art. 89). This step adds a qualitative dimension beyond the written materials. The procedure also ensures **transparency**, as the process is public, with the details regulated by the HPC's internal acts (Art. 90).

Following these steps, the HPC compiles a **ranking list** of candidates, based on merit, professionalism, and integrity (Art. 91). This list is published on the HPC's website. The final decision is made by the HPC, which issues a reasoned decision on the appointment of the head prosecutor or prosecutor in question (Art. 92). This decision is published both in the *Official Gazette* and on the HPC website, thereby ensuring public visibility of the outcome.

The central body in this process is the **High Prosecutorial Council**, which organizes the competition, reviews applications, conducts interviews, assesses eligibility, compiles the ranking list, and makes the final appointment decision. Internal commissions within the HPC assist in reviewing applications and gathering background information.

16. What are the eligibility criteria for managerial candidates (excluding the Prosecutor General)? Can non-prosecutors be appointed (e.g., lawyers, judges, other legal professionals)? Which entities assess compliance with the criteria, and how?

The eligibility criteria for managerial positions in prosecution offices in Serbia, excluding the Supreme Public Prosecutor, are defined by the **Law on Public Prosecution** and build upon the general requirements for prosecutorial appointment.

Candidates must first satisfy the **general conditions** applicable to all prosecutorial positions: Serbian citizenship, a completed law degree, a passed bar exam, professional competence, and personal integrity. Beyond this, the law requires **longer post-bar exam legal experience** for managerial positions compared to entry-level prosecutors (only marginally higher thresholds in terms of required professional experience). Specifically, eligibility requires:

- **Four years** of legal experience for the position of *basic head public prosecutor*,
- **Seven years** for *higher head public prosecutor*,
- **Ten years** for *appellate head public prosecutor or head prosecutor of special jurisdiction offices*.

These criteria reflect that the standards are not significantly higher, and managerial positions are largely accessible to prosecutors with only slightly more experience than their non-managerial peers.

The law explicitly allows **non-prosecutors** (such as judges, lawyers, or other qualified legal professionals) to apply. Article 88 stipulates that for candidates without prior prosecutorial service, the **High Prosecutorial Council** must pay particular attention to the type of legal work the candidate performed after passing the bar exam. This ensures that relevant professional expertise, even outside prosecutorial structures, can qualify a candidate for leadership roles, thereby widening the potential pool of applicants.

The **High Prosecutorial Council** has exclusive competence to assess compliance with these criteria. It collects professional records, work evaluations, and opinions from institutions where candidates previously served.

17. How is gender equality ensured in the appointment of managerial positions (excluding the Prosecutor General)? Are any positive measures applied for female candidates (e.g., quotas or provisions ensuring selection in cases of equal merit)? If yes, how are they implemented?

Same as for question no. 6.

18. How has the procedure for appointing prosecutors to managerial positions and the relevant criteria functioned over time? What weaknesses have been identified? How were they assessed by international institutions, primarily the Council of Europe and the EU?

Over time, the appointment of prosecutors to managerial positions in Serbia has undergone important reforms aimed at reducing political influence and strengthening institutional autonomy. Under the earlier

constitutional and legislative framework, **the Government and the Parliament played a decisive role** in these appointments. The State Prosecutorial Council would select and propose list of candidates to the Government, and Government would propose one or more candidates to the Parliament (Art 74 of the previous Law on Public Prosecution). The final decision was in the hands of Parliament, which raised persistent concerns about politicization and susceptibility to external pressures.²¹⁴

The **2022 constitutional amendments** introduced a fundamental shift. The role of Parliament and the Government in appointing prosecutors to managerial positions was removed. Under the new system, the **High Prosecutorial Council** has exclusive competence to appoint public prosecutors and heads of public prosecution offices, with the exception of the Supreme Public Prosecutor, whose appointment remains a parliamentary prerogative. This reform marked a significant step toward aligning Serbia with European standards of prosecutorial independence, ensuring that appointment decisions rest within the professional, self-governing body rather than political institutions.

19. Is a reserve list of candidates for managerial positions (excluding the Prosecutor General) maintained? If yes, what are the key elements and procedures? How effective is this practice? Have there been any appeals from those excluded, and what were the outcomes?

No reserve list of candidates is maintained for managerial positions in the prosecution service, including the Supreme Public Prosecutor (Art. 94 of the Law on Public Prosecution). The procedure is limited to the **evaluation and selection of candidates responding to a specific vacancy advertisement**. Once the selection decision is taken by the High Prosecutorial Council, the procedure concludes. There is no formal mechanism to create or maintain a list of reserve candidates who could later be appointed should another vacancy arise.

The absence of such a reserve list means that each managerial appointment requires a new advertisement, evaluation process, and decision, without relying on previously vetted candidates.

20. Describe the mandatory training for managerial candidates or newly appointed managers.

The Law on the State Prosecution Office (Article 60) provides that the public prosecutor has the right and obligation to professional training at the expense of the Republic of Serbia, in the manner regulated by law.

The Law on Judicial Academy recognizes two types of training for judges and prosecutors: initial (before appointment) and continuous (after appointment). Continuous training can be voluntary or mandatory. Continuous training is mandatory when provided for by law or by a decision by the High Judicial Council of the High Prosecutorial Council in the event of a change in specialization, significant changes in regulations, introduction of new work techniques, and in order to eliminate deficiencies in the work of judges and public prosecutors observed during the evaluation of their work.

Withing this normative framework, the training for heads of the prosecution offices can result from the negative assessment of their work. Namely, according art. 109 of the Law on the Prosecutors' office, the evaluation of the work of the chief public prosecutor and the public prosecutor is based on the following basic criteria: professional knowledge and ability to apply it; the ability to think analytically and solve legal issues; ability to make decisions within appropriate deadlines; discussion and listening skills; the ability of oral and written expression and argumentation; the ability to organize and manage the public prosecutor's work;

²¹⁴ EU Progress report, 2022, p. 5

taking on additional jobs and responsibilities. Criteria and indicators for evaluation, method and procedure of evaluation of the work of the chief public prosecutor and the public prosecutor are regulated in more detail by the **Rulebook adopted by the High prosecutorial Council. Art. 3 of the Rulebook provides that** The High Prosecutorial Council and the Judicial Academy jointly determine an individualised programme of compulsory training for the holders of the public prosecutor's office whose work has been evaluated with the mark "performs the public prosecutor's office unsatisfactorily."

Therefore, **there is no specific mandatory initial training** for heads of the prosecutors' offices. However, it could become mandatory as a result of the negative evaluation. Also, supported by various donor funded projects, there are training programs available on the ad hoc basis aimed at enhancing their managerial of soft skills, but exclusively on a **voluntary basis**.

21. Do heads of prosecutor's offices (excluding the Prosecutor General) bear disciplinary liability for ineffective management (e.g., failure to achieve organizational goals, low performance of subordinates, or other organizational shortcomings)? If yes, what are the qualifying conditions and are there specific sanctions? If not, do they bear other forms of liability and under what procedures? Which entities assess compliance, and how?

In accordance with Articles 156 and 158 of the Constitution, the Chief Public Prosecutor is responsible for the work of the Public Prosecutor's Office and for his work to the Supreme Public Prosecutor and the immediately superior Chief Public Prosecutor, in accordance with the law. The Supreme Public Prosecutor and the Chief Public Prosecutor are dismissed if they are convicted of a criminal offense to a prison sentence of at least six months or if one of the reasons for dismissal provided by law occurs.

As explained in the previous question, the managerial aspects of their work are subject to evaluation. Art. 51 of the Rulebook on criteria for evaluating the work of the chief public prosecutor and the public prosecutor adopted by the High Prosecutorial Council provides that the criterion for evaluating the work of the chief public prosecutor is the ability to organise and manage the public prosecutor's work. The evaluation of indicators shall be carried out based on the data from the report on the work of the public prosecutor's office, the Work Plan and Programme of the public prosecutor's office, the issuance of guidelines for the standardisation of public prosecutor's practice and the monitoring of case-law, and other reports of importance for work evaluation.

The ability to organise and manage the public prosecutor's work shall be evaluated based on the following indicators:

1. the ability to organise material, organisational, financial, administrative and other affairs; to pass normative acts; to ensure data security; and to manage the public prosecution in crises,
2. the ability to determine tasks in the work of the public prosecutor's office, the ability to encourage the holders of the public prosecutor's office and other employees to achieve goals and tasks;
3. fulfilling the requirements for using efficient methods and technical means in administrative affairs; the ability to direct employees towards using available and new information and communication technologies. (art. 52 of the Rulebook)

The individual grade "unsatisfactory" shall be awarded to a chief public prosecutor who, during the work evaluation period, at an insufficient level: organises material and financial affairs, does not carry out the distribution of tasks within the public prosecutor's office, ensure the accurate and timely work of the public

prosecutor's office, does not pass normative acts in accordance with law, ensure data security, cannot determine tasks in the work of the public prosecutor's office and encourage holders of the public prosecutor's office and other employees to achieve goals and tasks, does not provide conditions for using effective methods and technical means in administrative affairs and direct employees towards using available information and communication technologies. (art. 53 of the Rulebook)

Article 114 of the Law defines disciplinary responsibility for acting in the capacity of public prosecutor (not specifically associated with the leading/managing position). A disciplinary offense is the negligent performance of the public prosecutor's office or behavior unworthy of the holder of the public prosecutor's office, which is prescribed by this law. Unconscionable performance of the public prosecutor's function is an action that is contrary to the prescribed obligations and prohibitions in the performance of the function or in connection with the performance of the function. Behavior unworthy of the public prosecutor's office is the behavior of the holder of the public prosecutor's office in the exercise of the office and outside the exercise of the office, which **damages the reputation of the public prosecutor's office** and the trust of citizens in the public prosecutor's office. The comprehensive list of acts that, if committed by public prosecutors, is listed in art. 115 of the Law. All of them are closely related to acting in the capacity of public prosecutors and do not specifically reflect any role reserved for chief prosecutors.²¹⁵

Article 103 of the Law provides for the reasons for dismissal: The holder of the office of public prosecutor shall be dismissed if he has been legally sentenced for a criminal offense to a prison sentence of at least six months or if in the procedure for determining the reason for his dismissal it is established that he has committed a serious disciplinary offense which, according to the opinion of the High Council of Prosecutors, **seriously harms the reputation of the office** of public prosecutor and public trust in the public prosecutor's office.

C. Appointment and dismissal of the Prosecutor General

22. What are the stages in the appointment procedure for the Prosecutor General? Which entities are involved, and what is their role? Who holds de facto veto power over the selection?

In accordance with arts. 99, 105 and 158 of the Constitution and arts. 44-47 of the Law on the State Prosecution Office there is an eight-step appointment procedure, where the main power is in the hands of the Prosecutorial Council, despite the fact that the Parliament is in charge of his/her election.

The term: The Supreme Public Prosecutor is elected by the National Assembly, for six years. The same person cannot be re-elected as the Supreme Public Prosecutor.

The process:

Stage 1: Public advertisement

The public competition for the nomination of candidates for the election of the Supreme Public Prosecutor shall be announced by the High Prosecutorial no later than six months before the expiration of the term for which the Supreme Public Prosecutor was elected. If the Supreme Public Prosecutor ceases before the end

²¹⁵ See question 13 for the list of disciplinary offences.

of the term for which he was elected, the Council announces a public competition for the election of the Supreme Public Prosecutor within 15 days from the date of the decision on the termination of the public prosecutor's office. (art. 94 of the Law)

Stage 2: Submitting applications:

The candidate for the Supreme Public Prosecutor, together with the application for the public competition for selection, submits the program of organization and improvement of the work of the public prosecution, which is published on the website of the Council, together with data from the candidate's work biography. (art. 94 of the Law)

Stage 3: Technical/formal control of applications

The High Prosecutorial Council by decision establishes a three-member commission that determines the timeliness, admissibility and completeness of the submitted applications. Untimely, illegal and incomplete applications are rejected by the commission with a conclusion. The commission rejects the application by its conclusion, even if the report from the criminal record, which was submitted with the application, shows that the candidate has been sentenced to a prison sentence of at least six months. An objection to the conclusion is allowed to be submitted to the Council within three days from the day of delivery of the decision.

The commission submits a timely, permitted and complete application to the Council for further proceedings.

Stage 4: Collection of information and interviews

The Council obtains data and opinions on the expertise, competence and worthiness of candidates. Data and opinions are obtained from authorities and organizations where the candidate previously worked. In the process of nominating candidates for the election of the Supreme Public Prosecutor, the Council conducts an interview with the candidates, with the participation of experts and the general public. (art. 94 of the Law)

Stage 5: Shortlisting

The Prosecutorial Council shall make a ranking list of candidates who meet the statutory requirements for the election of the supreme state prosecutor. The ranking list is published on the website of the High Prosecutorial Council.

Stage 6: Proposal

The High Prosecutorial Council proposes to the National Assembly one candidate for the election of the Supreme Public Prosecutor. The proposal of the High Prosecution Council must be reasoned to address all the criteria prescribed by the Law. ("Candidates for the election of the Supreme Public Prosecutor are proposed by the High Council of Prosecutions on the basis of the candidate's expertise, competence and worthiness." Article 94 of the Law).

Stage 7: Election in the Parliament

In accordance with arts. 99, 105 and 158 of the Constitution, the Parliament is in charge of election of the Supreme State Prosecutor. The President of the National Assembly convenes a session for the election of the Supreme Public Prosecutor. The session is convened no earlier than 15 days after receiving the proposal for election. The session must be held and concluded within 30 days from the date of convening the session. The Assembly elects the Supreme State Prosecutor on the proposal of the High Prosecutorial Council, with the votes of three fifths of all deputies.

Stage 8: Election by the special commission

If the National Assembly does not elect the Supreme Public Prosecutor within the deadline, after the expiration of the next ten days, he is elected, from among all the candidates who meet the conditions for election, by a commission consisting of the President of the National Assembly, the President of the Constitutional Court, the President of the Supreme Court, the Supreme Public Prosecutor and the Protector of Citizens, by majority vote.

Before making the decision, the Commission will hold a public meeting, with the participation of the general and expert public, to consider the applications of all candidates who meet the conditions for election and conduct an interview with them.

If the commission does not make a decision within 60 days from the expiration of the ten-day period, the procedure for the election of the Supreme Public Prosecutor will be repeated.

23. What are the eligibility criteria for candidates for the Prosecutor General? Which entities assess compliance, and how?

The general and special conditions for the election of the Supreme Public Prosecutor are prescribed by the Law on the Public Prosecution Office (arts. 81-83) and the Rulebook on election of public prosecutors adopted by the State Prosecutorial Council.

General conditions for selection

A citizen of the Republic of Serbia who meets the general requirements for work in a state body, who has graduated from law school, passed the bar exam, and who is professional and worthy of performing the public prosecutor's office can be elected as the holder of the public prosecutor's office.

Special conditions

1. Work experience required: twelve years work experience in the legal profession after passing the bar exam
2. Other conditions for selection: expertise, competence and worthiness.
 - Expertise implies the possession of theoretical and practical knowledge necessary for the performance of the public prosecutor's function.
 - Competency means skills that enable the effective application of specific legal knowledge in the resolution of a public prosecutor's case.
 - Dignity implies the moral qualities that the holder of the office of public prosecutor should possess and conduct in accordance with those qualities. The moral qualities are: honesty, conscientiousness, fairness, dignity, perseverance and exemplary behavior, and behavior in accordance with these qualities means preserving the reputation of the Public Prosecutor's Office inside and outside the

service, awareness of social responsibility, maintaining independence and impartiality, reliability and dignity inside and outside the service, and assuming responsibility for the internal organization and positive image of the Public Prosecutor's Office in the public.

The criteria and standards for assessing the expertise, competence and worthiness of the candidates and the selection procedure are regulated in more detail by Rulebook on election of public prosecutors adopted by the State Prosecutorial Council.

For the **assessment of compliance** see steps 2-6 in the previous answer describing the procedure and the division of competences.

24. How has the appointment procedure and the relevant criteria for the Prosecutor General functioned over time? What weaknesses have been identified? How were they assessed by international institutions, primarily the Council of Europe and the EU?

Over time, the appointment of Prosecutor General in Serbia has undergone important reforms aimed at reducing political influence and strengthening institutional autonomy. Under the earlier constitutional (art. 158 of 2006 Constitution) and legislative framework, **the Government and the Parliament played a decisive role** in this appointment. The Prosecutor General, at the time, was elected based on the proposal of the Government to Parliament. The final decision was in the hands of Parliament, which raised persistent concerns about politicization and susceptibility to external pressures.²¹⁶

The **2022 constitutional amendments** introduced a fundamental shift. The role of the Government in appointing Prosecutor General was removed. Under the new system, as previously described (see question 22) the **High Prosecutorial Council** has exclusive competence to propose candidates to Parliament. This reform marked a significant step toward aligning Serbia with European standards of prosecutorial independence, ensuring that, even the appointment decision is made by Parliament, the complete procedure of evaluating, selecting and proposing the candidates is done by the professional, self-governing body rather than political institutions. For more details on the assessment of the reform processes, see ²¹⁷

²¹⁶ EU Progress report, 2022, p. 5

²¹⁷ European Commission for Democracy Through Law (Venice Commission) CDL-PI(2018)003 Compilation of Venice Commission Opinions and Reports Relating to Qualified Majorities and Anti-Deadlock Mechanisms in Relation to the Election by Parliament of Constitutional Court Judges, Prosecutors General, Members of Supreme Judicial and Prosecutorial Councils and the Ombudsman, Strasbourg, 8 June 2018; European Commission for Democracy through Law (Venice Commission), CDL-AD(2007)004, Opinion on the Constitution of Serbia, Adopted by The Venice Commission at its 70th Plenary Session (Venice, 17-18 March 2007); European Commission for Democracy through Law (Venice Commission), CDL-AD(2014)029-e, *Opinion on the Draft amendments to the Law on the State Prosecutorial Council of Serbia*, adopted by the Venice Commission at its 100th Plenary Session (Rome, 10-11 October 2014); European Commission for Democracy Through Law (Venice Commission) *Serbia Draft Amendments to the Constitution of the Republic of Serbia*, CDL-REF(2018)015, 26 April 2018; European Commission for Democracy through Law (Venice Commission) Opinion on the Provisions on the Judiciary in the Draft Constitution of the Republic of Serbia, adopted by the Commission at its 64th plenary session (Venice, 21-22 October 2005); CDL-PI(2023)005 *Serbia- Information to the Follow-up on three previous opinions on Judiciary (CDL-AD(2022)030, CDL-AD(2022)042, CDL-AD(2022)043), presented at the 134th Plenary Session (10-11 March 2023)/ Serbie - Information sur les suites données sur trois avis précédents sur le pouvoir judiciaire (CDL-AD(2022)030, CDL-AD(2022)042, CDL-AD(2022)043), présenté lors de la 134e session plénière (10-11 mars 2023); CDL-AD(2022)042 Serbia - Opinion on two draft laws implementing the constitutional amendments on the prosecution service, adopted by the Venice Commission at its 133rd Plenary Session (Venice, 16-17 December 2022)*

25. Are general grounds for disciplinary liability applicable to the Prosecutor General? If not, are there special grounds or procedures for holding the Prosecutor General accountable, including through dismissal?

On disciplinary responsibility see detailed answers to question no. 21.

Responsibility for the work

In accordance with Articles 156 and 158 of the Constitution, the supreme public prosecutor is responsible for the work of the public prosecution and his work to the National Assembly. The Supreme Public Prosecutor is not responsible to the National Assembly for handling a particular case.

In accordance with Article 38 of the Law, the Supreme Public Prosecutor and the Chief Public Prosecutor lead the administration of the Public Prosecutor's Office and they are responsible for the proper and timely work of the Public Prosecutor's Office in accordance with the law and the act on the administration of the Public Prosecutor's Office.

The reasons for dismissal

In line with art. 160 of the **Constitution**, before the expiration of the term for which he was elected, the office of the Supreme Public Prosecutor and the Chief Public Prosecutor ceases: if he requests it himself, if the public prosecutor's office is abolished, if he permanently loses the ability to perform the function of the chief public prosecutor, if his citizenship of the Republic of Serbia ceases or if he is **dismissed**.

The Supreme Public Prosecutor and the Chief Public Prosecutor are dismissed if they are convicted of a criminal offense to a prison sentence of at least six months or if one of the reasons for dismissal provided by law occurs.

In accordance with Article 103 of the **Law**, the holder of the office of public prosecutor shall be dismissed if he has been legally sentenced for a criminal offense to a prison sentence of at least six months or if in the procedure for determining the reason for his dismissal it is established that he has committed a serious disciplinary offense which, according to the opinion of the High Prosecutorial Council, seriously harms the reputation of the office of public prosecutor and public trust in the public prosecutor's office. The Supreme Public Prosecutor is also dismissed when he reaches 67 years.

Procedure for determining the reason for the dismissal of the holder of the public prosecutor's office due to a serious disciplinary offense:

The Council determines the facts on whether a serious disciplinary offense by the holder of the public prosecutor's office, which was established by a legally binding decision, is such that it seriously damages the reputation of the public prosecutor's office or the public's trust in the public prosecutor's office.

Step 1: Initiative

The procedure is initiated by the Council ex officio or at the proposal of the Disciplinary Commission.

Step 2: The procedure before the Council

The Council is obliged to conduct the procedure and make a decision within 90 days from the day of initiation of the procedure to determine the reason for the dismissal of the holder of the public prosecutor's office. The Supreme Public Prosecutor is exempted from decision-making if the procedure has been initiated against him. The decision of the High Prosecutorial Council must be reasoned. (Article 105 of the Law)

In this procedure (which has to be urgent and conducted under the fair trial principle), the holder of the public prosecutor's office has the right to be immediately informed of the reasons for initiating the procedure, to familiarize himself with the case, accompanying documentation and during the procedure, and to provide explanations and evidence for his allegations himself or through an attorney. He/she has the right to present his allegations orally before the Council. The procedure is held, without the presence of the public, unless the holder of the public prosecutor's office in relation to whom the procedure is conducted requests that the procedure be public. (article 106)

Step 3: The procedure before the National Assembly

Decision on the termination of the public prosecutor's office of the Supreme Public Prosecutor is made by the National Assembly, on the proposal of the Council, after the procedure in which it determines the reason for the termination of the public prosecutor's function of the Supreme Public Prosecutor. The decision must be reasoned and published in the "Official Gazette of the Republic of Serbia" and on the websites of the Council and the National Assembly. (art. 107 of the Law)

Step 4: Appeal to the Constitutional Court

Against the decision of the National Assembly the Supreme Public Prosecutor can appeal to the Constitutional Court, which excludes the right to file a constitutional appeal, within 30 days from the date of delivery of the decision. By its decision, the Constitutional Court can reject the appeal to the Constitutional Court or accept the appeal to the Constitutional Court and cancel the decision on the termination of the public prosecutor's office. The decision of the Constitutional Court is final and is published in the "Official Gazette of the Republic of Serbia". (Articles 158 of the Constitution and 108 of the Law)

26. What are the grounds for early dismissal of the Prosecutor General, and under which legal act are they defined?

See question no.25.

27. What are the stages in the early dismissal procedure for the Prosecutor General? Which entities are involved, and what is their role? Who holds de facto veto power over dismissal?

See question no.25.

28. How has the early dismissal procedure and relevant grounds for the Prosecutor General functioned over time? What weaknesses have been identified? How were they assessed by international institutions, primarily the Council of Europe and the EU?

This procedure has never been used in the past, either before or after the constitutional amendments. However, in the process of the constitutional and legal amendments, the main focus was on ensuring that the main power in dismissal procedure is in hands of the Council as the self-governing body, as well as to

exclude the Supreme Prosecutor from the decision-making process before Council, to ensure integrity of the process despite the hierarchical organization of the Public Prosecutors Office. (see questions 22 and 24).

D. Prosecutorial Self-Government Bodies

29. List the prosecutorial self-governing bodies, their legal status, and their relationship with each other and with the prosecution service.

The Constitution of Serbia of 2006, as amended in 2022, establishes the Public Prosecutor's Office as an autonomous state authority of *sui generis* character, distinct from both the executive and judiciary. The Constitution regulates the Public Prosecutor's Office in a dedicated section (Articles 155–161). Its constitutional role is to prosecute perpetrators of criminal offences and other punishable acts, initiate and conduct criminal proceedings before competent court, and take legal actions to protect public interest and ensure legality. The Public Prosecutor's Office is thus a central guarantor of legality and one of the pillars of the rule of law.

The Supreme Public Prosecutor is the head of the prosecutorial system. Appointed by the National Assembly on the proposal of the High Prosecutorial Council (Art. 158 Constitution, as amended in 2022), the Prosecutor General has a pivotal role in ensuring the autonomy and uniformity of prosecutorial practice across the country (Art. 31 Law on Public Prosecution, Official Gazette RS, no. 10/2023).

The Constitution (Art. 162) and the Law on Public Prosecution establish the **High Prosecutorial Council (HPC)** as the prosecutorial self-governing body. The Council is tasked with safeguarding autonomy, overseeing recruitment, promotion, transfer, and disciplinary responsibility of prosecutors. It consists of a mix of prosecutors elected by their peers, eminent legal experts, and ex officio members, balancing professional independence with external oversight. The Serbian Constitution explicitly prescribes the composition and election of the Council, reflecting the Venice Commission's recommendations that fundamental guarantees of prosecutorial independence should be enshrined at the constitutional level.

While the Constitution provides the general framework, the **Law on Public Prosecution (2023)** and the **Law on the High Prosecutorial Council (2023)** regulate in detail the internal organisation of the prosecution system. This includes the hierarchical structure (Republic, appellate, higher, and basic prosecution offices), the mandate and evaluation of prosecutors, disciplinary proceedings, and safeguards for the functional independence of individual prosecutors in casework.

30. Describe their composition, terms of office, and the procedures for selecting their members.

The composition and the rules and the procedures for election of the members of the High Prosecutorial Council are determined by both: the Constitution and the Law of the State Prosecutorial Council.

Composition of the High Prosecution Council (art. 163 of Constitution)

The High Prosecutorial Council consists of 11 members:

- five public prosecutors elected by the chief public prosecutors and public prosecutors,
- four prominent lawyers elected by the National Assembly,
- the Supreme Public Prosecutor and

- the minister responsible for justice (the capacity of the Minister is limited as he/she does not vote in the procedure for determining the disciplinary responsibility of the public prosecutor).

Election of the members

1. Members elected among public prosecutors

The selection of members of the High Council of Prosecutors from among public prosecutors is regulated by law (arts 25-42 of the Law on the State Prosecutorial Council).

The conditions:

Any public prosecutor can be a candidate for an elected member of the Council from among public prosecutors. A public prosecutor nominated by the collegium of one or more public prosecutor's offices according to the type and degree of public prosecutor's office (Article 26) can be elected as a member of the Council in which the candidate performs the public prosecutor's function.

The Chief Public Prosecutor cannot be elected to the Council of Prosecutors.

Elective members of the Council from among public prosecutors are elected from the following public prosecutor's offices:

- one from the Supreme Public Prosecutor's Office;
- one of the appellate public prosecutor's offices, the Public Prosecutor's Office for Organized Crime and the Public Prosecutor's Office for War Crimes;
- one of the higher public prosecution offices;
- two from basic public prosecutor's offices.

The Procedure:

Stage 1: Initiation of the procedure

The decision on starting the procedure for electing a candidate for an elective member of the Council from among public prosecutors is made by the president of the Council no later than six months before the expiration of the term of office of an elective member of the Council from among public prosecutors. The decision shall be published in the "Official Gazette of the Republic of Serbia" and on the website of the Council and is submitted to the president of the Election Commission of the Council (hereinafter: Election Commission).

Stage 2: Proposing the candidates.

Each collegium of a public prosecutor's office can propose only one candidate. At the collegium, a secret vote is taken on the proposed candidate. A public prosecutor who is supported by at least 15 holders of the public prosecutor's office according to the type and degree of the public prosecutor's office in which he/she performs the public prosecutor's office can be elected as a member of the Council. The Chief Public Prosecutor and the Public Prosecutor can support only one candidate.

Exceptionally from this rule, a candidate for an elective member of the Council from among the public prosecutors of the Supreme Public Prosecutor's Office and public prosecutor's offices of special jurisdiction acquires the status of a candidate by submitting an application.

Stage 3: Formal check of the applications

The application for candidacy shall be submitted to the Election Commission within 30 days from the date of publication of the decision to start the procedure for nominating candidates for election to the Council in the "Official Gazette of the Republic of Serbia".

Along with the candidacy application, the following shall be submitted: the candidate's signed declaration of acceptance of the candidacy, the decision of the collegium of the public prosecutor's office or public prosecutor's offices proposing the candidate, i.e. a form with the signatures of the chief public prosecutors and public prosecutors who support the candidate, as well as personal and professional information about the candidate. A candidate may withdraw his candidacy by submitting a written statement to the Election Commission no later than eight days from the date of determination of the final list of candidates.

The Election Commission examines the timeliness, permissibility and completeness of the application. Within 24 hours of receiving an incomplete application, the Election Commission concludes by inviting the candidate to complete the submitted application within 48 hours from the time of receipt, with a warning that otherwise the application will be rejected. Untimely, illegal and incomplete applications are rejected by the Election Commission by decision.

Stage 4: The lists of candidates

The Election Commission determines one final list of candidates for each level and type of public prosecution. The order of candidates on the list is determined according to the order of submission of candidacy applications to the Election Commission.

The Election Commission simultaneously publishes all determined final lists of candidates, together with the personal and professional data and programs of the candidates, on the Council's website.

Stage 5: Presentation of the candidates

Every candidate has an equal right to be represented by the holders of the public prosecutor's office.

The election commission determines the deadline for the presentation of candidates, which cannot be shorter than 30 days.

The Election Commission determines the schedule for the presentation of candidates at the headquarters of the appellate public prosecutor's office and informs all holders of public prosecutor's office about it according to the type and degree of public prosecutor's office (Article 26).

The chief public prosecutor is obliged to allow public prosecutors to attend the presentation of the candidate at the seat of the appellate public prosecutor's office in whose territory it is located. The Election Commission, with the consent of the candidate, organizes a video recording of the presentation of the candidate in the appellate public prosecutor's office and publishes the resulting video on the Council's website. The candidate has the right to paid leave for the days when he presents himself at the headquarters of the appellate public prosecutor's office. The candidate has the right to present himself directly to the holders of the public prosecutor's office and in another public prosecutor's office according to the type and level of the public prosecutor's office. The Council provides compensation for travel expenses of candidates for representation at the headquarters of the appellate public prosecutor's office

Stage 6: Elections

The election process is organised by the Election commission established by the Council. The process itself is regulated in detail by the Law and by the Rules of the Procedure of the Election Commission. The holder of the office of public prosecutor elects the members of the Council on the basis of free, general, equal and

direct electoral rights, by secret ballot. No one has the right, on any basis, to prevent or compel the holder of the office of public prosecutor to vote or to hold him accountable for voting. The holder of the public prosecutor's office votes for only one candidate from the list of candidates of the type, i.e. the level of the public prosecutor's office in which he performs the public prosecutor's office.

The public prosecutor who gets the highest number of votes according to the type and degree of public prosecution is elected as a member of the Council. As an exception, two candidates with the highest number of votes were elected as members of the Council from among the candidates from among the public prosecutors of the basic public prosecutor's offices.

If two or more candidates according to the type and degree of public prosecution get the same number of votes, the elections are repeated for those candidates within 15 days from the date of the election.

After the expiry of the deadline for submitting an objection, if no objection has been submitted, or after the expiry of the deadline for submitting an appeal to the Constitutional Court, if no appeal has been submitted to the Constitutional Court, i.e. after receiving the decision of the Constitutional Court rejecting or rejecting the appeal to the Constitutional Court, the Council shall announce the final results of the vote and issue a decision confirming the election of the Council member.

2. Election of the members among prominent lawyers (art. 163 of Constitution)

The conditions:

The National Assembly elects four members of the High Prosecutorial Council from prominent lawyers with at least ten years of experience in the legal profession. A member of the High Prosecution Council elected by the National Assembly must be worthy of that office. A member of the High Prosecution Council elected by the National Assembly cannot be a member of a political party.

A detailed conditions are specified by the Law (art. 44):

- 1) that he meets the general requirements for work in state bodies;
- 2) to have acquired higher education at basic academic studies at the Faculty of Law in the amount of at least 240 ESPB points or higher education acquired at basic studies at the Faculty of Law for a duration of at least four years;
- 3) to have experience and knowledge relevant to the work of the judiciary;
- 4) that it is worthy to perform the function of a member of the Council;
- 5) that he has not reached the age of 65;
- 6) not to perform the function of public prosecutor or judge;
- 7) that he was not elected to a public office directly by the citizens, that he does not perform the function to which he is elected by the National Assembly, that is, that he does not perform the function of a judge of the Constitutional Court or the Secretary of State;
- 8) not to strongly influence the making of political decisions;
- 9) that he did not exert undue influence on the work of the holder of the public prosecutor's office and the public prosecutor's office or the judge and the court;
- 10) that in public appearances he did not advocate positions that threaten the independence of the public prosecution or the independence of the judiciary.

Dignity implies moral qualities that a member of the Council should possess and conduct in accordance with those qualities. The moral qualities are: honesty, conscientiousness, fairness, dignity, perseverance and exemplary behavior, and behavior in accordance with these qualities means safeguarding the reputation of

the Council and the Public Prosecutor's Office in and outside the office, awareness of social responsibility, preservation of independence, impartiality, integrity and dignity in the exercise of the office and outside it, and ensuring the preservation of trust in the work and authority of the Council and the Public Prosecutor's Office in the public.

During the election, professional or scientific work of importance for the work of the judiciary, as well as an understanding of the judiciary and advocacy in professional work or public action for the independence of the public prosecutor's office, are especially valued.

The procedure:

Stage 1: Applications

The public competition for the election of a member of the Council is announced by the decision of the President of the National Assembly no later than six months before the end of the term of office of the member of the Council. If the position of a member of the Council ends before the end of the term for which he was elected, a public competition is announced within 15 days from the day of the termination of the position. The public competition is published in the "Official Gazette of the Republic of Serbia" and at least one means of public information covering the territory of the Republic of Serbia, as well as on the website of the National Assembly and the Council.

If a sufficient number of candidates do not register for a public competition, a new public competition will be announced within 15 days from the deadline for submitting applications for the previous public competition.

The application for the public call shall be submitted to the Board within 15 days from the date of publication of the public tender in the "Official Gazette of the Republic of Serbia". The application for the public competition contains information about the candidate and evidence of the fulfillment of the conditions for the election of a member of the Council. The detailed content of the application is governed by the decision on public competition.

Step 2: Evaluation, shortlisting and interviews with candidates

The public competition for the election of a member of the Council is conducted by the Committee. The Committee examines the application for the public competition and the attached evidence on the fulfillment of the conditions for the election of a member of the Council. The Committee rejects unauthorized, incomplete and untimely applications. The application is not allowed if it is submitted by a person who does not meet the requirements of the law. The board can obtain information about the candidate from the authority, organization and legal entity in which the candidate works, as well as other information about the candidate that is important for the election. After examining the admissibility, timeliness and completeness of the applications, the Committee compiles a list of candidates who meet the conditions for selection.

The Committee publishes the biographies of candidates who meet the conditions for selection and the schedule of interviews with them on the website of the National Assembly.

At a public session, with the participation of the general and professional public, the Committee considers the applications and submitted evidence and conducts an interview with the candidates from the list. The conversation with the candidates is broadcast directly through the media.

Stage 3: Proposal

At a special session, the Committee adopts a proposal for double the number of candidates for the election of a member of the Council from the number to be elected, which is submitted to the President of the National Assembly within 90 days of the deadline for submitting an application for a public competition. Each member of the Committee has the right to propose a candidate for election as a member of the Council. The proposal is determined by the Committee with the votes of two-thirds of the total number of Committee members.

If the Committee does not determine the proposal by two-third majority it decides by the votes of three fifths of the total number of members of the Board, after 15 days from the day of the previous determination of the proposal.

Exceptionally, if the Board does not determine the proposal even in the second round of vote, members of the Council are elected in accordance with the procedure described in the step 5.

The President of the National Assembly may, on the reasoned proposal of the Committee, extend the deadline for the decision by 30 days.

Stage 4: The election by the National Assembly

The four members (prominent lawyers) shall be elected from eight candidates proposed by the competent committee of the National Assembly, after a public competition, with the votes of two-thirds of all MPs, in accordance with the law.

Stage 5: The election by the special commission

If the National Assembly does not elect all four members within the period specified by law, the remaining members (after the expiration of the period specified by law), are elected from among all the candidates who meet the conditions for election, by a commission consisting of the President of the National Assembly, the President of the Constitutional Court, the President of the Supreme Court, the Supreme Public Prosecutor and the Protector of Citizens (Ombudsman), by majority vote.

The term of members of the High Prosecutorial Council and the president and vice-president of the High Prosecution Council: (art. 164 of Constitution)

- A member of the High Prosecutor's Council is elected for five years.
- The High Prosecutorial Council has a president and a vice president. The President is elected by the High Council of Prosecutions from among the members who are public prosecutors, and the Vice President from among the members elected by the National Assembly, for a term of five years.

Before the expiration of the term for which he was elected, the mandate of a member of the High Prosecutor's Council ends if he requests it himself or if he is convicted of a criminal offense and sentenced to imprisonment of at least six months. The mandate of a member who is a public prosecutor ends with the termination of the function of a public prosecutor, and a member who is not a public prosecutor - even if he permanently loses his ability to perform the function of a member of the High Council of Prosecutors.

The decision to terminate the mandate of a member of the High Prosecution Council is made by the High Prosecutorial Council. An appeal to the Constitutional Court is allowed against the decision, which excludes the right to a constitutional appeal.

31. What are the eligibility criteria for candidates for self-governing bodies? Which entities assess compliance, and how?

See answers to question 30. It covers all required points.

32. How has the procedure for selecting members of self-governing bodies and the relevant criteria functioned over time? What weaknesses have been identified? How were they assessed by international institutions, primarily the Council of Europe and the EU?

The challenges experienced in the previous period regarding the election of the Council's members were associated with the composition of the Council and the mechanisms of their election: The 2022 constitutional amendments and the adoption of the Law on the High Prosecutorial Council significantly changed both the composition and competences of the body. The Council was renamed the *High Prosecutorial Council*, and its structure was adjusted to reduce direct political presence. The representative of Parliament was removed, thereby lowering the number of *ex officio* members. However, four "distinguished lawyers" were introduced, elected by the National Assembly, to replace the earlier combination of a law professor and a representative of the Bar. At the same time, the number of elected prosecutors was reduced from six to five. Another key change was that the Supreme Public Prosecutor was no longer the chair of the Council, addressing a long-standing concern about the excessive concentration of authority.

The 2022 constitutional amendments and the Law on the High Prosecutorial Council not only redefined the composition of the prosecutorial self-governing body but also introduced new procedural safeguards to enhance legitimacy and reduce political influence. A crucial innovation concerns the election of the four *distinguished lawyers* who now sit on the High Prosecutorial Council. These members must have at least ten years of professional legal experience and are chosen from a shortlist of eight candidates proposed by the competent parliamentary committee following a public competition. Importantly, their election requires a **two-thirds majority in the National Assembly**, which is designed to ensure broad political consensus and prevent domination by a single ruling majority (Art. 163 of the Constitution).

Equally significant is the **deadlock mechanism** that applies if the Assembly fails to elect all four members within the legally prescribed timeframe. In such cases, the responsibility shifts to a special commission composed of the President of the National Assembly, the President of the Constitutional Court, the President of the Supreme Court, the Supreme Public Prosecutor, and the Ombudsman. This commission makes the selection by majority vote from among all candidates who meet the eligibility criteria. The introduction of this mechanism was welcomed by the Venice Commission as a safeguard against institutional paralysis and as an instrument to guarantee that the Council can be fully constituted even in highly polarized political circumstances.

The Venice Commission, in its 2021 Opinion,²¹⁸ welcomed several of these changes, particularly the removal of the Supreme Public Prosecutor as chair and the reduction of *ex officio* members, both of which were

²¹⁸ CDL-AD(2021)032 Opinion on the draft constitutional amendments on the judiciary and the draft constitutional law on the implementation of constitutional amendments, adopted by the Venice Commission at its 128th Plenary session, Venice and online 15-16 October 2021, para 110 (in the composition of the HPC, there are now fewer prosecutors than in the past – this is not to be recommended; there is a difference between the HJC and the HPC with respect to the inclusion of *ex officio* members – ideally, the two positions of *ex officio* members of the HPC should be abolished and there should be six public prosecutors elected by their peers; the members elected by the National Assembly should also not have any present or future hierarchical (or *de facto*) subordination links to the Supreme Public Prosecutor and represent other legal professions.).

considered steps toward greater independence. At the same time, the Commission noted that the Serbian authorities should reconsider whether the Minister of Justice ought to remain a member of the Council, as this still leaves an avenue for executive influence. While the introduction of four distinguished lawyers was seen as broadening external perspectives, it also shifted the balance by reducing the number of prosecutors directly represented, raising concerns about the weight of professional self-governance.

The European Union, in its Enlargement Reports, echoed the Venice Commission's findings. It recognized the 2022 reforms as a significant improvement toward depoliticization but emphasized that credibility will depend on transparent implementation, particularly in appointments, disciplinary decisions, and safeguards against undue influence.

The reforms of 2022 marked a turning point for Serbia's prosecutorial self-governance. By reducing political presence, redefining composition, and strengthening competences, the High Prosecutorial Council has been brought closer to European standards. Yet, as international assessments underline, its success will ultimately be judged by practice: whether it operates transparently, independently, and in line with the constitutional goal of safeguarding prosecutorial autonomy.

33. Provide a comprehensive list of powers of self-governing bodies regarding:

- **Initial selection of prosecutors,**
- **Transfer of prosecutors (including to higher-level positions),**
- **Selection of candidates for managerial positions (excluding the Prosecutor General),**
- **Disciplinary functions,**
- **Participation in selection of the Prosecutor General,**
- **Participation in early dismissal of the Prosecutor General.**

The competence of the State Prosecutorial Council is governed by both: the Constitution and the Law on the State Prosecutorial Council.

In line with Article 162 of **the Constitution** the Jurisdiction of the High Prosecutorial Council will be as follows: The Council is an independent state body that ensures and guarantees the independence of the Public Prosecutor's Office, the Supreme Public Prosecutor, the chief public prosecutors and public prosecutors.

The Council proposes to the National Assembly the election and termination of the office of the Supreme Public Prosecutor, appoints the acting Supreme Public Prosecutor, elects the chief public prosecutors and public prosecutors and decides on the termination of their office, decides on other issues of the position of the Supreme Public Prosecutor, chief public prosecutors and public prosecutors and exercises other powers determined by the Constitution and the law.

In accordance with Article 17 of the **Law on the State Prosecutorial Council**, within the comprehensive list of the Council' competences, with regards to the points listed above, the following competences belong to the Council (original enumeration from the Law kept):

- 1) proposes to the National Assembly the election and termination of the office of the Supreme Public Prosecutor;
- 2) elects chief public prosecutors and public prosecutors;
- 3) decides on the termination of the functions of the chief public prosecutor and the public prosecutor;

- 4) elects the president and vice president of the Council;
- 5) appoints acting Supreme Public Prosecutor and Chief Public Prosecutor;
- 6) decides on other issues of the position of the Supreme Public Prosecutor, chief public prosecutors and public prosecutors in accordance with the law;
- 7) elects members of the commission for deciding on objections against mandatory instructions for work and action in a particular case, objections against decisions on substitution and objections against decisions on devolution;
- 8) decides on the permanent transfer of the chief public prosecutor and the public prosecutor and the referral of the public prosecutor;
- 9) determines the number of public prosecutors for each public prosecution;
- 10) decides on the removal of the holder of the public prosecutor's office;
- 11) decides on the incompatibility of the performance of another function, job or private interest with the function of public prosecutor;
- 12) decides in the process of evaluating the work of the chief public prosecutor and the public prosecutor;
- 13) appoints the Disciplinary Prosecutor, his deputies and members of the Disciplinary Commission, determines the conditions for appointment and the manner of termination of duties, the manner of work and decision-making in disciplinary bodies;
- 14) decides on the appeal in the disciplinary procedure;
- 17) adopts the Code of Ethics;
- 18) considers and decides on the report of the Ethics Committee on compliance with the Code of Ethics;
- 19) decides on the existence of undue influence on the work of the holders of the public prosecutor's office and the public prosecutor's office and measures to prevent undue influence;
- 21) decides on the immunity of the holder of the office of public prosecutor and the elected member of the Council;
- 23) decides on an objection in the procedure of election for a member of the Council from the ranks of public prosecutors;
- 25) forms the working bodies of the Council and elects and dismisses their members and deputy members;
- 26) gives an opinion on amendments or additions to the existing or adoption of new laws that regulate the position of public prosecutors, the organization and actions of the public prosecutor's office, as well as other systemic laws that the public prosecutor's office applies or are important for the performance of the public prosecutor's office.

34. Do prosecutorial self-governing bodies have formal procedures (beyond legislation) and/or soft tools (guidelines, methodologies, best practices) that structure the execution of powers listed above in point 33? If yes, list and briefly describe them, indicating who adopted them and for what purpose.

Yes. This approach is a part of the Western Balkans legal tradition. Namely, whenever it is necessary to regulate some procedure in depth, the law says: the rules of and the procedure on this/that shall be governed by the rulebook rendered by xy. There is visible progress in terms of the number and comprehensiveness of the bylaws adopted by the Council after the latest Constitutional and legislative reform, so the following acts have been adopted:

- 1) Rules of Procedure of the High Prosecutorial Council
- 2) Rules of Procedure of the Ethics Committee of the High Prosecutorial Council

- 3) Rules of Procedure of the Commission for Deciding on an Objection Against a Mandatory Instruction for Work and Proceedings in a Single Case, an Objection Against a Decision on Substitution and an Objection Against a Decision on Devolution
- 4) Rules of Procedure of the High Prosecutorial Council regarding undue influence on the work of the public prosecutor and the public prosecutor's office
- 5) Rules of Procedure of the Budget Commission of the High Prosecutorial Council
- 6) Rules on disciplinary bodies of the High Prosecutorial Council and disciplinary proceedings
- 7) Code of Ethics for Public Prosecutors, with Guidelines for the Application of Ethical Principles
- 8) Code of Ethics for Members of the High Prosecutorial Council
- 9) Rulebook on criteria and indicators for evaluating the work of the Chief Public Prosecutor and Public Prosecutor
- 10) Rules of Procedure of the Election Commission of the High Prosecutorial Council
- 11) Rules on the procedure for electing a member of the High Prosecutorial Council from among public prosecutors
- 12) Decision on the organization and work of the Administrative Office of the High Prosecutorial Council
- 13) Rules on filling executive positions and positions in the Administrative Office of the High Prosecutorial Council
- 14) Regulation on criteria and measures for assessing the expertise, competence and worthiness of candidates and the procedure for the election of the Chief Public Prosecutor and Public Prosecutor and the nomination of candidates for the election of the Supreme Public Prosecutor
- 15) Regulations on taking exams to test the expertise and competence of candidates who are being elected or proposed for election to the public prosecutor's office for the first time
- 16) Rules on deciding on an objection against a decision on the annual work schedule in the public prosecutor's office or a decision on amending a decision on the annual work schedule in the public prosecutor's office
- 17) Rules of Procedure of the Commission for Monitoring the Proper Distribution of Cases
- 18) Rulebook on the method of maintaining and form of the personal file of the holder of the public prosecutor's office and staff employed in the public prosecutor's office
- 19) Rules of Procedure of the Commission for the Evaluation of the Work of the Chief Public Prosecutor and Public Prosecutor

In addition to this, whenever there is no legal ground in the Law to adopt a bylaw, there is a possibility to adopt e.g. guidelines or Methodology to deal with a certain issue.

Finally, the Council can adopt or take part in developing planning/policy documents to trace its own path with regard to a certain issue or reform activities.

35. Do other institutions assist the self-governing bodies in executing the powers listed in point 33? If yes, list them and explain their status, relationship with the self-governing bodies and prosecution, and their role.

- 1) Yes, the Ministry of Finance with regard to the **budget**. See question 36.
- 2) Also, there is a clear division between competences of the Ministry of Justice and the Council governed by the art. 42 of the Law on the Public Prosecution Office:
 - a) The tasks of the judicial administration performed by the **High Prosecutorial Council**: supervision over the implementation of the act on administration in the public prosecution, determination of general

guidelines for the internal regulation of the public prosecution; issuing an instruction on compiling a report on the work of the public prosecutor's office; monitoring the work of the public prosecutor's office; statistical and analytical processing of data on the work of the Public Prosecutor's Office in order to increase the quality and efficiency of the work of the Public Prosecutor's Office; adoption of by-laws from its jurisdiction; giving an opinion on the rulebook on the internal organization and systematization of jobs in the public prosecutor's office; taking care of truthful, timely and complete information to the public about the work of the public prosecutor's office; maintaining the personal file of the holder of the office of public prosecutor and other tasks determined by law.

- b) The tasks of judicial administration performed by the **ministry responsible for justice**: supervision of the implementation of the act on administration in the public prosecutor's office; statistical and analytical processing of data on the work of the public prosecutor's office in order to monitor the application of regulations in the areas regulated by the ministry, that is, the development of regulations, strategic, planning and program acts; giving consent to the rulebook on the internal organization and systematization of workplaces in the public prosecutor's office; arrangement, development and maintenance of the judicial information system; taking care of accommodation conditions, equipment and security of the public prosecutor's office; development and implementation of capital projects and other programs for judicial authorities and other tasks determined by law.

36. Do the prosecutorial self-governing bodies have separate funding and a secretariat staffed with personnel outside the prosecution service?

Budget

In accordance with arts. 3-4 of the Law on the High Prosecutorial Council, funds for the work and functioning of the Council (hereinafter: the budget of the Council) are provided in the budget of the Republic of Serbia, at the proposal of the Council. The Council independently disposes of funds from the budget that are designated for the work of the Council. The Government cannot suspend, postpone or limit the execution of the Council's budget, i.e. the funds from the budget allocated for the work of the public prosecution, without the consent of the Council. The procedure for determining the Council's budget proposal is regulated by this law. The Secretary of the Council prepares the Council's budget proposal in accordance with the law governing the budget system and submits it to the Council's working body responsible for financial matters (hereinafter: the Budget Commission). The Budget Committee determines the Council's budget proposal and sends it to the President of the Council for submission to the Ministry responsible for financial affairs for an opinion. The minister responsible for financial affairs shall submit a reasoned opinion to the Council on the proposal. If the minister responsible for financial affairs has objections to the submitted budget proposal of the Council, he/she will organize consultations with the President of the Council and the Budget Commission in order to reach agreement. If the minister responsible for financial affairs has no objections to the Council's budget proposal or the agreement is reached, the Council determines the final budget proposal of the Council, which the ministry responsible for financial affairs includes without changes in the draft law on the budget of the Republic of Serbia, and the Government without changes in the draft law on the budget of the Republic of Serbia. If the agreement is not reached, the ministry responsible for financial affairs shall include the final budget proposal without changes in the draft law on the budget of the Republic of Serbia, and the Government without changes in the draft law on the budget of the Republic of Serbia, if the budget proposal of the Council is within the defined scope of expenditures and expenditures. If the agreement is not reached,

the ministry responsible for financial affairs shall state in the explanation the reasons why it considers the Council's budget proposal unacceptable.

The Council also has its own **Administrative Office** which is composed of 8 units specialized in various fields (human resources, finance, IT, public procurement, communications, normative affairs, etc). See question 37 for the comprehensive information.

37. Who approves the structure of the secretariat and selects its personnel? What units comprise the secretariat, and what are their functions?

Pursuant to Article 58 of the Law on State Prosecutorial Council, the Administrative Office is established to perform professional, administrative and other tasks within the Council. The organization, work and way of working of the Administrative Office are regulated in more detail by an act of the Council. The rights and obligations of an employee in the Administrative Office are subject to the regulations governing the position of civil servants and officials.

The structure of the organizational units, the number and the qualifications of the personnel is governed by the Decision on organization and work of the Administrative Office (2023) and the Rulebook on internal organization and systematization of the Administrative Office of the Council adopted by the Council itself.

In accordance with arts 4-5 of the Decision, the Administrative Office is managed by the Secretary of the Council who organizes and ensures the unified work of the Administrative Office. The Secretary of the Council may adopt internal acts that he or she deems necessary for the functioning of the Administrative Office. The Secretary of the Council is accountable to the Council for his or her work and the work of the Administrative Office. In the Administrative Office of the Prosecutor's Council, in accordance with the aforementioned Rulebook, 8 organizational units (with currently 20 employees), where the head of each department, the head of a section and the head of a group shall be accountable to the Secretary of the Council for their work and the work of the internal unit.

1. Department for Material and Financial Affairs

The Department for Material and Financial Affairs performs professional and operational tasks related to planning and executing the budget for the Council and proposing a part of the budget for the work of public prosecutors' offices for current expenses, except for prosecutorial staff and maintenance of equipment and facilities; financial and accounting tasks; recording and monitoring budget execution; qualitative analysis of the expenditure of funds for the Council and public prosecutors' offices from the aspect of the funds needed for uninterrupted work; drafting financial reports; supervising the intended use of budget funds and supervising the financial and material operations of public prosecutors' offices; preparing reports, analyses and information from the scope of the Department; monitoring regulations in the field of finance and other areas of importance for the work of the Department and other tasks in the field of material and financial affairs.

2. Budget and Analytical and Planning Group

The Budget and Analytical and Planning Group performs tasks related to the preparation and analysis of data for the purpose of preparing reports on liabilities and expenditures for the current and previous years in public prosecutors' offices, coordinates with the Department for Status Issues for the purpose of planning

salaries and other income of holders of the public prosecutor's office; prepares proposals for financial plans upon requests from public prosecutors' offices in accordance with the law regulating the budget system; distributes allocated funds to public prosecutors' offices; analyzes data that serve as a basis for determining, planning and implementing financial policy; prepares reports on priority areas of financing; consolidates financial data (periodic and annual reports) of public prosecutors' offices and submits a report to the Ministry of Finance in accordance with relevant laws; monitors the implementation of contracts concluded by the Council for the needs of public prosecutors' offices; records reports on the status of arrears in public prosecutors' offices; monitors regulations in finance and other areas for the successful performance of work and other tasks within the scope of the Group.

3. Financial and Accounting Group

The Financial and Accounting Group performs tasks related to the preparation of a financial plan proposal for the Council in accordance with the law on the budget system; prepares a budget execution plan proposal, prepares analyses that serve as the basis for determining, planning and implementing financial policy; pays salaries and other income to employees of the High Prosecutorial Council; reconciles the balance of the Treasury general ledger with subsidiary ledgers; establishes and monitors records of the implementation of financial transactions with the Treasury and external users; prepares periodic reports and the final account; records supporting documentation for all transactions recorded in the Treasury general ledger; monitors the implementation of contracts concluded by the Council; processes documentation for all types of payments for the Council; monitors regulations in finance and other areas important for the successful performance of work and other tasks within the scope of the Group.

4. Department for Status Issues of Public Prosecutors and Preparation of Regulations

The Department for Status Issues of Public Prosecutorial Function Holders and Preparation of Regulations performs administrative, legal and analytical and statistical tasks related to the election of public prosecutorial function holders; drafting all decisions regarding status issues of public prosecutorial function holders; drafting decisions made under legal remedies in the procedure for removing public prosecutorial function holders; drafting decisions made under legal remedies in the procedure for electing members of the Council from among public prosecutors; drafting responses to lawsuits in disputes before the Administrative and Constitutional Courts; maintaining personal files of public prosecutorial function holders; keeping records of the evaluation of the work of public prosecutorial function holders; providing expert and administrative support in the procedure for evaluating the work of public prosecutorial function holders and preparing relevant documents; preparing opinions on draft laws regulating the position of public prosecutors and the work of public prosecutors' offices, preparing opinions on systemic laws that public prosecutors' offices apply or are of importance for the work of public prosecutors' offices; preparing regulations within the competence of the Council and preparing regulations regulating the work of the Administrative Office; participating in the work of permanent working bodies and committees established by the Council; monitoring the situation and proposing measures in areas within the scope of the Department; preparing reports, analyses and information within the scope of the Department; preparing documentation for the authorized person's actions upon requests for free access to information of public importance on or in connection with the work of the Department; performing other tasks within the scope of the Department.

5. Department of Personnel and General Affairs

The Department for Personnel and General Affairs performs tasks related to the preparation of the draft Personnel Plan; selection and election of personnel; professional development, evaluation of work performance and advancement of civil servants; preparation of acts related to the labor status of members of the Council, civil servants and employees; the procedure for hiring new civil servants and employees; preparation of contracts for the engagement of persons to provide expert, translation, technical and other services; preparation of acts related to business trips in the country and abroad; occupational safety and health affairs; preparation of an integrity plan; prevention of conflicts of interest; IT affairs; record keeping; administrative and technical affairs, transport and delivery of mail; monitoring the situation and proposing measures in the areas within the scope of the Department; preparation of reports, analyses and information from the scope of the Department; preparing documentation for the authorized person's actions upon requests for free access to information of public importance on or in connection with the work of the Department; planning and implementing public procurement procedures for the Council and public prosecutor's offices; and performing other tasks within the scope of the Department.

6. Information Technology Group

The Information Technology Group performs IT tasks for the implementation, maintenance and improvement of information technologies within the judicial system; provides support and analysis of data, information management and ensuring data integrity; performs installations and configurations of software applications that support the work of public prosecutors' offices, performs electronic archiving of documents and other data analysis tools; regularly maintains networks, servers and other IT resources to ensure stability, security, speed and monitoring of system performance, troubleshooting and application of security patches; develops and implements policies and procedures for data protection; prevents unauthorized access and responds to security threats; performs network monitoring, malware detection and staff training on security practices; provides technical support to users within the Council and public prosecutors' offices to resolve problems with software, hardware or access to systems; trains employees on the use of IT tools; monitors new technological trends and recommends innovations and improvements to the work of public prosecutors' offices; researches new software tools, implementation of new technologies and adapts existing systems in order to better respond to the needs of the justice system; regularly updates information on the Council's website; regularly updates software and responds to potential incidents; provides support to users who have difficulties using the websites of public prosecutors' offices, trains staff within public prosecutors' offices on the use of administrative tools for content management; and performs other tasks within the scope of the Group.

7. Office Group (administrative and technical affairs)

The Office Group performs tasks related to the receipt, opening, review, allocation, recording, merging, delivery of cases and documents to internal organizational units; keeping cases in the agenda, sorting and archiving cases; separating and preparing mail for forwarding, franking and sending mail via the postal service and internal delivery by courier; Reception Office - direct receipt of submissions from parties; informing and providing basic information to parties regarding submissions, basic notification of parties about the progress of resolving their requests and other submissions; storing archived cases and separating archival materials from worthless registry materials and archival materials, extracting and destroying worthless registry materials; determining the brief content of cases for entering and storing data in the automatic data processing system; preparing documentation for the authorized person's actions upon requests for free

access to information of public importance about or in connection with the work of the Group; also performs other tasks within the scope of the Group's activities.

8. Office/Cabinet of the President of the Council

The Office of the President of the Council performs tasks of an advisory and protocol nature; tasks related to informing the public; tasks related to the organization and coordination of activities related to the cooperation between the President of the Council and state bodies; tasks related to cooperation with prosecutorial councils of other countries and international organizations, and other tasks significant for the work of the President of the Council.

Also there are a few independent posts outside all internal units for performing various duties such as internal audit, international cooperation and projects, and European integration.

38. Do self-governing bodies have a unit responsible for interaction with the parliament, government, or president? If yes, briefly describe its role and functions.

Yes. Even the President of the Council is authorized to represent the Council, and he/she signs all the decision made by the Council, he/she is supported by the various units of the Administrative Office, such as the Office of the President of the Council. The Office of the President of the Council performs tasks of an advisory and protocol nature; tasks related to informing the public; tasks related to the organization and coordination of activities related to the cooperation between the President of the Council and state bodies; tasks related to cooperation with prosecutorial councils of other countries and international organizations, and other tasks significant for the work of the President of the Council.

IX. Country Report – Slovenia (Gaja Štovičej)

A. General Overview of the Prosecution Service and its Self-Governance

- 1. Briefly describe the constitutional status of the prosecutor's office and its key elements (its place within the system of state authorities, its functions, the nature of the position and role of the Prosecutor General, the role of prosecutorial self-governing bodies, etc.). If the constitutional provisions are limited, describe these aspects based on the key legislative acts.**

Constitution of the Republic of Slovenia (Constitution) has a special section about public prosecution (with only 2 articles) entitled “The State Prosecutor’s Office”. Article 135 is titled “State Prosecutors” states: “State Prosecutors file and present criminal charges and have other powers provided by law. The organisation and powers of state prosecutor offices are provided by law.” Article 136 with title “Incompatibility of State Prosecutor” states that being a state prosecutor is not compatible with office in other state authorities, in local self-government authorities, and in bodies of political parties, and with other offices and activities as provided by law.”

Slovenian Constitution clearly separates the organisational and functional elements of the public prosecution. The function of criminal prosecution is a function, carried out solely by the individual prosecutor and does not pertain to the prosecutorial organisation. For the organisation of the state prosecution offices, the Constitution gives the legislative branch a power to pass an act, regulating public prosecution. Slovenia adopted its first State Prosecutor’s Office Act in 1995, that was replaced with a new State Prosecutor’s Office Act in 2011.

The Constitutional court of the Republic of Slovenia passed several rulings regarding the state prosecutors office and the state prosecutors. The Constitutional Court wrote that the State Prosecutor’s Office is a system of independent state bodies, within which state prosecutors perform their function of filing and presenting criminal charges, as a special function of state power and carry out other tasks according to law. The state prosecutor’s office is a part of the executive branch of power but organised as independent state bodies. The independence of state prosecutors shall be guaranteed by the law regulating the state prosecutorial service and the prosecutorial function .

The law, regulating the prosecution service, is the above-mentioned State Prosecutors Office Act (SPOA), that came into force in November 2011. SPOA regulates the state prosecutorial service, the incompatibility of the function of the state prosecutor with other functions or jobs, the regulation and jurisdiction of state prosecutor’s offices, state prosecutorial and justice administration, and the composition, jurisdiction and functioning of the State Prosecutorial Council, the relationships between the state prosecutor’s offices, and other issues relevant for the work of state prosecutors and state prosecutor’s offices. SPOA also explicitly states: “Public prosecutor’s offices have an independent position within the executive branch. As part of the judiciary, public prosecutor’s offices are independent state authorities.”

Public prosecutors decide on prosecution, files and represents criminal charges, directs the investigation of perpetrators of criminal offences and performs other procedural acts of the prosecutor in pre-trial and criminal proceedings. Public prosecutors also have same competences in other procedures: they can file motions and legal remedies in misdemeanour cases and they can file procedural documents in civil and other court proceedings and in administrative proceedings, when so provided by law.

In the Republic of Slovenia, we have the Office of the State Prosecutor General, also called Supreme State Prosecutor's Office (Supreme SPO), one Specialised State Prosecutor's Office (Specialised SPO) and 11 District State Prosecutor's Offices (District SPO). We do not have higher state prosecution offices. State prosecutors at SPO perform their function before all first instance courts and before the appellate courts in criminal matters. At every SPO there are some state prosecutors with the rank of higher prosecutor, usually the head of the office and his/ her deputy.

2. List the prosecutorial self-governing bodies, their key areas of competence, and the periods of their establishment and reform.

The State Prosecutorial Council is the only body of state prosecutorial self-government. The State Prosecutorial Council's composition changed with the new State Prosecutor's Office Act in 2011.

The composition of the State Prosecutorial Council under the law of 1995 had seven members. Now there are 9 members. The Prosecutor General and his deputy were members of the Council by virtue of their position, but not any more since 2011. One member of the Council was and still is appointed by the Minister of justice from among the heads of district public prosecutor's offices. Four members of the Council were and still are elected *by public prosecutors from among* public prosecutors who do not hold management positions. The elected prosecutors are from all ranks: one member is elected from among supreme, one from among higher, one from among district and one from among local prosecutors. Since 2011 four members are elected by the National Assembly of the Republic of Slovenia on the proposal of the President of the Republic from among the legal experts.

Till the 2011 the term of office of members of the State Prosecutors' Council was five years, since 2011 it is 6 years.

The work of the State Prosecutors' Council till 2011 was led by the Prosecutor General, and in his absence, by his deputy. Since 2011 The President and Vice-President of the State Prosecutorial Council are elected by the members by a two-third majority vote by secret ballot for two years, then they change. President and vice-president may may not be re-elected after the expiry of the mandate.

3. Describe the reasons for the establishment and reform of the prosecutorial self-governing bodies, and how the results were assessed by international institutions, primarily the Council of Europe and the EU.

The composition of the Prosecutorial Council before the reform in the 2011 was exclusively of the state prosecutors (of different ranks and positions). The Prosecutor General and his deputy were members of the Council by their function.

The new composition includes the members from among legal professionals that are not prosecutors. That solution is in accordance with international standards and was recognized as good practice since it supports the need to avoid corporatism (e.g. Venice commission; CDL—AD(2021)015). The Slovenia SPOA per se was not assessed by international institutions.

B. Prosecutors' Career

4. What are the stages in the procedure for first-time appointment as a prosecutor? Which entities are involved, and what is their role?

If there is a free position of a public prosecutor, the head of the state prosecutor's office must obtain a consent of the State Prosecutor General to start the procedure to fill the position. The vacancy for the free position is announced in the Official Gazette of the Republic of Slovenia by the Ministry for Justice at the proposal of the head of the state prosecutor's office with free position. The deadline for applications must be at least 15 days.

The involved authorities are:

- Head of the state prosecutor's office with vacancy
- State Prosecutor General
- Ministry of Justice
- State Prosecutorial Council
- Government

Ministry for Justice announces the free position and collect the applications. Ministry also gathers the documentation about the previous work of the prosecutor (e.g. about internship, if completed in the judiciary, about the state legal exam, personal records and personal files of candidates who have already served or worked in court, or state attorney's office...). Ministry of Justice rejects applications of candidates that are incomplete or late. An administrative dispute may be initiated against this decision of the ministry within fifteen days of the date of delivery of the decision. The administrative court must decide on the administrative dispute within two months of the filing of the lawsuit. All complete applications the ministry sends to the head of the state prosecutor's office where the vacant post exists.

The Head formulates a reasoned opinion on the suitability of each candidate, and the candidate may submit his reasoned remarks to that opinion. The head formulates his final opinion and sends it to the State Prosecutorial Council, together with all the documents. The Head may specifically list and explain, which candidate(s) he considers most suitable, but is not obliged to do so.

The State Prosecutorial Council is not bound by the opinion of the head of a state prosecutor's office regarding the suitability of candidates. The State Prosecutorial Council conducts interviews with candidates, forms a draft opinion (i.e. ranks candidates based on the assessment of suitability for appointment and provide reasoning), and serves the draft opinions to each candidate and the Head. The candidates and the Head may submit their reasoned remarks to the draft opinion. The State Prosecutorial Council then forms its final opinion and sends it to the Ministry of Justice.

Minister of Justice may request with reasoned request from the State Prosecutorial Council to consider its decision again, if the minister disagrees with the final opinion. If the State Prosecutorial Council adopts the same decision during a repeated consideration by a two-thirds majority vote of all members, Minister must propose to the government to appoint that candidate. If, upon reconsideration the State Prosecutorial Council does not decide by a two-thirds majority of all members, the tender is ended as unsuccessful (no candidate is chosen for free position).

Government of the Republic of Slovenia appoints state prosecutors on the proposal of Minister of Justice and serves the decisions about the appointment to all candidates who applied for the vacant state prosecutor's post. All applicants have a right to contest the decision in administrative dispute before the Administrative Court. Act on appointment is published in the Official Gazette of Republic of Slovenia.

A first-time appointed prosecutor assumes the function on the day when he/she takes the oath before the Prime Minister of the Republic of Slovenia (the Prime Minister can authorize a minister of justice to swear the public prosecutors to the office and that is a usual way).

5. What are the eligibility criteria for first-time candidates for the position of prosecutor, and which legal act provides for them? Which entities involved in the selection procedure assess compliance with these criteria, and how?

General conditions for the position of state prosecutor are stipulated in SPOA and must be met by every candidate as follows:

- citizenship of the Republic of Slovenia,
- fluent in the Slovenian language,
- contractual capacity,
- good general health,
- at least 30 years old,
- a law degree,
- passed state law exam, and
- he/she is personally suited to carry out a prosecutorial function (meaning also not being convicted for a crime).

Specific conditions relate to the work experience in the legal field that candidate has acquired *after* passing the state law exam²¹⁹. For the position of local state prosecutor at least 3 years of work experience as a legal professional after passing the state law exam are required. Requested work experience goes up to at least 20 years work experience after the state legal exam for the position of supreme state prosecutor. The first time candidate can be appointed to the position of higher or supreme state prosecutor also if he/ she is a university law professor (who meets the general conditions), provided that he/ she has appropriate professorial title.

The pivotal role in assessing the candidates holds the State Prosecutorial Council. They assess the candidates based on the documentation provided during tender and the opinion of the head of the state prosecution office. The State Prosecutorial Council may also conduct tests of professional knowledge, personal qualities, abilities, and skills necessary for performing the duties of a state prosecutor, psychological tests and interviews with candidates. The Council forms an opinion about every candidate. In its opinion, the Council ranks the candidates according to their suitability for appointment and justifies the reasons for the ranking.

6. How is gender equality ensured in the appointment process? Are any positive measures applied for female candidates (e.g., quotas or provisions ensuring selection in cases of equal merit)? If yes, how are they implemented?

We do not have any measures for gender equality since they are not needed. The annual report of the Supreme State Prosecutor Office shows that on 31. 12. 2024 there were 212 state prosecutors, 152 of them were women and 50 men. Currently there are 3 men holding the position of the head of the state prosecutor office, the rest heads are women (8). Also the head of the Specialised State Prosecutor office and the State prosecutor General are women.

²¹⁹ See more about state law exam at the answer to the question No. 7.

7. Describe the mandatory training required for first-time candidates or newly appointed prosecutor.

The training for position of judge or state prosecutor in Slovenia is conducted *prior* to passing the state law exam. There is no specific training *after* being appointed for the state prosecutor. The person appointed immediately assumes duties in full. However, there are some trainings specifically targeted to young/ new state prosecutors, to help them build their competences.

The state law exam in Slovenia is mandatory for some legal professions, such as the position of the judge, state prosecutor and attorney at law. A person with a law degree from the university must have at least 2 years of work experience in legal entities in legal field and also some experience with work in courts (at least attending to some main hearings in court) to be allowed to apply for state law exam. Usually, law graduates work for 2 years at the court or at state prosecutor office as judicial/ prosecutorial trainees. During this time, they learn about the profession of judge/ prosecutor and learn necessary skills by attending main hearings, preparing drafts for decisions, preparing draft judgements, attend the questioning etc. The trainees get to work in different fields, for example in civil, criminal, family, administrative law. They have to prepare reports on their work. The obligatory training prior to the exam and the state legal exam is regulated by State legal exam Act.

8. How has the procedure for first-time appointment and the relevant criteria functioned over time? What weaknesses have been identified? How were they assessed by international institutions, primarily the Council of Europe and the EU?

The procedure for appointment to any position of the state prosecutor is very lengthy. From the announcement of the position to being appointed takes about one year and a half. Usually, the candidate that works as trainee or as legal expert in the prosecutor's office is appointed to the free position. Since they already work at the prosecutor's office they do know the work of the prosecutor and are therefore very well qualified for the job. However, arguably this could mean that some possibly very prosperous candidates do not enter the profession.

The procedure is rather transparent, it is meticulously regulated by law, which is in accordance with the Rome Charter (CCPE Opinion No.9 (2014)).

9. What are the stages in the procedure for transferring a prosecutor to another office, particularly to a higher-level position? Which entities are involved, and what is their role?

In the Slovenian system, we distinguish between *promotion* and *transfer* of a public prosecutor. A public prosecutor can only be *promoted* to a higher-level position after an evaluation of his/ her work or if he/ she is selected in a competitive procedure for a higher position. A public prosecutor may be promoted:

1. in salary grades,
2. to a higher *title* ²²⁰,
3. to a higher *position*, and

²²⁰ The public prosecution service is performed in public prosecution positions under the titles of local, county, higher, or supreme public prosecutor. The prosecutors that was appointed to the position of a (for example) local can be promoted under due procedure on this *same position* to a higher title. Promotion can also be to a higher position with also getting the higher title.

4. to the position of councillor.

A public prosecutor can be transferred to another public prosecutor's office upon his/ her consent, on the proposal of the Prosecutor General and with consent of both heads of SPO. If transferred, the public prosecutor retains his/ her title (position) and salary grade.

The condition that must be fulfilled for promotion is always a satisfactory assessment of prosecutor's work adopted by the Council (see answer to question 10) – except for promotion to higher position (which is basically an *appointment* and not a promotion).

The difference between promotion to *title* and promotion to *position* is confusing because both, the positions and the titles are called the same: local, district, higher and supreme. Theoretically, a person occupying the *position* of local prosecutor could even reach the *title* of higher prosecutor. Also, the promotion to higher position is actually an appointment. The promotion to higher position is only possible after the full procedure for appointment, including publication of free position, submitting application, going to interview, being selected as best candidate by the Council and being appointed by the Government.

Each prosecutor's office has a set number of prosecutorial *positions*, and it is also regulated in which *titles* those positions are. For example, prosecutor's office "A" has 10 positions for prosecutors, of which 3 are "local", 5 are "district", and 2 are "higher" prosecutors' position. When a person is appointed to a position in that prosecutor's office, he/she is appointed to one of the positions and gets the title according to that position. For example, if a person is appointed to the *position* of district prosecutor, he also gets the *title* of district prosecutor. However, a prosecutor occupying that *position* with the title of district prosecutor may later be promoted to the *title* of higher prosecutor through exceptional promotion (while continuing to occupy the *position* of district prosecutor).

A bit about every type of promotion:

In principle, local, district, and higher prosecutors are promoted to a higher salary grade every three years, unless an assessment of service determines that they do not meet the conditions for promotion during that period.

The title of counsellor is generally acquired by:

- local or district prosecutors upon their first promotion after reaching the age of 45, if their performance evaluation determines that they meet the conditions for *faster* promotion,
- higher prosecutors upon their third promotion to a higher salary grade in the same position,
- a supreme prosecutor after nine years of service as a supreme prosecutor, if an assessment finds that he or she meets the conditions for promotion.

A prosecutor can be promoted to the higher title (but stays at the same *position*) if the assessment of the work adopted by the Council determines that he/ she fulfils the criteria for exceptional promotion.

In order to be "promoted" to a higher position (not just to a title), it is necessary to go through the entire application process as for the vacant position (as described above). So, in essence, this is not a promotion but a new appointment (in my answer to question 11, I explained why this arrangement is not optimal).

10. What are the criteria for candidates being transferred to a higher-level position? Which entities assess compliance with these criteria, and how?

The Prosecutorial Council decides on promotions in salary grades, to the position of councillor, and to the title of district and higher state prosecutor. The Government decides on promotions to the title of *supreme* state prosecutor at the proposal of the Prosecutorial Council.

Before promotion, the work of a public prosecutor is assessed in accordance with the prescribed procedure. The work of a public prosecutor may only be reviewed by higher or supreme public prosecutors, who prepares a review report. Criteria for evaluation of work are:

- a) Work capability and professional knowledge (e.g. quality of decisions, capability to resolve legal questions, complicated and complex cases, precision and range of legal knowledge, respecting deadlines,...)
- b) Personal features (e.g. responsible, reliable, wise, protects independency, impartiality, reliability and reputation of SPO both, respect of ethical code of prosecutors).
- c) Social skills (respectful, professional to co-workers, parties in procedure, representatives of other institutions, and readiness to help).

The report about the work of prosecutor is sent to the Prosecutorial Council. Head of the office, where evaluated prosecutor performs his/ her duties, also writes a reasoned opinion about evaluated prosecutor's work. The final assessment of work is prepared by the Prosecutorial Council. The Prosecutorial Council adopts its assessment and determines whether the prosecutor *achieves* the appropriate levels of quality and professionalism in his/ her work and *how well* he/ she achieves them. Assessments range from unsatisfactory, meaning that the prosecutor is not suitable for the prosecution service, to exceptional, meaning that the public prosecutor can be promoted to a higher prosecutorial title.

If the prosecutor's assessment shows that he/ she is not suitable for the public prosecutor's service, his/ her function as a public prosecutor is terminated.

11. How has the procedure for transferring prosecutors and the relevant criteria functioned over time? What weaknesses have been identified? How were they assessed by international institutions, primarily the Council of Europe and the EU?

The procedure for promotion is precisely described. The assessment of work and preparation of the final assessment (that is the ground for promotion) is rather lengthy, but it is clearly regulated, uses transparent and objective criteria. The minor or bigger backlogs in conducting the assessments had appeared from time to time. A possible solution is to introduce less complex assessment for promotion in pay grade (which could be more or less automatic after every fixed period of time), and keeping the complex system in place for promotion to higher positions and titles.

The solution of following the procedure for recruitment of new prosecutor for promotion to higher position also complicates and prolongs the procedure. The idea is to always find the best candidate for a free position (which usually means a candidate that already is a prosecutor).

12. Do individuals have the right to appeal decisions denying them appointment or transfer (particularly to higher-level positions)? If yes, on what grounds and what are the outcomes of such appeals?

Every prosecutor has the right to be involved in the assessment procedure. He/ she is granted the right to be acquainted with quantitative data about his/ her work, considered in the process of evaluation, give

explanation about that data and give the explanations or comments to evaluators report. The evaluated prosecutor can also give explanation and comment the findings in the assessment procedure. After the assessment is adopted, the prosecutor may file a complaint within 8 days.

The judicial protection can be sought in an administrative dispute, but it is limited mostly to procedure. In accordance with case law, the court does not engage in a strict assessment on how the substantive criteria were estimated but applies the test of so-called “obvious unreasonableness”.

13. What are the grounds and sanctions for disciplinary liability²²¹ of prosecutors? What are the stages of the disciplinary procedure? Which entities are involved, and what is their role?

Slovenia has an exhaustive list of disciplinary offences that are listed in the SPOA. There are 31 actions that lead to disciplinary responsibility of a prosecutor, regardless of the offence being committed intentionally or as a result of negligence. The state prosecutor has no disciplinary liability for opinions given in the course of performing prosecutorial service. More serious disciplinary violations, inter alia, are the following: reckless, untimely, inappropriate or negligent performance of state prosecutorial service; releasing official or other secrets; abuse of office or transgression of official authorisations; abuse of the right to absence from work; conduct or actions that are in conflict with the independence of a state prosecutor or state prosecution offices; and improper, indecent or offensive conduct or expression.

A disciplinary procedure is commenced by a disciplinary prosecutor²²². The initiative to commence a disciplinary procedure may be filed by the head of SPO, the Prosecutor General, the Prosecutorial Council and the Minister of justice. If a disciplinary prosecutor decides not to initiate the proceedings, he must inform the initiator. If the latter insists on the initiative, the disciplinary court of first instance decides about whether or not to start the process. A request to commence a disciplinary procedure may be made by the Prosecutor General, the Prosecutorial Council and the Minister of justice. Based on a written filed request, the disciplinary prosecutor must commence a disciplinary proceeding.

There are two Disciplinary Courts²²³: of first and second instance (decides on appeal). The disciplinary court decides on disciplinary responsibility of prosecutor and imposes a disciplinary sanction. Disciplinary sanctions are: a written reprimand, a time-limited reduction in salary, a time-limited suspension of a promotion, a time-limited transfer to another SPO, and dismissal from the position of state prosecutor.

²²¹ About the disciplinary liability and proceeding against public prosecutors the study was implemented in the framework of the Council of Europe Project **“Human Rights Compliant Justice System in Ukraine” which is part of the Council of Europe Action Plan for Ukraine 2018 –2022**. The study included Slovenia.

²²² The disciplinary prosecutor and his deputy are appointed from among the prosecutors with a title of *supreme* state prosecutors. He/ she is appointed with his/ her consent by the Prosecutorial Council at the proposal of the Prosecutor General.

²²³ Disciplinary *court of the first* instance has 9 members: 6 of them are state prosecutors (of different ranks), appointed with their consent on the proposal of the Prosecutor General by the Prosecutorial Council, and 3 of them are judges, appointed upon their consent on the proposal of the Judicial Council by the Prosecutorial Council. The disciplinary court of the first instance decides on a matter before it in the senate of 3 members.

Disciplinary *court of second* instance has 6 members: the president and his deputy can only be the supreme judges and another 2 of the members are judges of different positions, appointed with their consent on the proposal of the Judicial Council by the Prosecutorial Council. The remaining 2 members are supreme state prosecutors, appointed upon their consent on the proposal of the SPG by the Prosecutorial Council. The disciplinary court of the second instance decides in the senate of 3 members.

All disciplinary bodies are appointed for 2 years with the possibility of reappointment

14. How have the grounds and procedure for disciplinary liability of prosecutors functioned over time? What weaknesses have been identified? How were they assessed by international institutions, primarily the Council of Europe and the EU?

In disciplinary procedures the procedure for shortened criminal process is used. It can make it difficult in a case the prosecutor in a process is deflecting to pick up the notices and invitations to hearings, but such procedure is justified, given the gravest consequence of the procedure (dismissal from the prosecutor's office).

15. What are the stages of the appointment procedure for managerial positions in the prosecution (excluding the Prosecutor General)? Which offices at all levels does it apply to? Which entities are involved, and what is their role?

In short about the managerial positions:

The managerial positions in Slovenian SPOs pertained to the head of the SPO and the director of SPO (at the Supreme SPO there is a general director). Only the director general at the Supreme SPO may be either a state prosecutor or a civil servant, at the other SPO the directors are civil servants. The head and the director are responsible for matters of prosecutorial administration which include, among other:

- internal organization and organization of the work of state prosecutors;
- preparation of annual programs and annual reports;
- organizing participation in main hearings, court sessions, and other proceedings;
- issuing and implementing general instructions;
- handling complaints;
- human resources management;
- deciding on the rights, obligations, and responsibilities of state prosecutors and state prosecution staff;
- reporting on the work of the State Prosecutor's Office;
- registering, recording, and statistically monitoring of cases;
- clerical and technical operations;
- financial, accounting, and material operations, and conducting public procurement procedures.

The director is only responsible for human resources management of *civil servants*, not for the prosecutors. The director's responsibility is also financial, accounting and inventory management and management of public procurement procedures.

The head of SPO carries the responsibilities connected to performance of prosecutorial duties and has all the competences like any other head of public bodies. The head of SPO has a deputy, who replaces him and performs the duties of the head during his absence.

The heads of departments at SPOs are not part of the prosecutorial administration and are not part of management in SPO²²⁴. The law expressly stipulates that prosecutorial administration matters are the responsibility of the head of the prosecution office and of the director, who are also accountable for their work in this area. In this sense the heads of departments are not part of the prosecutorial administration. The heads of departments are (mostly) prosecutors. Only in the departments of general, administrative nature (e.g. human resources department, finances department) the heads can be civil servants. But in the

²²⁴ The head of the SPO determines the allocation of state prosecutors to departments, their legal areas of work, and the heads and deputy heads of departments in the annual work schedule. The annual work schedule must be adopted every year.

departments where prosecutors perform their duties the heads are always prosecutors (e.g. juvenile crime division, general crime division, economic crime division). Departments may be formed within the SPO by the head of the SPO, in particular for the purposes of specialisation and efficiency of work. The head of a department is responsible for the day-to-day and professional work of the department. The head of a department is only authorized to assign cases in accordance with the powers granted to them by the head of the SPO. Rather than saying that the prosecutors in these positions lack any meaningful power, one could say that their powers are consistent with the purpose for which these positions exist – day to day work of the department.

The appointment procedure for the head of SPO applies to appointing the heads of District and Specialised SPO.

The head is appointed by the Prosecutorial Council, the Prosecutor General gives the preliminary opinion on the candidate, and the minister of justice presents the reasoned proposal for appointment of the candidate to the Prosecutorial Council. The head is appointed for six years (possible reappointment) and gets the title of higher state prosecutor.

The procedure for appointment of the head of SPO starts when the State Prosecutor General submits the proposal to publish the position to the ministry of justice. Ministry must publish the position in Official Gazette not later than within 3 months before the expiry of mandate of the current head. Candidates must enclose their CV with a description of professional activities, a management programme for the SPO and evidence of meeting the criteria.

Minister of justice has interviews with all candidates and obtains an opinion of the State Prosecutor General on suitability of each candidate for the management of the SPO. Minister forms a reasoned proposal for the appointment of a candidate that is served to the State Prosecutor General and all candidates, all of which may submit reasoned comments in 8 days. Then a minister formulates a final proposal, he sends it to the Prosecutorial Council. The Council is not obliged to appoint the candidate that is proposed for the appointment and is not bound by the opinion of the State Prosecutor General.

16. What are the eligibility criteria for managerial candidates (excluding the Prosecutor General)? Can non-prosecutors be appointed (e.g., lawyers, judges, other legal professionals)? Which entities assess compliance with the criteria, and how?

The eligibility criteria for the head of the SPO are:

- must already be a state prosecutor (non-prosecutor can not be appointed)
- must be under 64 years of age at the time of application and
- must meet the criteria for nomination to the position of higher state prosecutor (which is either that he/she has successfully performed the duties of a *district* public prosecutor for at least five years or has at least nine years of work experience after the state legal exam)

The minister of justice assesses the candidates and when formulating the proposal, the minister must take into account in particular: the management program of the SPO prepared by the candidate, the candidate's presentation at the oral interview, the opinion of the State Prosecutor General, and the candidate's professional qualifications and knowledge, experience, recommendations, and achievements in relation to the performance of the prosecutorial duties.

A deputy head of the SPO is appointed by the Prosecutorial Council on the reasoned proposal of the head of SPO. The State Prosecutor General gives preliminary opinion on the candidate. The prosecutorial Council appoints the deputy head for six years with possibility of reappointment. The head performs tasks and duties of the head if the head is absent or otherwise engaged.

17. How is gender equality ensured in the appointment of managerial positions (excluding the Prosecutor General)? Are any positive measures applied for female candidates (e.g., quotas or provisions ensuring selection in cases of equal merit)? If yes, how are they implemented?

As explained in answer to question 6, currently there are only 3 men out of 12 heads of first instance prosecution offices.

18. How has the procedure for appointing prosecutors to managerial positions and the relevant criteria functioned over time? What weaknesses have been identified? How were they assessed by international institutions, primarily the Council of Europe and the EU?

Both, the procedure and the criteria function well. They are in accordance with, e.g., the Rome Charter and with the Recommendation Rec(2000)19, adopted by the Committee of Ministers of the Council of Europe

19. Is a reserve list of candidates for managerial positions (excluding the Prosecutor General) maintained? If yes, what are the key elements and procedures? How effective is this practice? Have there been any appeals from those excluded, and what were the outcomes?

There is no reserve list of candidates for managerial positions. Before the mandate of the head of the SPO ends, the new procedure is started. If the office ends unexpectedly (e.g. the head resigns), the procedure for new appointment must start within 30 days. Till the appointment of the new head, the deputy head performs the duties.

20. Describe the mandatory training for managerial candidates or newly appointed managers.

All newly appointed heads of the SPO and the deputies must undergo a managerial training that is provided by the Center for judicial education within six months of their appointment. After completing the training, he / she must submit a certificate to the Prosecutorial Council and the Minister. The complete training takes 24 hours and is divided in several slots. The training program mainly covers the necessary functional knowledge for managers, such as:

- I. Management and administration of the State Prosecutor's Office (powers of the head in the administration and management of the SPO, division of powers between heads and directors of prosecutor's offices, division of powers between heads and the ministry of justice, modern methods and techniques of organization and management, PR skills);
- II. Staffing and human resources management (human resources management, procedures for selection and promotion of prosecutors, evaluation of work of prosecutors);
- III. Financial operations and planning (financial and accounting at the SPO, budget of the SPO and its management, public procurement);

- IV. Personal integrity and security issues (ensuring security at the SPO, personal integrity and self-defence issues, stress management in leadership positions, business protocol).

21. Do heads of prosecutor's offices (excluding the Prosecutor General) bear disciplinary liability for ineffective management (e.g., failure to achieve organizational goals, low performance of subordinates, or other organizational shortcomings)? If yes, what are the qualifying conditions and are there specific sanctions? If not, do they bear other forms of liability and under what procedures? Which entities assess compliance, and how?

Failing to effectively manage the SPO is not a disciplinary offense, so the heads do not bear the *disciplinary* liability for ineffective management. However, they are held accountable for achieving the goals of the SPO and can be dismissed as heads if they fail to do so.

The head of the SPO is dismissed from the position of the head in the following cases:

- if he does not perform his state prosecutorial administration duties in compliance with law or if he does not perform them on time;
- if he interferes with the self-dependency of state prosecutors when working on cases;
- if he violates his state prosecutorial duties in a way that makes him unfit to perform the office of the head;
- if he fails to achieve the planned work results, set down in the annual work programme of the SPO for 2 years in a row without justification.

The report on the alleged violations or facts regarding the above-mentioned situations is prepared by prepared by the Prosecutor General either on his own initiative or at the request of the Prosecutorial Council or the Minister for Justice. During the dismissal proceedings, the head of the SPO must be given the opportunity to comment on all circumstances relating to the grounds for dismissal and to respond to the report on the alleged violations. The report on the alleged violations and the response of the head in question is sent to the minister of justice. The minister decides based on the report whether or not he will *propose* the dismissal. The Prosecutorial Council decides on the dismissal of the head upon the proposal of the Minister.

An administrative dispute may be initiated against the decision on dismissal.

C. Appointment and dismissal of the Prosecutor General

22. What are the stages in the appointment procedure for the Prosecutor General? Which entities are involved, and what is their role? Who holds de facto veto power over the selection?

The State Prosecutor General is elected by the National Assembly of Slovenia on the reasoned proposal by the State Prosecutorial Council, after obtaining the opinion of the Government of Slovenia. The term of office of State Prosecutor General is six years with the possibility of reappointment. State Prosecutor General adopts the prosecution policy and is authorised to issue general instructions.

The State Prosecutor General may issue *general* instructions on activities of state prosecutors in dealing with cases (not in any individual case). General instructions relate to the uniform application of the law, unification

of the prosecution policy and to the manner of informing the public about the work of State Prosecutor Office (SPO).

The position of Prosecutor General is published by the Ministry of Justice no later than six months before the expiry of the term of office of the current Prosecutor General. The advertisement is published in the Official Gazette of the Republic of Slovenia, and the deadline for applications may not be less than 30 days. Late and incomplete applications are rejected by the Ministry of Justice, and an administrative dispute may be initiated against this decision. Candidates must enclose to their application a CV describing their professional activities, a six-year strategic work program, and evidence demonstrating that they meet the conditions for the position of prosecutor general.

Complete and timely applications are submitted by the Ministry to the Prosecutorial Council, which conducts oral interviews with the candidates. The Council draws up a proposal for one or more candidates for appointment to the position of Prosecutor General. Candidates may submit reasoned comments on the draft proposal and send them to the Council. The Council draws up a final proposal and sends it to the National Assembly of the Republic of Slovenia together with documentation on all candidates, including the opinion of the Government that the Council has acquired. The National Assembly of the Republic of Slovenia invite all candidates proposed by the Council to present their strategic program and provide any additional explanations regarding their application. The presentation is open to the public. The National Assembly of the Republic of Slovenia is not bound by the proposal when making the appointment and is not required to appoint the candidate proposed by the State Prosecutorial Council.

After the National Assembly elects the Prosecutor General, he/ she must take an oath before the President of the National Assembly. With taking the oath he/ she assumes the function of the Prosecutor General.

23. What are the eligibility criteria for candidates for the Prosecutor General? Which entities assess compliance, and how?

The eligibility criteria for the Prosecutor General are:

- must already be a state prosecutor (non-prosecutor cannot be appointed)
- must be under 64 years of age at the time of application and
- must meet the criteria for nomination to the position of *supreme* state prosecutor (which is either that he/ she has successfully performed the duties of a higher prosecutor for at least five years or the duties of a district prosecutor for at least ten years or has at least 20 years of work experience in legal work after passing the state law exam).

Candidates for Prosecutor General must prepare a six-year strategic programme when applying for the office. The six-year strategic programme must include an evaluation of the situation at the SPO, a risk assessment and opportunities for the improvement of its functioning, a proposal on how the candidate plans to formulate and harmonise the prosecution policy, and which areas will he/ she set up for priority consideration, activities to support the transparency of the activities of SPO, and an indication of planned measures and deadlines for the achievement of goals, set out in the programme.

The formal conditions are assessed first by the ministry and again by the Council. The main assessment is done by Council. When formulating its proposal, the Prosecutorial Council considers in particular: the strategic work program of the candidate, the candidate's presentation at the oral interview, his / her

professional qualifications and knowledge, experience, recommendations, and achievements in relation to the performance of the prosecutorial service.

The National Assembly does not assess the formal criteria; they conduct an interview with the candidate. To be elected, candidate must get majority of the votes.

24. How has the appointment procedure and the relevant criteria for the Prosecutor General functioned over time? What weaknesses have been identified? How were they assessed by international institutions, primarily the Council of Europe and the EU?

The problem in this procedure can be, if a member of the parliament (or more of them) in the National Assembly chooses to use the hearing for attack on the candidate and incident speech and non-connected topics during presentation of the candidate. Such occurrences can defer someone from running for the position, but it also undermines the reputation of the institution in public. Generally, the system functions acceptably.

25. Are general grounds for disciplinary liability applicable to the Prosecutor General? If not, are there special grounds or procedures for holding the Prosecutor General accountable, including through dismissal?

Every prosecutor, including The Prosecutor General has the same disciplinary liability. For Prosecutor General, the same as for the heads of SPO, there is also a managerial responsibility defined by SPOA.

26. What are the grounds for early dismissal of the Prosecutor General, and under which legal act are they defined?

The grounds for early dismissal of the Prosecutor General are defined in SPOA.

The Prosecutor General is dismissed from the position in the following cases:

- if he does not perform his state prosecutorial administration duties in compliance with law or if he does not perform them on time;
- if he interferes with the self-dependency of state prosecutors when working on cases;
- if he violates his state prosecutorial duties in a way that makes him unfit to perform the office of the head;
- if he fails to achieve the planned work results, set down in the annual work programme of the SPO for 2 years in a row without justification.

27. What are the stages in the early dismissal procedure for the Prosecutor General? Which entities are involved, and what is their role? Who holds de facto veto power over dismissal?

The report regarding the reason for dismissal for the Prosecutor General is prepared by the president of the Prosecutorial Council, at the request of the whole Prosecutorial Council or the Minister for Justice.

During the dismissal proceedings, the Prosecutor General must be granted an opportunity to comment on all circumstances relating to the grounds for dismissal and to respond to the report on the alleged violations. The report on the alleged violations and the response to it is presented to the Prosecutorial Council. If the Council so decides, it files the proposal to dismiss the Prosecutor General to the National Assembly. Before

making its decision, the National Assembly sends the proposal to the Government of the Republic of Slovenia for its opinion.

An administrative dispute may be initiated against the decision on dismissal.

28. How has the early dismissal procedure and relevant grounds for the Prosecutor General functioned over time? What weaknesses have been identified? How were they assessed by international institutions, primarily the Council of Europe and the EU?

To my knowledge, there has been only one case of procedure before the Prosecutorial Council regarding the early dismissal of the Prosecutor General. In that case the Council did decide that the prosecutor general has acted in disaccordance with a law, but the disaccordance was not so heavy that it would require the dismissal. The Council explained that the sanction of dismissal would be manifestly disproportionate to both the gravity of the infringement and its consequences, taking into account the circumstances in which the infringement was committed.

D. Prosecutorial Self-Government Bodies

29. List the prosecutorial self-governing bodies, their legal status, and their relationship with each other and with the prosecution service.

The State Prosecutorial Council is the only body of prosecutorial self-governance. It is an independent state body with its own budget that performs the tasks of state prosecutorial self-government and participates in ensuring the uniformity of prosecution and protecting the independence of state prosecutors.

The prosecutor General is not a member of the Prosecutorial Council but is always invited to their sessions and has the right to express his views and make proposals on the matters under discussion.

Twice a year, the Prosecutor General, the Prosecutorial Council, and the Minister of justice hold joint meetings with the heads of SPO to discuss the work of the prosecutor's offices and adopt or coordinate the measures necessary for the implementation of annual work programs.

30. Describe their composition, terms of office, and the procedures for selecting their members.

According to the current legislation, the State Prosecutorial Council consists of nine members, and the term of office is six years.

Four members of the Council are elected by public prosecutors from among public prosecutors who do not hold managerial positions. The elected prosecutors are from all ranks: one member is elected from among supreme, one from among higher, one from among district and one from among local prosecutors. Four members are elected by the National Assembly on the proposal of the President of the Republic from among the legal experts. One member of the Council is appointed by the Minister of justice from among the heads of SPO.

Elections of members of the Prosecutorial Council from among state prosecutors are conducted on the basis of a single list of candidates. Elections of members of the Prosecutorial Council is announced by the President of the National Assembly at least 90 days before the expiry of the term of office of the current members (in

the case of by-elections, within 30 days of the occurrence of the circumstances giving rise to the by-elections). The act announcing the elections is published in the Official Gazette of the Republic of Slovenia.

Elections of members of the Prosecutorial Council **from among prosecutors:**

All prosecutors who are in office on the day of the elections and are registered in the prosecutorial electoral roll have the right to vote. The Prosecutors' Electoral Register contains the first and last names of prosecutors and the prosecutor's office where they work.

The list of candidates for Prosecutorial Council must contain more candidates than the number of members to be elected, but no more than four times the number of members to be elected. Candidates for the Prosecutorial Council are nominated in writing by other prosecutors. Candidates who have been nominated by at least three prosecutors are included on the list of candidates. If the number of candidates exceeds the permitted number, those candidates who have been nominated by the largest number of prosecutors are included on the list of candidates.

Elections are held at polling stations located at the headquarters of the public prosecutor's offices, including the Supreme SPO. Voting is done in person with a ballot paper on which the name of the prosecutor being elected is circled. The elections are direct and secret.

The prosecutor who receives the most votes is elected. If two or more candidates receive the same number of votes, the election is repeated for those candidates.

Elections of members of the Prosecutorial Council **elected by the National Assembly:**

The President of the State Prosecutorial Council must notify the President of the Republic and the National Assembly of the expiry of the term of office of a member of the Prosecutorial Council elected by the National Assembly no later than six months before the expiry of the term of office. Within 30 days of receiving the notification, the President of the Republic must publish a call for proposals for potential candidates for the Prosecutorial Council in the Official Gazette.

Proposals must be accompanied by an explanation and, in particular, the written consent of the potential candidate that they are prepared to accept the nomination. The President of the Republic sends the list of candidates to the National Assembly for election. The number of candidates on the list of candidates must be bigger than the number of members to be elected, but no more than twice the number of members to be elected.

31. What are the eligibility criteria for candidates for self-governing bodies? Which entities assess compliance, and how?

The members of the Prosecutorial Council, elected from among the prosecutors, have no special eligibility criteria. Most candidates are invited to run for membership in Prosecutorial council by other prosecutors. Their peers usually invite to candidacy those prosecutors that are active as lecturers in prosecutorial trainings, participate in activities of Association of Prosecutors, appear publicly to support the independence and position of prosecutors and similar.

The member from among the heads of SPO is chosen by the minister of justice. The formal demand for this member is only that the candidate is a head of SPO.

Members elected by the National Assembly must be acknowledged legal professionals. Sometimes the Association of prosecutors makes a proposal, sometimes candidates apply by themselves. The president can have the interview with the possible candidates and send to the assembly only the names he/ she deems most suitable.

32. How has the procedure for selecting members of self-governing bodies and the relevant criteria functioned over time? What weaknesses have been identified? How were they assessed by international institutions, primarily the Council of Europe and the EU?

Under the SPOA since 2011 there has been three compositions of the Prosecutorial Council. No special difficulties had occurred during the selection of members. The procedure is set out in the law and is in line with the international standards.

33. Provide a comprehensive list of powers of self-governing bodies regarding:

The State Prosecutorial Council is the most important body in the recruitment procedure for the appointment of new state prosecutors and appoints candidates to other positions in the prosecutorial organisation. Inter alia, the Prosecutorial Council submits proposals on the appointment of the Prosecutor General, appoints and dismisses heads of District SPO and the Specialised SPO and their deputies, decides on the transfers and secondments of state prosecutors, appoints and dismisses disciplinary bodies, and performs other matters in accordance with the law. The Prosecutorial Council adopts criteria regarding the quality of work of state prosecutors and criteria for assessment of performance of prosecution offices and is responsible for assessments of efficiency of those offices. The Prosecutorial Council also appoints the Commission for Ethics and Integrity.

The State Prosecutorial Council has the following powers:

- to give opinions on the prosecution policy of the State Prosecutor's Office;
- to initiate the adoption or amendment of general guidelines;
- to give opinions on proposals for the appointment of state prosecutors;
- to evaluate the work of the State Prosecutor's Office
- to decide on the promotion of state prosecutors;
- to propose the appointment of the Prosecutor General and give opinions on the appointment of his deputy;
- to appoint the heads of district state prosecutor's offices and their deputies;
- to decide on the transfer and re-assignment of public prosecutors;
- to decide on the incompatibility of the function of public prosecutor;
- to give its opinion on the budget proposal for public prosecutors' offices;
- to give the opinion to the National Assembly of the Republic of Slovenia on laws governing the status, rights, and duties of public prosecutors;
- to adopt criteria for the quality of work of public prosecutors to assess their work²²⁵;

²²⁵ The criteria for assessing the quality of work performed by public prosecutors establishes framework criteria for evaluating the professionalism of public prosecutors, including the expected time required to resolve individual types of cases and for typical procedural actions.

- to adopt criteria for the effectiveness of prosecution conducted by public prosecution offices²²⁶;
- gives its opinion on the number of positions for public prosecutor in public prosecutor's offices;
- gives its opinion on the joint annual report on the work of public prosecutor's offices;
- gives its opinion on the implementation of judicial supervision;
- proposes or requests the elimination of violations that have affected the independence of public prosecutors and, if necessary, publishes its findings;
- appoints and dismisses disciplinary bodies in accordance with this Act;
- adopts criteria and methods for testing the professional competence and other abilities of candidates for public prosecutors;
- adopts the Code of Ethics for Public Prosecutors;
- appoints the Ethics and Integrity Commission for public prosecutors;
- approves the policy for detecting and managing corruption risks and the exposure of state prosecutors and monitors its implementation;
- proposes amendments or additions to the policy for detecting and managing corruption risks and the exposure of state prosecutors.
- decides on other matters, if so provided by law.

Initial selection of prosecutors:

The Prosecutorial Council conducts interviews with candidates, forms a draft opinion (i.e. ranks candidates based on the assessment of suitability for appointment and provide reasoning), and serves the draft opinions to each candidate and the Head of SPO. The candidates and the Head of SPO may submit their reasoned remarks to the draft opinion. The Prosecutorial Council then forms its final opinion and sends it to the Ministry of Justice. On the request of the Minister of Justice the Prosecutorial Council considers its decision again and if the decision is adopted by a two-thirds majority vote of all members, Minister must propose to the government to appoint that candidate the Prosecutorial Council has chosen.

Transfer of prosecutors (including to higher-level positions):

Under the conditions, set in SPOA, a state prosecutor may, even without consent, be assigned to perform prosecution duties at another prosecutor's office on a full-time or part-time basis if circumstances so require. The assigned public prosecutor has the right to appeal against this decision. The Prosecutorial Council must decide on the appeal within 15 days.

A public prosecutor can be transferred to another public prosecutor's office upon his/ her consent, on the proposal of the Prosecutor General and with consent of both heads of SPO. If transferred, the public prosecutor retains his/ her title (position) and salary grade.

The Prosecutorial Council decides on promotions in salary grades, to the position of councillor, and to the title of district and higher state prosecutor. The Government decides on promotions to the title of *supreme* state prosecutor at the proposal of the Prosecutorial Council.

²²⁶ The criteria for the effectiveness of prosecution by public prosecution offices determine the proportion of cases in a given period in which, depending on the nature of the offense, the type of proceedings, and the prosecution policy, a solution is expected in the form of deferred prosecution, settlement, penalty order, abbreviated proceedings, indictment, conviction, type and severity of the penalty imposed. They also establish the basis for monitoring, assessing and analysing the effectiveness, efficiency and economy of prosecution.

The Prosecutorial Council adopts the assessment of prosecutor's work and determines whether the prosecutor *achieves* the appropriate levels of quality and professionalism in his/ her work and *how well* he/ she achieves them. The promotion depends on that assessment.

Selection of candidates for managerial positions (excluding the Prosecutor General),

The Prosecutorial Council has the authority to conduct oral interviews with candidates, proposed by the minister of justice, select and appoint the heads of SPO (and their deputies).

Disciplinary functions,

The Prosecutorial Council appoints the disciplinary prosecutor and his deputy and the members of the disciplinary court of first and second instance.

Participation in selection of the Prosecutor General,

The Prosecutorial Council conducts oral interviews with the candidates for the position of Prosecutor General. The Prosecutorial Council draws up a final proposal with one or more suitable candidates for the position of the Prosecutor General and sends it to the National Assembly.

Participation in early dismissal of the Prosecutor General:

The report about the circumstances that can be ground for early dismissal of the Prosecutor General is prepared by the president of the Prosecutorial Council, at the request of the (whole) Prosecutorial Council (or the Minister for Justice).

During the dismissal proceedings, the Prosecutor General must be granted an opportunity to comment on all circumstances relating to the grounds for dismissal and to respond to the report on the alleged violations. The report on the alleged violations and the response to it is presented to the Prosecutorial Council. *If* the Prosecutorial Council so decides, it files the proposal to dismiss the Prosecutor General to the National Assembly.

The Ethics and Integrity Commission was introduced with amendments to SPOA in 2015, together with obligation of prosecution office to adopt the Code of Ethics for Public Prosecutors and the Policy on the detection and control of corruption risks. The Code of Ethics for Public Prosecutors sets out rules for conduct of prosecutors both, in professional and private life in order to protect their independence, impartiality, and integrity, as well as the reputation of the public prosecution service. The Policy on the detection and control of corruption risks is prepared and adopted by Prosecutor General in cooperation with the Prosecutorial Council. The Council may propose amendments or additions to this policy. Both, the Code of Ethics for Public Prosecutors and the Policy for detection and control of corruption risks are published in the internal prosecutors' newsletter and on the website of the Supreme State Prosecutor's Office.

The Ethics and Integrity Commission is a body within the Council, and the members are only prosecutors appointed by the Council. The detailed composition, procedure for appointment of members, and rules for their work are determined by the Rules of procedure of the State Prosecutorial Council. The Ethics Commission has three members, one of them is a member of the Council. The Council appoints also one deputy in case any of three members of the Commission is detained. They are appointed for four years and may be reappointed.

The Ethics and Integrity Commission has the following tasks:

- to adopt advisory opinions on conduct that constitutes a violation of the Code of Ethics for prosecutors;
- issuing recommendations for compliance with the rules of ethics and integrity in accordance with the Code of Ethics for prosecutors;
- adopting guidelines in the field of ethics and integrity in accordance with the Code of Ethics for prosecutors;
- in cooperation with the Center for Judicial Education, providing education and training for public prosecutors in the field of ethics and integrity.

Any person may *propose* to the Ethics and Integrity Commission to review the conduct of prosecutor that is deemed to be in breach of prosecutorial ethics. The Commission is not obliged to take such proposal under consideration. The Commission only decides on the matter if it is of importance regarding the Commission's jurisdiction. However, the Commission is *obligated* to form an opinion if the *demand* to do so is filed by the state prosecutor general, the minister of justice, a member of the Ethics Commission or a member of the Council.

34. Do prosecutorial self-governing bodies have formal procedures (beyond legislation) and/or soft tools (guidelines, methodologies, best practices) that structure the execution of powers listed above in point 33? If yes, list and briefly describe them, indicating who adopted them and for what purpose.

For the powers listed in the above point 33, most of the provisions are in the law. The Prosecutorial Council has adopted the Rules of procedure of the State Prosecutorial Council which regulate the rules of work and organization of the Prosecutorial Council. In those Rules of procedure are, for example, stipulations regarding the election and responsibilities of the president, summoning and conducting of session, the required presence at the meetings, rules on voting and issuing the decisions, on the administrative support to work etc.

The Prosecutorial Council has also adopted the act called Measures, methods and rules for testing the professional competence and other skills of candidates for state prosecutors (connected to point 33, bullet 1 above). This act defines in detail the criteria and methods for testing the professional competence and other abilities of candidates, as well as the rules for conducting tests and interviews with candidates in order to form an opinion on proposals for the appointment of state prosecutors. The criteria, methods, and rules were adopted in order to ensure that advertised vacancies for state prosecutors are accessible under the same conditions for all candidates.

35. Do other institutions assist the self-governing bodies in executing the powers listed in point 33? If yes, list them and explain their status, relationship with the self-governing bodies and prosecution, and their role.

There are no institutions assisting the Prosecutorial Council in execution of its powers listed in point 33. All the powers, pertaining to the Prosecutorial Council, are executed by it.

36. Do the prosecutorial self-governing bodies have separate funding and a secretariat staffed with personnel outside the prosecution service?

The Prosecutorial council has its own budget and its own staff. They are part of the prosecution regarding the *preparation* of the budget but are part of negotiations with the government and they draft their own proposal. They assign the funds that are at their disposal autonomously. The allowed number of staff is negotiated within the number of places for prosecution service. The Prosecutorial Council conduct their own recruitment procedures for staff and chooses them.

The professional service of the Prosecutorial Council, that performs professional and administrative work for the Council, has a head that must be a state prosecutor with the title of senior or supreme state prosecutor. The cooperation regarding administrative duties between the Prosecutorial Council and Supreme SPO is regulated by a written agreement between both entities.

37. Who approves the structure of the secretariat and selects its personnel? What units comprise the secretariat, and what are their functions?

The structure of secretariat is set forth in the act on systematisation and organization of the Prosecutorial Council. The systematization defines the organization of professional services, specifies the number of civil service positions, the tasks performed by civil servants, and so on. The systematization is regulated in accordance with the rules for public servants that apply to the judiciary (not for judges and prosecutors, just civil servants) and state administration. The Prosecutorial council conduct their own recruitment procedures for staff and chooses them. The president signs the employment contracts.

The task of the secretariat staff is to ensure the smooth running of meetings (e.g. preparing materials, sending invitations), recording received and created documents, taking minutes, prepare draft for decisions, etc. There are two units in the secretariat: Office of the State Prosecutor's Council (general tasks) and the Professional Support Service (preparing draft decisions etc.). The secretariat is small – it has under 8 employees and one higher prosecutor who is the head of State Prosecutorial Council secretariat.

38. Do self-governing bodies have a unit responsible for interaction with the parliament, government, or president? If yes, briefly describe its role and functions.

No, there is no such unit. The president of the Prosecutorial Council conduct all of the mentioned task.

X. Country Report – Portugal (Lorena Bachmaier Winter)

A. General Overview of the Prosecution Service and its Self-Governance

1. Briefly describe the constitutional status of the prosecutor's office and its key elements (its place within the system of state authorities, its functions, the nature of the position and role of the Prosecutor General, the role of prosecutorial self-governing bodies, etc.). If the constitutional provisions are limited, describe these aspects based on the key legislative acts.

The Public Prosecutor's Office (*Ministério Público*, MP or Public Prosecutor, PP) is a constitutional body with jurisdiction to prosecute criminal cases, participate in the implementation of the criminal policy defined by the executive and the legislative, represent the State, and defend democratic legality and the interests determined by law. It was first introduced in Portugal, following the French model in 1823-24, as a body of the executive power, although with no direct subordination to the government. The 1974 Revolution led the fight for the judicial independence, which was expressed in the 1976 Constitution setting also the basis for the autonomy of the PP's Office, entrusted with the management and disciplinary proceedings of the PPs. The selection procedure initially was the same as for judges, being the last positioned ones allocated to the PP Service.²²⁷

The Portuguese PPO model is based on five main pillars:

- The autonomy of the Public Prosecution Service;²²⁸
- Its self-governance;
- The independence and parallelism from the judiciary;
- The core and reserved competence as the holder of criminal prosecution, and
- Its main mission is defending the democratic legality.

The Constitution of Portugal of 1976 (CRP, last revised in 2005), includes only two provisions relating to the Public Prosecution. These provisions are included in the Title V, dedicated to the judicial power, and under Chapter IV:

Public Prosecution Service

Article 219

(Functions and statute)

1. *The Public Prosecution Service has the competence to represent the state and defend the interests laid down by law, and, subject to the provisions of the following paragraph and as laid down by law, to participate in the implementation of the criminal policy defined by the entities that exercise sovereignty, exercise penal action in accordance with the principle of legality, and defend democratic legality.*
2. *The Public Prosecution Service shall have its own statute and autonomy, as laid down by law.*
3. *The law shall create special forms of advice to be provided to the Public Prosecution Service in cases involving strictly military crimes.*

²²⁷ See E. Maia Costa, "El Ministerio Público en Portugal", *Jueces para la Democracia*, nº 21 (1994), pp. 84-87.

²²⁸ Article 3 of the Law MP: "The Public Prosecution Service owns autonomy in relation to the other organs of central, regional and local power, ..."

4. *The agents of the Public Prosecution Service are accountable judicial officers, shall form part of and be subject to a hierarchy, and may not be transferred, suspended, retired or removed from office except in the cases provided for by law.*

5. *The competences to appoint, assign, transfer and promote agents of the Public Prosecution Service and exercise discipline over them pertain to the Prosecutor General's Office.*

Article 220

(Prosecutor General's Office)

1. *The Prosecutor General's Office is the superior body of the Public Prosecution Service and shall have the composition and competences laid down by law.*

2. *The Prosecutor General's Office is presided by the Prosecutor General and encompasses the High Council of the Public Prosecution Service, which includes members elected by the Assembleia da República and members elected by the public prosecutors from among their number.*

3. *Without prejudice to the provisions of Article 133(m),²²⁹ the Prosecutor General's term of office is six years.*

These rules are developed in the Law on the Public Prosecution (*Estatuto do Ministério Público*, hereinafter Law MP) adopted in 2019, last amended in 2025.²³⁰ The MP is organized as a procedural autonomous judicial body (*magistratura*), in two senses: it does not interfere with other branches of government in its actions, and it is conceived as a distinct judicial body, guided by the principle of separation. It represents a certain parallelism with respect to the judiciary (Article 219.2, CRP; Articles 2 and 96.1, Law MP). This autonomy is defined by its commitment to criteria of legality and objectivity and only subject in its decisions to the directives, orders, and instructions provided for in the Law MP (Article 3.2).

Main functions

Although endowed with powers that are not materially jurisdictional nor limited to those exercised by the courts, the MP is a body structured within the judiciary exercising its functions within the justice system with functional autonomy and separate from the judges. More commonly associated with the exercise of its powers in the criminal field, the MP has also some powers outside the criminal justice system. The powers and functions are listed in Article 4 of the Law MP:

- *upholding the democratic legal order;*
- *representing the State, the Autonomous Regions, local authorities, the incapacitated, unknown or uncertain persons, and those absent whose whereabouts are unknown;*
- *participating in the execution of the criminal policy as defined by the bodies sovereign bodies;*
- *pursuing criminal prosecution guided by the principle of legality;*

²²⁹ Article 133
(Competences [of the President of the Republic] in relation to other entities)

"In relation to other entities and bodies the President of the Republic has the following powers:

m) Upon a proposal from the Government, to appoint the President of the Court of Auditors and the Prosecutor General and discharge them from office;"

²³⁰ Lei n.o 68/2019 of 27 August, last amended in 2025, Lei 57/2025, of 24 July, accessible at: https://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=3119&tabela=leis&so_miolo=. The complete legislation related to the MP of Portugal is available at: https://www.pgdlisboa.pt/leis/lei_main.php?codarea=478&so_miolo=

- carrying out investigative and preventive actions within the scope of their powers, and when necessary, assisted by criminal the police forces;
- initiate administrative proceedings to defend the public interest, fundamental rights, and administrative legality;
- exercising *ex officio* the actions in favour of workers and their families in defense of their social rights;
- defending, in cases provided for by law, collective and diffuse interests (class actions);
- assuming, in accordance with the law, the defense and promotion of the rights and interests of children, youth, the elderly, adults with reduced capacities, and other particularly vulnerable persons;
- affirming the independence of the courts, within the scope of their powers, and exercising the jurisdictional function in accordance with the Constitution and the laws;
- promoting the enforcement of the decisions of the courts, for which they are accorded standing;
- oversight of the constitutionality of regulatory acts;
- intervention in proceedings affecting the public interest;
- the exercise of advisory functions;
- oversight of the procedural activity of the criminal police bodies;
- filing appeals against decisions that may be the result of collusion between parties to defraud the law, or that have been issued in express violation of the law.

Brief overview of the organizational structure

The General PP Office (*Procuradoria Geral da República*) comprises the General PP (*Procurador-Geral da República*), whose functions are set out in Article 19 Law MP and consist mainly in directing the General PP Office, represent the institution, present the annual report of the MP and elaborate the general instructions for the MP; the Deputy General PP (*Viceprocurador-Geral da República*), who will exercise the functions of the General PP when substituting him/her (Article 20 Law MP); the Superior Council of the Public Prosecutor's Office (*Conselho Superior do Ministério Público*), which is the MP self-governing body (Article 21 Law MP), the Advisory Council of the General PP Office (*Conselho Consultivo da Procuradoria-Geral da República*), as the main consultative body of the General PP Office (article 43 ff. Law MP); the legal auditors, the national coordination offices and the General Secretariat (Article 15 Law MP). The General PP of the Republic is the highest authority with jurisdiction over the other PPs, and from top to bottom the whole hierarchical structure goes down. The European Delegated Prosecutors, and the representative of Portugal at EUROJUST are also members of the PP (Article 12 Law MP).

The actions of the PPs are subject to three major constitutional principles: responsibility (they are responsible for the fulfillment of their duties and for observing the directives, orders, and instructions they receive); hierarchical subordination (subordination to their higher ranked superior and the consequent obligation for them to comply with the instructions they receive); and stability (PPs cannot be transferred, suspended, retired, or dismissed, or, by any means, changed from their position except in the cases provided for in the Law MP) (Article 219.4, CRP; Articles 97 and 99 Law MP).

In accordance with the Constitution and the Law MP (Articles 12 and 14) and the Law on the Organization of the Judicial System (Law 62/2013, of August 26, Judiciary Act)²³¹ the main territorial bodies of the MP are:

²³¹ Lei n.º 62/2013 26 August *Lei da organização do sistema judiciário* (Judiciary Act), last amended 24th July 2025, available at: https://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=1974&tabela=leis

- the General PP's Office, its highest body, which has administrative and financial autonomy (Article 18 Law MP);
- the (4) Regional PP General's Offices, which are the coordination and management bodies of the activity and services of the MP in the relevant area of the judicial districts (Lisbon, Porto, Coimbra, and Évora);
- the (23) Regional Prosecutor's Offices, bodies responsible for coordinating and directing the activities and services of the Public Prosecutor's Office within the respective regional area.
- the (4) Administrative and Fiscal Prosecutor's Offices, bodies responsible for directing, coordinating, and supervising the activities of the Public Prosecutor's Office within the respective territorial jurisdiction area.

The functions of the General Public Prosecutor's Office are set out in Article 15 Law MP:

- a) Promoting the defense of democratic legality;*
- b) Appointing, placing, transferring, promoting, dismissing, assessing professional merit, exercising disciplinary action, and generally performing all acts of a similar nature related to Public Prosecutor's Office magistrates, with the exception of the Attorney General of the Republic;*
- c) Directing, coordinating, and overseeing the activities of the Public Prosecutor's Office and issuing directives, orders, and instructions that must be followed by Public Prosecutor's Office magistrates in the performance of their respective duties;*
- d) Pronouncing on the legality of contracts in which the State has an interest, when its opinion is required by law or requested by the Government;*
- e) Providing an opinion in cases of consultation provided for by law and at the request of the President of the Assembly of the Republic, members of the Government, Representatives of the Republic for the autonomous regions, or self-governing bodies of the autonomous regions;*
- f) Propose legislative measures to the member of the Government responsible for justice aimed at increasing the efficiency of the Public Prosecutor's Office and improving judicial institutions;*
- g) Inform, through the member of the Government responsible for justice, the Assembly of the Republic and the Government of any obscurities, deficiencies, or contradictions in legal texts;*
- h) Oversee the procedural activities of criminal police agencies, in accordance with this Statute;*
- i) Coordinate the procedural activities of criminal police agencies among themselves, in accordance with the law;*
- j) Decide on matters related to the Public Prosecutor's Office's information systems and technologies;*
- k) Ensure the production of statistics related to the Public Prosecutor's Office's activities, promoting transparency in the justice system;*
- l) Perform other functions conferred by law.*

2. List the prosecutorial self-governing bodies, their key areas of competence, and the periods of their establishment and reform.

The self-governing prosecutorial body is the Superior Council of the Public Prosecutor's Office of Portugal (*Conselho Superior do Ministério Público*, SCPP). In the text resulting of the 1982 Constitutional amendment, it is mentioned the establishment of a collegiate body within the General Prosecutor's Office of the Republic to underscore the autonomy of the GPP, but it is not until the constitutional amendment of 1989 that the express reference to the Superior Council of the Public Prosecution is mentioned. This was introduced to reinforce the autonomy of the PP service. The main provisions of the SCPP are contained in Articles 21 to 38 Law MP.

The SCPP, whose **functions** are listed under Article 21 Law MP, is mainly responsible for the appointing, placing, transferring, promoting, dismissing, evaluation and assessing professional merits and exercising disciplinary action of the members of the PP, except those powers which are reserved to the GPP him/herself (for the full list of powers, see under question 33).

Composition: In accordance with Article 22 Law MP, the SCPP is composed of:

- a) The General PP, who presides it;
- b) All the General Regional PPs;
- c) An adjunct PP (*Procurador-geral-adjunto*), elected from among them;
- d) Six public prosecutors elected from among and by the public prosecutors, ensuring representation of the area of jurisdiction of the four regional territorial prosecution offices;
- e) Five members elected by the Legislative Assembly from among individuals of recognized merits;
- f) Two members appointed by the member of the Government responsible for the area of justice, from among individuals of recognized merits.

3. Describe the reasons for the establishment and reform of the prosecutorial self-governing bodies, and how the results were assessed by international institutions, primarily the Council of Europe and the EU.

As mentioned above, the establishment of a college within the GPPO introduced in the Constitution of Portugal by way of the amendments of 1982, was followed by the specific reference to the Superior Council of the Public Prosecution in the 1989 constitutional revision. Mainly due to its composition, this Council acquired a status of self-government. The goal was to increase the autonomy of the PPO and make it stronger against interferences from the executive.

B. Prosecutors' Career

4. What are the stages in the procedure for first-time appointment as a prosecutor? Which entities are involved, and what is their role?

Entry into the training of judges and public prosecutors is done through public tender, published in the *Diário da República* (DR) and involves various selection methods. It aims to fill vacancies in judicial courts (judges and public prosecutors) or to fill vacancies for judges in administrative and tax courts. The recruitment of the members of the PP follows the same path as for the judges and the procedure is entrusted to the Center for Judiciary Studies (*Centro do Estudos Judiciários*, CEJ).

The CEJ was created in 1979 and is the Portuguese institution responsible for both the initial and on-going training of judges and public prosecutors, as well as training initiatives at an international level. Although working under the responsibility of the Ministry of Justice, it has legal personality and administrative autonomy.

The recruitment procedure starts with a public announcement of the vacant positions and the holding of the recruitment procedure and involves several eliminatory stages: **1)** written phase: which consists of an initial written assessment; **2)** oral examination; and **3)** a psychological selection exam to assess the aptitude for the role.

Those who pass the selection process are admitted to a training program at the CEJ, where they undergo specific training, with lectures, group activities, and simulation of proceedings as well as drafting of decisions (for more details see below under question 7). Trainees are appointed as probationary judges or prosecutors –traditionally the best ranked have opted for the position of judge, but this is not always the rule–, undertaking their duties in a first-instance judicial court under the supervision of a mentor. After successfully completing the probationary period, trainees are definitively appointed as judges or public prosecutors.

The first appointment of new PPs, is in the category of PPI, preferably in an PP office of general jurisdiction, identified by the SCPP through a deliberation prior to the movements. Appointments are made according to the order of rank obtained in the entry courses or internships, established in a single final ranking list (roster). (art. 155 Law MP).

The filling of positions for supplementary positions is made from among PPs with at least three years of service, under terms to be regulated by the SCP and is in effect until the next magistrate movement. All positions in the supplementary position are open to competition in the annual PPs transfer (movimento). (art. 156 Law MP).

5. What are the eligibility criteria for first-time candidates for the position of prosecutor, and which legal act provides for them? Which entities involved in the selection procedure assess compliance with these criteria, and how?

As a general requirement the candidates have to be a Portuguese citizen or a citizen of Portuguese-speaking States with permanent residence in Portugal, with a recognized right to exercise the functions of a judge/prosecutor under the terms of the law and under conditions of reciprocity. In addition, they have to fulfill the general requirements to enter into the public service (article 146 Law MP). These requirements are set in *Decreto-Lei* n.º 204/98, of 11 July and mainly consist of be of legal age (older than 18 years), not be under the prohibition of performing public duties, have physical and mental aptitude for the position, have fulfilled military or civic service duties (if applicable), and have up-to-date mandatory vaccinations.

The administrative staff of the CEJ checks compliance with the eligibility criteria. The general rules on the administrative procedure apply. Therefore, a list of included candidates will be published, as well as list of excluded ones, eventually with the possibility to correct any failure in the application form or complete any missing documents. Against these decisions, there is the possibility to file administrative remedy.

There are two ways to apply or entry into the judiciary/prosecution service:

The general requirement is to hold the necessary academic qualification: a degree in Law for five years or less, provided that it is complemented, in this case, by a Masters or PhD in the field of Law obtained at a Portuguese university, or by equivalent academic degrees recognized in Portugal (article 5(b) of Law n.º 2/2008, of 14 January, in conjunction with article 40(c) of the *Estatuto dos Magistrados Judiciais* (EMJ – Judiciary Statute) and article 146(c) of the *Estatuto do Ministério Público*.

In addition, there is a second entry path, accrediting professional experience. In such case, in addition to meeting the academic qualification the candidates must proof to have professional experience, in the judicial

area or in other related areas, relevant to the exercise of the functions of a judge/prosecutor, with an effective duration of not less than five years.²³²

6. How is gender equality ensured in the appointment process? Are any positive measures applied for female candidates (e.g., quotas or provisions ensuring selection in cases of equal merit)? If yes, how are they implemented?

In the last decades, a significant transformation of legal professions has been its increasing “feminization” and the increasing predominance of female judges and public prosecutors since 2006 has been overwhelming.²³³ If, until 1974, the judiciary and the Public Prosecution were professions forbidden to women in Portugal, a study of 2011 showed that out of 1970 Portuguese judges, 1040 were women (53%). In the Public Prosecution, 49,3% of the total of PPs were women and the percentage of female prosecutors on the basis of the career goes beyond that number (61,3%). The share of women in the judiciary and Public Prosecution is visible even at the Centre for Judicial Studies, where at that time 85% of the attendees are women. This trend has continued during the last years. Council of Europe Data of 2021 show that 63% of judges and 65,7% of PPs were women.²³⁴

Public prosecutors

Absolute number of public prosecutors by instance and gender

2021	Total	Distribution by instance	Male	Female	Male	Female
1st instance	1 389	93,9%	446	943	32,1%	67,9%
2nd instance	75	5,1%	53	22	70,7%	29,3%
Supreme court	16	1,1%	8	8	50,0%	50,0%
Total	1 480		507	973	34,3%	65,7%

However, as reflected in the CEPEJ report (2020-2022),²³⁵ there are no specific provisions for facilitating gender equality within the framework of the procedures for recruiting judges/prosecutors, neither for promoting them.

At the court or public prosecution services level, there is no person (e.g. an equal opportunities commissioner)/institution specifically dedicated to ensuring the respect of gender equality in the organisation of judicial work in Portugal.

7. Describe the mandatory training required for first-time candidates or newly appointed prosecutors.

²³² In the contest to fill vacancies in the judicial courts, for each position (judicial and the Public Prosecutor's Office), an admission quota of 25% is reserved for each of the two admission routes.

In the contest to fill vacancies for Fiscal and Administrative courts, an admission quota of 25% is reserved for each of the two admission routes.

²³³ M. Duarte, P. Fernando, C. Gomes, A. Oliveira, “The Feminization of the Judiciary in Portugal: Dilemmas and Paradoxes”, *Utrecht Law Rev.* Volume 10, Issue 1 (January) 2014, <https://utrechtlawreview.org/articles/255/files/submission/proof/255-1-606-1-10-20140131.pdf>

²³⁴ CEPEJ evaluation data of the judicial systems (2020-2022), available at: <https://rm.coe.int/portugal-2021-data-/1680ab89c3>

²³⁵ See p. 36 of the CEPEJ report (2020-2022), available at: <https://rm.coe.int/portugal-2020-en/1680a85c93>

The training activities are provided according to the Regulation on Training Activities of 2022²³⁶.

Initial training consists of a theoretical and practical phase, as well as a probationary stage. The theoretical and practical phase comprises two successive cycles of 11 months each. The first cycle takes place at the CEJ premises, and its main objective is to assist the trainees in developing the qualities and acquiring the technical skills fundamental to the judicial functions, not disregarding the human dimension of such functions. The subjects of the theoretical and practical phase have been divided into three groups: General, that deals with matters like Constitutional Law, Ethics and Deontology, Judicial organization and Judicial Institutions and Foreign Languages; Specialized, approaching subjects such as European and International Law, Administrative Law, Forensic Medicine, Judicial Psychology and Judicial Sociology; Professional, dealing with Civil Law and Civil Procedure, Criminal Law and Criminal Procedure, Family and Children's Law and Labour Law and Labour Procedure.

The first cycle, delivered by trainers, include regular group training sessions, case discussion, mock trials and seminars and the trainees' participation is assessed by trainers regarding their aptitude to perform the functions of judges or public prosecutors. To that end, two reports with qualitative assessments are written at the end of the first and second trimester, those assessments becoming quantitative in the moment of the final grading of the cycle.

The second cycle takes place at the courts, in which the trainees are placed taking into consideration their previous option to become judges or public prosecutors. Here, the training is supervised by mentor judges and prosecutors and involves the participation of the trainees in judicial tasks; they are expected to take part in acts regarding the preparation of cases, to help in preparing drafts of documents for a case and to assist with the gathering of evidence and judicial decisions.

Upon completion of the theoretical and practical phase, trainees begin the probationary period and are appointed as trainee judges or public prosecutors by the respective High Council. The probationary period lasts for 18 months, during which the trainees perform their respective functions with the assistance of supervisors, but with full responsibility for their acts. After this period, the judges and prosecutors are granted tenure.

The newly appointed judges and prosecutors may maintain their attachment to the CEJ by attending on-going training, which is another attribution of the CEJ in the framework of the professional training of judges and prosecutors.

The on-going training plan is drafted yearly by the CEJ in direct cooperation with the High Councils of Judges, Administrative Judges and Public Prosecutors, so as to enhance the deepening of knowledge, facilitating the contact and the exchange of experiences through the organization of seminars, conferences, workshops, meetings, debates and lectures.

The carrying out of the international training activities is an attribution of the International Department that operates as part of the CEJ. Under the direct supervision of the CEJ Director, it is responsible for the planning, coordination, provision of information and technical support in matters relating to judicial training, within

²³⁶ Regulamento 924/2022, of 21 September 2022, *das Atividades de Formação dos Magistrados do Ministério Público*, available at: https://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=3806&tabela=leis&ficha=1&pagina=1

the context of European affairs, international relations and cooperation agreements. At present, the CEJ employs 19 trainers and 45 staff members.

The OECD Report 2024, “Modernisation of the Justice Sector in Portugal,” underlines also that the Centre for Judicial Studies (CEJ) offers continuous training and education for legal professionals, including judges and public prosecutors. These programmes cover various areas, including new legal frameworks, digital skills, and innovative practices in the justice sector.²³⁷

8. How has the procedure for first-time appointment and the relevant criteria functioned over time? What weaknesses have been identified? How were they assessed by international institutions, primarily the Council of Europe and the EU?

The first appointment for PPs follows the same rules as for judges. The working conditions, namely a shortage of administrative and support staff (also clerks) in the prosecution service is signaled as one of the issues that make the work in the prosecution service less attractive. The payment is less than the average of the professional lawyers, but the career progress is more stable. According to CEPEJ data (2021),²³⁸ the salary of the Portuguese PPs is above the media of the EU, however it is mentioned as one of the factors which makes the career unattractive.

9. What are the stages in the procedure for transferring a prosecutor to another office, particularly to a higher-level position? Which entities are involved, and what is their role?

According to Article 11 of the Judiciary Act (Law 62/2013):

“Appointment, assignment, transfer, promotion, and other acts concerning Public Prosecutor's Office magistrates

1. Public Prosecutor's Office magistrates may not be transferred, suspended, promoted, retired, or dismissed except in the cases provided for in their respective statutes.

2. The appointment, assignment, transfer, promotion, dismissal, assessment of professional merit, exercise of disciplinary action, and, in general, the performance of all acts of a similar nature concerning Public Prosecutor's Office magistrates, with the exception of the GPPI, are the responsibility of the GPPO, through the SCPP.”

As to the precise rules on transfer and promotion procedure, please, see under question 11.

²³⁷ OECD Report 2024, Modernisation of the Justice Sector in Portugal, available at: https://www.oecd.org/content/dam/oecd/en/publications/reports/2024/06/modernisation-of-the-justice-sector-in-portugal_08c45955/cbde9a7a-en.pdf

This report is focused on the level of digitalisation in the justice system, and regarding the training of prosecutors (continuous, not initial), it states that “within *GovTech Justiça*, certain sporadic initiatives, such as *Lab Justiça*, help strengthen the skills of various actors in justice services on strategic management, digital transition and leadership in a context of change (see Box 5.2). This investment in capacity-building is particularly relevant in the context of executing projects and reforms envisioned in the Recovery and Resilience Plan.

²³⁸ Available at: <https://rm.coe.int/portugal-2021-data-/1680ab89c3>

10. What are the criteria for candidates being transferred to a higher-level position? Which entities assess compliance with these criteria, and how?

The merit evaluation of the PPs in Portugal is carried out through inspections, which aim to obtain information on their performance and assess their professional merit based on criteria and parameters established in the Law MP (art. 21 Law MP) and more precisely in the Inspection Regulation on the proceedings for evaluating PPs 13/2020.²³⁹ Inspections provide important data for career development and ensuring the quality of justice. The objectives of the inspection are to obtain information on how the PPs perform their duties; and based on that assess their professional merit (art. 1 Regulation 13/2020).

The evaluation criteria are set out in art. 140 Law MP, and are:

Classification must take into account the manner in which PPs perform their duties, namely: a) Their technical preparation and intellectual capacity;

b) Their suitability and intellectual prestige;

c) The respect for their duties;

d) The volume and management of the work under their responsibility;

e) Their productivity and adherence to the deadlines established for the performance of procedural acts, considering the existing caseload and the available means and resources;

f) The circumstances in which the work is performed;

g) Their participation and contributions to the proper functioning of the service;

h) The results of previous inspections;

i) The curriculum activities contained in their individual file;

j) The length of their service;

k) The disciplinary sanctions applied during the period covered by the inspection;

l) Their ability to simplify procedural acts.

These criteria are further specified in art. 11 of Regulation 13/2020:

Article 11.

Merit Assessment Parameters

1 - The inspection that assesses the service and merit of the judge must consider his or her ability to practice the profession, his or her technical preparation, and his or her adaptation to the service being inspected.

2 - The ability to exercise the professional duties is assessed taking into account, among others, following factors:

a) Suitability and politeness;

b) Impartiality and objectivity;

c) Common sense, reasonableness, and a sense of justice;

d) Adequate relationships with other judicial officers and procedural participants;

e) Functional coordination with criminal police agencies and other supporting entities;

f) Collaboration and contribution to the judicial/prosecutorial training system;

g) Presence and resourcefulness in serving the public; and

h) Simplification of procedural procedures.

²³⁹ See Regulation 13/2020, of 9 January 2020, *Regulamento dos procedimentos de inspeção do Ministério Público*, available at: https://www.pgdlisboa.pt/leis/lei_print_articulado.php?tabela=leis&artigo_id=&nid=3229&nversao=&tabela=leis

3rd - The assessment of technical and functional preparation focuses particularly on:

- a) Capacity and manner of performing the role, particularly the efficiency of resources, the effectiveness of decision-making, and the achievement of consensus;*
- b) Ability to gather and assess the facts and understand the legal situations under consideration;*
- c) Ability to summarize and resolve issues, through clarity and simplicity of presentation and argumentative discourse, practical and legal sense, and the thoughtfulness and knowledge demonstrated in decisions and other procedural acts;*
- d) Authorship of published legal works; and*
- e) Relevant interventions in public events, especially conferences and colloquia.*

4 - In adapting to the service, the following aspects, among others, are taken into account:

- a) Working conditions;*
- b) Volume and complexity of the service;*
- c) Productivity, efficiency, and innovation;*
- d) Organization, management, and method; e) Compliance with the deadlines established for the performance of procedural acts, considering the existing caseload and the available means and resources;*
- f) Proficiency in using official case management platforms and other databases, with correct entry of data and identifying elements for the various types of procedural acts;*
- g) Punctuality in compliance with and attendance at scheduled acts and hearings;*
- h) Diligence and dedication;*
- i) Level of achievement of established objectives.*

5th - In the evaluation of magistrates with management functions, the following elements are also considered:

- a) Leadership qualities;*
- b) Efficiency in directing, coordinating, guiding, and overseeing the functions of the Public Prosecutor's Office;*
- c) Level of hierarchical intervention of a statutory or procedural nature; and*
- d) Initiative in the adjudication of cases, especially when justified by complexity or the operation of the service.*

The merit evaluation of judges, under the jurisdiction of the SCPP carried out through the merit evaluation section, shows for 2024: 197 PPs were evaluated and the scores where: 122 "Very Good," 46 "Good with Distinction," 21 "Good," 7 "Sufficient," and 1 "Mediocre."²⁴⁰

11. How has the procedure for transferring prosecutors and the relevant criteria functioned over time? What weaknesses have been identified? How were they assessed by international institutions, primarily the Council of Europe and the EU?

Article 77 Law MP regulates the reassignment or temporary transfer in following terms:

- 1 - Reassignment consists of the temporary assignment of a PP to a court, prosecutor's office, or section of a department other than the one in which they are assigned.
- 2 - Reassignment is determined by the SCPP, requires prior hearing of the PP, and cannot imply that the PP will work in a different district or in a location more than 60 kilometers from their assigned location.

²⁴⁰ See Annual Report of the General Public Prosecution of Portugal (*Relatório síntese do ministério público*) 2024,p. 39, available at: https://www.ministeriopublico.pt/sites/default/files/editor-files/relatorio_sintese_mp_2024_final.pdf

3 - Reassignment ceases upon the subsequent transfer and cannot be renewed, for the same PP, without his/her consent before three years have passed.

Transfer of a PP can result from the imposition of a disciplinary sanction, as of art. 227 c) Law MP. The transfer in this case consists of the prosecutor being assigned to a position of the same category outside the jurisdiction of the court, department, tribunal, or service in which he or she previously worked (art. 230 Law MP).

Article 236. Transfer: 1. Transfer applies to serious or very serious offenses that affect the prestige required of Public Prosecutor's Office magistrates and jeopardize their continued existence in the social environment in which they hold office or in the court, tribunal, or department where they perform their duties.

2. Transferred Public Prosecutor's Office magistrates may not return to the district, administrative and tax court, or court with expanded territorial jurisdiction where they previously held office within three years of the sanction being imposed. This sanction represents also the loss of 60 days of seniority in service (art. 239.1 Law MP).

The transfer to a higher ranked PP office position as well to a specialised court (family, minors, commercial courts, eetc.) is based on the combination of seniority and evaluation.

Following art. 157 Law MP, appointments in Central Courts, Courts with Expanded Territorial Jurisdiction, and Administrative and Tax Courts shall be filled from among PPs with a merit rating and at least 10 years of service. The following preference factors, in descending order, are professional resumes as assessed by service ratings, experience in the respective field, and specific training. To assess experience, previous work in the specialized field in question is taken into account. Specific training requires approval in specialized courses offered by the CEJ. The appointment of judges to these positions without prior experience or specific training may require them to attend additional training after their appointment. Other specific trainings shall also be considered by the SCPP, but giving priority to the specific trainings in the field of the position to be covered.

As to the promotion procedure, it is provided under Article 148 Law MP:

"1 - Promotion to Deputy PP is made through a public selection process, restricted to federal prosecutors with a positive evaluation.

2 - By resolution of the SCPP, twice as many federal prosecutors are called to the selection process as the positions being selected, classified as Very Good or Good with Distinction, at a ratio of one Good with Distinction for every two Very Good candidates, who hold the most seniority in the category and do not declare their waiver of the promotion.

3 - The selection process is curricular in nature and includes a public hearing..

4 - Grading is based on the relative merit of the candidates, taking into account the overall curriculum evaluation.

5 - The curriculum evaluation considers the judge's professional background and takes into account, among others, the following factors:

a) Service evaluation;

b) Performance of management positions in PPs office agencies;

c) Other factors that support the bidder's suitability.

6 - The selection board is chaired by the GPP, with the power of delegation, and is composed of two deputy GPPs with at least five years of experience in the category, and two jurists of recognized merit, all to be appointed by the SCPP.

7 - The functions of each board are fulfilled by ranking the admitted candidates, according to the criteria defined in their own regulations.

8 - The ranking referred to in § 4 is valid for the period defined by the SCPP, between 1 and 3 years, for any vacancies that may occur during that period.

9 - The provisional list is notified to interested parties for a prior hearing within a period of no less than 10 days.

10 - The SCPP regulates the other terms of the selection board.

Article 149. Filling Vacancies

1 - The positions of Deputy GPP are filled by transfer or promotion from among Federal Prosecutors.

2 - Positions not filled by transfer are filled by promotion.

3 - Placement is made by competitive examination, in the movements subsequent to graduation, with the time limit established in § 8 of the previous article, and whenever, at such times, the existence and need to fill vacancies for Deputy Attorney General are verified.

4 - When reasons of service convenience justify it, the SCPP may, outside of the transfers of PPs, proceed with the placement, until the next transfer of PPs and Deputy GPP, respecting their respective ranking.

5 - The application for admission to the public service exam referred to in § 3 may be submitted to the courts of appeal and the Central Administrative Courts, or to only one of these jurisdictions.

6 - The appointment is primarily intended for the effective exercise of functions as a public prosecutor in the jurisdiction corresponding to the area for which the candidate is applying.

7 - The positions that require nomination by the GPP to the SCPP may be filled from among PPs who were evaluated and ranked under the terms of the previous article. No specific critical or negative assessment regarding this promotion and transfer system by international bodies (CoE), has been found.

Information of the Portuguese PP to CoE dated on 2018 reads:

*“The deepening of the PPS’ independence requires, on the other hand, the effectiveness of its **accountability**. Being more autonomous, having the power to make real decisions about the establishment of priorities and the allocation of means, PPS will still have to redesign its articulation with other democratic institutions, mainly the Parliament, by negotiating its budget and presenting before this body the results of its performance, thus reinforcing transparency.”²⁴¹*

12. Do individuals have the right to appeal decisions denying the appointment or transfer (particularly to higher-level positions)? If yes, on what grounds and what are the outcomes of such appeals?

All decisions adopted by the sections of the SCPP can be appealed to the Plenary of the SCPP (art. 10. Internal Rules SSCP) and the decisions of the plenary are subject to appeal to the administrative courts.

13. What are the grounds and sanctions for disciplinary liability of prosecutors? What are the stages of the disciplinary procedure? Which entities are involved, and what is their role?

A disciplinary offense is any act, even if merely negligent, committed by public prosecutors in violation of the principles and duties enshrined in this Statute, as well as any other acts committed by them that, by their

²⁴¹ <https://rm.coe.int/portugal-en-ccpe-reply/16809fc129>

nature and repercussions, are incompatible with the responsibility and dignity essential to the performance of their duties. (Article 205 Law MP)

Disciplinary proceedings are independent of criminal and administrative offense proceedings instituted for the same facts. When, in disciplinary proceedings, the existence of a criminal offense is determined, the prosecutor immediately notifies the Superior Council of the Public Prosecutor's Office and the Attorney General of the Republic of this fact. Once an order has been issued validating the identification of a Public Prosecutor's Office magistrate as an accused, the competent judicial authority immediately notifies the Superior Council of the Public Prosecutor's Office of this fact. (Article 207 Law MP).

The disciplinary offenses are classified as very serious, serious, or minor, depending on the circumstances of each case (art. 213 Law MP).

The offences are:

Article 214 - Very Serious Offenses

"Acts committed with intent or gross negligence that, due to the repetition or severity of the violation of duties and incompatibilities provided for in this Statute, are considered very serious offenses, which bring disrepute to the administration of justice and the exercise of the Public Prosecutor's Office, namely:

- a) Refusal of procedural promotion, even if based on the absence, obscurity, or ambiguity of the law;*
- b) Interference, through orders or pressure of any kind or nature, in the duties of another judge with the aim of obtaining, through a favorable decision, illegitimate advantages for oneself or others;*
- c) The exercise of any activity incompatible with the position, even if the judge is retired;*
- d) Failure to comply with the duty to declare oneself disqualified or to activate the legally provided disqualification mechanisms, aiming to harm, favor, or provide procedural, economic, or other advantages or benefits to a party or intervener in a judicial proceeding or proceeding of another nature;*
- e) The unlawful disclosure of facts or data learned in the performance of one's duties, which cause harm to the progress of a case, to any person, or to the image or prestige of the justice system;*
- f) Unlawful and continuous absence for more than 10 consecutive business days or 20 intermittent business days per year from the judicial district in which the judge is assigned, or failure to report for duty with express intent to abandon the position, with abandonment being presumed in the event of an unjustified absence for 30 consecutive business days;*
- g) Falsehood or material omission in the provision of data and elements contained in requests for leave, declarations of compatibility, remuneration, financial assistance, or any other documents that may be used to assess a claim or fulfill a legal obligation of the applicant;*
- h) Abusive use of the position of public prosecutor to obtain personal advantages, for oneself or for a third party, from authorities, civil servants, or professionals of other categories;*
- i) Engaging in public political-partisan activities;*
- j) Repeated failure to comply with the legal obligations of filing income and asset declarations.*

Article 215 Serious Violations

1 - Serious violations are acts committed with intent or gross negligence that reveal a serious lack of interest in fulfilling official duties, especially: a) Failure to comply with directives, orders, and instructions issued by the Attorney General;

- b) Excess or abuse of authority, or a serious lack of consideration and respect due to citizens and all those with whom they interact in the performance of their duties;*
- c) Unlawful public disclosure, outside of established channels or means of information, of facts or data learned in the performance of their duties or by reason thereof;*
- d) Unlawful and continued absence for more than five and less than 11 business days from the judicial district in which the Public Prosecutor's Office magistrate is assigned;*
- e) Unjustified, repeated, or grossly negligent failure to comply with the timetables established for public events, as well as the deadlines established for the resolution of proceedings or the exercise of any legally conferred powers, particularly when three months have elapsed since the end of the deadline;*
- f) Unjustified failure to comply with legitimate and legally formal requests for information, instructions, decisions, or official appointments issued by a superior within the scope of their duties;*
- g) Obtaining authorization to perform an activity compatible with the duties of a Public Prosecutor's Office by providing false information;*
- h) Providing false information regarding one's professional career or the performance of one's duties;*
- i) Repeated failure to fulfill the obligations of direction, guidance, and advocacy, in the cases provided for by law;*
- j) Unlawful interference in the official activities of another judge;*
- k) Access to personal databases made available for the exercise of official duties, not freely accessible to the public, for purposes unrelated to the official duties;*
- l) Use of the content of the personal databases referred to in the previous paragraph for purposes unrelated to the official duties;*
- m) Unjustified exercise of the right to refuse;*
- n) Any of the conduct listed in the previous article that does not meet all the requirements set forth in the respective body.*

Article 216 Minor Offenses

Minor offenses are those committed with minor negligence that reflect a misunderstanding of official duties, namely:

- a) Unlawful and continuous absence for more than three and less than seven business days from the judicial district in which the judge is assigned;*
- b) Performing an activity compatible with the duties of a public prosecutor, without obtaining, when required, the appropriate authorization;*
- c) Any of the conduct listed in the previous article that does not meet all the requirements set forth in the respective caput of § 1 and that, for this reason, is not considered a serious offense. Article 217. Unjustified Non-Compliance.*

The assessment of unjustified non-compliance provided for in paragraph e) of No. 1 of Article 215 requires a specific consideration of the volume and characteristics of the service provided by the Public Prosecutor's Office, including the number of completed cases, if applicable, the circumstances surrounding the performance of duties, the percentage of cases in which rulings were issued late, as well as a specific consideration of whether, given these circumstances and personal circumstances, it would have been reasonable to require the judge to behave differently.

The disciplinary liability is extinguished by:

- a) Expiry and statute of limitations of the disciplinary proceedings; b) Expiry of the sanction;

- c) Compliance with the sanction;
- d) Death of the accused;
- e) Amnesty and general pardon. (art. 208 Law MP).

Article 227 provides for the type of sanctions that can be imposed to a PP for a disciplinary offence:

- a) Warning;
- b) Fine;
- c) Transfer;
- d) Suspension from office;
- e) Retirement or compulsory retirement;
- f) Dismissal.

2 - The sanctions applied are always recorded, except for warnings, in which case recording may be waived.

Disciplinary sanctions are decided and imposed primarily by the disciplinary section within the SCPP. This section comprises the GPP and following members of the SCPP: 5 of the members which are PPs in a number proportional to their respective representation; the Deputy GPP; 3 of the members elected by Parliament; and 1 member appointed by government designated by lottery (art. 11 Internal Rules).

As to the stages of the ordinary disciplinary proceedings, can be divided into four phases: Instruction; Defence; Report and Public Hearing; and Decision

1 — INSTRUCTION : The disciplinary procedure must be completed within 60 days. The instructor, within a maximum of 5 days from the date he/she was notified of the decision to initiate the proceedings, shall inform the SCPP and the defendant of the date of initiation. This deadline can be extended up to 30 days for reasonable reasons. During this stage the investigated PP shall be heard and the evidence will be gathered. However, any citizen, magistrate, hierarchical prosecutor or entity that has knowledge of the functional practice of prosecutor likely to be considered as a disciplinary offense may file a complaint and deliver it to the High Council.

The instructor shall mandatorily hear the defendant, at his or her request or whenever it is deemed appropriate. The defendant may request the instructor to gather evidence, which may be refused, by reasoned order, when the instructor deems the evidence already produced to be sufficient. Once the investigative acts for the inquiry have been carried out the instructor shall make a proposal to terminate this stage proceedings, which is filed to the SCPP, who will decide on closing or continuing the disciplinary proceedings. In the latter case, the instructor shall bring charges within 10 days, detailing the facts constituting the disciplinary infraction, the circumstances of time, manner and place of its perpetration and the facts that constitute aggravating or attenuating circumstances, indicating the applicable legal provisions and possible sanctions (art. 255 Law MP).

2 — DEFENCE: The defendant has a period of 20 days to present the defense and the evidence, which may be extended up to 30 days, either of his own motion or at the defendant's request. The instructor will decide on the proposed evidence, and reject those which are manifestly dilatory, impertinent or unnecessary. The defendant shall be notified of the date for the examination of the witnesses (a maximum of 20). The failure to hear the defendant with the possibility of presenting his/her defence and the omission of measures essential to establish the facts will cause the nullity of the proceedings. Other irregularities have to be challenged by the defendant within 5 days, sin knowledge.

3 — REPORT AND PUBLIC HEARING: Upon completion of the examination, the instructor shall draw up a report containing the facts that are considered proven, its qualification and the concrete sanction applicable (art. 258 Law MP). The defendant may request a public hearing to present his defense (art. 259 Law MP). The public hearing shall be presided over by the President of the SCPP or by the Vice-President. At the hearing the members of the Disciplinary Section, the instructor, the defendant and his defender or representative shall be present. Once the hearing is opened, the instructor shall read the final report and the defendant or his representative is given the floor to make oral submissions, after which the hearing is closed.

4 — DECISION: The HCJ shall deliberate and take a decision, and if they found a disciplinary offence has been committed, it shall specify the sanction imposed. The sanction imposed shall always be recorded, except for the warning. The Plenary of the HCJ is competent to impose a sanction of dismissal, and to decide proceedings concerning Judges of the Supreme Court and of the Courts of Appeal. The final decision, together with a copy of the report, shall be notified to the defendant personally or sent by registered mail with acknowledgement of receipt.

The disciplinary proceedings against PPs are *mutatis mutandis* like the ones provided for disciplinary proceedings for judges.

14. How have the grounds and procedure for disciplinary liability of prosecutors functioned over time? What weaknesses have been identified? How were they assessed by international institutions, primarily the Council of Europe and the EU?

In general, apart from very salient cases that reached the ECtHR and ended with judgment against Portugal, it does not seem that the procedure is raising any serious issues. The data reflected in the CEPEJ report of 2020, show that sanctions were imposed to PPs in 8 cases (3 warnings, 2 suspensions, and 3 fines), out of 18 disciplinary proceedings substantiated (the data might not be completely accurate, as explained in the CEPEJ report, p. 93).

According to the Annual report of the MP of Portugal of 2024 (published July 2025),²⁴² in exercising its disciplinary powers, the SCPP ruled on 48 inquiries and 19 disciplinary proceedings, imposing 14 disciplinary sanctions, including 4 warnings, 3 fines, 6 suspensions, and 1 transfer.

The disciplinary section deliberated, through preliminary assessments, on 149 situations brought to the attention of the SCPP (by the superior PPs, third parties, or citizens), concluding that an investigation should be initiated, pursuant to Article 270.1 Law MP, in 5 cases and that the cases should be closed in the remaining cases.

²⁴² See Annual Report of the General Public Prosecution of Portugal (*Relatório síntese do ministério público*) 2024, p. 41, available at: https://www.ministeriopublico.pt/sites/default/files/editor-files/relatorio_sintese_mp_2024_final.pdf

Quadro 4. Processos instaurados

Processos/Ano	2022	2023	2024
Inquéritos	48	36	48
Disciplinares	16	14	19
TOTAIS	64	50	67

15. What are the stages of the appointment procedure for managerial positions in the prosecution (excluding the Prosecutor General)? Which offices at all levels does it apply to? Which entities are involved, and what is their role?

The law on the MP provides specific rules for selection and appointment for managerial positions, starting with the deputy GPP (Art.14 Law MP)

In the exercise of their duties, the following judges hold powers of direction, hierarchy, and, under the law, procedural intervention:

- a) The General PP;
- b) The Deputy PP General;
- c) The Regional PP General;
- d) The Director of the Central Department of Investigation and Criminal Prosecution (DCIAP);
- e) The Director of the Central Department of State Litigation and Collective and Diffuse Interests;
- f) The Public Prosecutor's Office Coordinator of the District Public Prosecutor's Office;
- g) The Public Prosecutor's Office Coordinator of the Administrative and Fiscal Public Prosecutor's Office;
- h) The Director of the Regional Department of Investigation and Criminal Prosecution (DIAP);
- i) The Director of the DIAP.

The way PPs access these management positions is described in articles 155 to 177 Law MP. In some cases (higher positions, such as Deputy Regional Prosecutor or Regional Prosecutor General, Director of the DIAP), the Superior Council of the Public Prosecutor's Office appoints them upon proposal from the Attorney General's Office. In others, there is a competitive selection process among magistrates who meet a certain category, also by appointment from the SCPP.

The appointment to managerial positions combines seniority and experience/scoring. Usually it is required a 10 year experience, a positive evaluation, and for specific positions, also experience in the precise field. For example for heads of criminal prosecution units, art. 158 states that “The position of head prosecutor of the prosecutor's office and section in the DIAP is filled from among federal prosecutors with a merit rating and at least 10 years of service. The following are factors of preference, in descending order: a professional resume assessed by service ratings and experience in the respective field.”

For the head of the criminal prosecution office, 15 years experience is required, and the SPP will make the appointment based on a reasoned proposal from the coordinating PP of the district (*comarca*).

Requirements for the appointment of PPs Coordinating a region (several districts), art. 162 Law MP, provides:

The positions of coordinating Public Prosecutor's Office of the district are filled from among magistrates who hold effective positions as PP with at least 15 years of service and a rating of Very Good or Good with Distinction, by resolution of the SPP, after reviewing the applicants' curricula. The functions provided for in the previous paragraph are performed on a three-year commission basis, renewable for an equal period, and may exceptionally be renewed for a new period of the same duration if there is no other candidate for the district in question. During the period in which they serve, the coordinating Public Prosecutor's Office magistrate is required to attend a specific training course.

The Law MP details the requirements for every single managerial position (arts. 155 to 177 Law MP), but all of them follow the same pattern: seniority, good evaluation, and specialization or experience in the relevant field. Only for some positions as head of Special PPs offices, the General PP. For example, the filling the position of director of the Department of State Litigation and Collective and Diffuse Interests is based on the reasoned proposal presented by the GPP, and upon such proposal the SPP will make the appointment. However, the SPP cannot veto more than two nominations of the proposal of the GPP. The proposal of the GPP has to meet the requirements of seniority, category and evaluation and experience. (Article 165 Law MP)

16. What are the eligibility criteria for managerial candidates (excluding the Prosecutor General)? Can non-prosecutors be appointed (e.g., lawyers, judges, other legal professionals)? Which entities assess compliance with the criteria, and how?

See previous reply.

17. How is gender equality ensured in the appointment of managerial positions (excluding the Prosecutor General)? Are any positive measures applied for female candidates (e.g., quotas or provisions ensuring selection in cases of equal merit)? If yes, how are they implemented?

Portuguese law does not establish gender quotas or automatic tie-break rules for women in appointments to managerial positions within the PP service. Merit-based selection and equal treatment are the governing principles, following the criteria for evaluations and promotions, as explained above (see question 10). While there is no legal preference for candidates of the under-represented sex, equality and non-discrimination rules seem to apply fully and criteria may not indirectly penalize motherhood/parenthood. Portugal has opted to rely on mainstreaming equality within a merit system rather than positive discrimination instruments for managerial leadership positions within the PP service.

18. How has the procedure for appointing prosecutors to managerial positions and the relevant criteria functioned over time? What weaknesses have been identified? How were they assessed by international institutions, primarily the Council of Europe and the EU?

Since the adoption of the Law on the Public Prosecution Service in 2019, when the appointment to managerial positions has been the competence of the SCPP, the regulatory framework has been adjusted to refine weighting of merit, seniority, leadership experience, and service needs, introducing also changes into the timelines and the documentation. The regulatory framework, mainly the Regulation on Transfers of the PPs 231/2022²⁴³ has been amended several times to improve the system of transfers and appointments. Some of the weaknesses mentioned by stakeholders is the perceived opacity in how qualitative leadership criteria are weighed against seniority; and the fact that constraints created by service-needs clauses might in some occasions overtake rankings. The system of appointment is also criticized for the delays in the proceedings, caused by the high number of appeals against the decisions of the SCPP and the heavy caseloads of its sections. GRECO's 5th Evaluation Round Report for Portugal²⁴⁴ has also highlighted problems of lack of sufficient resources in the PP service, as one of the weaknesses, which also affect the effectiveness of the management and thus, the performance of the managerial positions.

19. Is a reserve list of candidates for managerial positions (excluding the Prosecutor General) maintained? If yes, what are the key elements and procedures? How effective is this practice? Have there been any appeals from those excluded, and what were the outcomes?

The *Regulamento* 231/2022 allows the SCPP when opening competitions and fixing the number of posts, to provide for a reserve list, which will cover the potential vacancies within that period. These reserve lists rely on the final ranked order approved by the SCPP after the merits assessment. Therefore, candidates not immediately placed may be called in strict order as vacancies arise, without re-opening the competition. This system can reduce the procedure to fill vacancies and speed up placements during the list's validity. However, in practice they haven't been without problems, especially when service-needs reallocations or eligibility changes occur mid-cycle. The candidates may challenge the decisions of the SCPP before the administrative courts, which also has contributed to more delays in finalizing the procedure of appointment for managerial positions. It is considered that the judicial review has functioned as a corrective check, mainly when procedural defects or irregularities were committed.

20. Describe the mandatory training for managerial candidates or newly appointed managers.

Initial and continuous training for PPs is delivered by the CEJ, with the SCPP defining priorities and authorizing participation. Beyond the general continuous training, there are specialized courses required for access to certain managerial positions in the PP service. The 2022 SCPP Training Regulation²⁴⁵ provides for possible mandatory attendance in defined circumstances and to condition eligibility for the managerial position on completion. Curricula for leadership modules typically include: human-resources management, performance assessment, ethics and conflicts, budgeting and resource planning, digital case-management and data governance, and communication in hierarchical settings. Newly appointed managers may also undergo short, on-the-job induction with mentoring by senior coordinators, complemented by CEJ seminars scheduled in

²⁴³ Regulation 231/2022, of 8 March, Regulamento de Movimento dos Magistrados do Ministério Público, last amended on 1 February 2023.

²⁴⁴ Available at: <https://rm.coe.int/grecoeval5rep-2022-3-final-eng-evaluation-report-portugal-public/1680ae19a7>

²⁴⁵ Regulation 924/2022 on training activities, already cited above.

the annual training plan. Compliance is supervised via CEJ/SCPP records and can be relevant for evaluations and future transfers.

21. Do heads of prosecutor's offices (excluding the Prosecutor General) bear disciplinary liability for ineffective management (e.g., failure to achieve organizational goals, low performance of subordinates, or other organizational shortcomings)? If yes, what are the qualifying conditions and are there specific sanctions? If not, do they bear other forms of liability and under what procedures? Which entities assess compliance, and how?

Yes, the heads of PPS units are subject to the same statutory disciplinary regime as other prosecutors, with managerial duties assessed against the EMP's functional obligations (diligence, leadership, supervision, efficiency, and observance of SPCC instructions and service plans). Ineffective management— manifested, for example, by systematic failure to implement the SCPP approved service distribution, recurring neglect of supervision duties leading to serious backlogs, or disregard of mandatory training —may constitute a disciplinary offence when imputable with fault (intent or negligence) and when it has a relevant impact on service. The existence of systemic organizational constraints can mitigate culpability. Where conduct does not entail disciplinary liability, the SCPP may apply corrective instruments, as for example managerial guidance, performance improvement plans, reassignment within movements, or non-renewal of leadership appointments.

C. Appointment and dismissal of the Prosecutor General

22. What are the stages in the appointment procedure for the Prosecutor General? Which entities are involved, and what is their role? Who holds de facto veto power over the selection?

The General Public Prosecutor of Portugal is appointed by the President of the Republic upon the proposal of the government, and his/her term of office is six years (Articles 133m, Constitution and 175.1 Law MP).

Article 133 para. m) of the Constitution, when listing the powers of the President of the Republic, reads:

*m) Upon a proposal from the Government, to appoint the President of the Court of Auditors **and the Prosecutor General and discharge them from office;***

and

Article 175 Law MP

Appointment and Removal of the General Public Prosecutor

1 - The General Public Prosecutor is appointed and removed from office in accordance with the Constitution.

*2 - The term of office of the General Public Prosecutor is **six years**, without prejudice to the provisions of paragraph m) of Article 133 of the Constitution.*

3 - The appointment implies dismissal from a previous position when it falls to a judge or member of the Public Prosecutor's Office, or to a civil servant with a public employment contract.

4 - After ceasing to serve, the General Public Prosecutor appointed under the terms of the previous paragraph has the right to return to his or her original position, without loss of seniority or the right to promotion.

5 - The provisions of Article 29 of Law No. 4/85 of April 9 apply to the General Public Prosecutor who is not a judge or member of the Public Prosecutor's Office, or a civil servant with a public employment contract.

6 - *If the General Public Prosecutor is a judge or a member of the PPO, the period of service performed in that office counts in full, as if it had been served in the judiciary, and he or she will occupy the position that would have been his or hers had he or she not interrupted the exercise of that function, notably without prejudice to the promotions and access to which he or she would have been entitled in the meantime.*

7 - *If a judge/PP is appointed as General Public Prosecutor and, at the time of appointment, is a senior member of the Supreme Court of Justice, he or she shall have the right, upon his or her termination of office, to be restored to the position that would have been his or hers had that appointment not been made.*

The stages of the appointment procedure could be summarized in the following:

1) Government Proposal: The Government, headed by the Prime Minister, makes the proposal for the position of General Public Prosecutor.

2) Approval by the SCPP: The proposal is sent to the SCPP for evaluation, which is a mere formal confirmation of the suitability of the candidate

3) Appointment by the President of the Republic: Once the High Council gives its opinion, the President of the Republic appoints the General Public Prosecutor.

The President as well as the Council have *de facto* veto power, but prior dialogue avoids coming to that point.

It can be affirmed the appointment of the GPP is a process where the political will of the government is a decisive factor, however it seems that in practice the GPP has acted with independence. The fact that under the mandate of GPP Lucilia Gago (who ended her mandate in 2024) the Public Prosecutor initiated a criminal investigation against the Portuguese Prime Minister (concerning irregularities in trading of lithium and hydrogen), which caused the resignation of the PM in November 2024, might suggest that the GPP enjoys a margin of independence, not being subservient to the political power.

The ministry of justice does not play any role in the administration or operations of the Portuguese prosecution service. However, the member of the Government responsible for the area of justice attends meetings of the SCPP when he or she deems it appropriate, to make communications and request or provide clarifications (art. 170 Judiciary Act).

23. What are the eligibility criteria for candidates for the Prosecutor General? Which entities assess compliance, and how?

The appointment is not linked to any recruitment area or special training requirements (175.2 Law MP). Since there are no specific requirements, there is no entity in charge of checking compliance with those requirements. In practice, until now most of the GPP have been chosen from the judiciary or the Public Prosecution Service.²⁴⁶

²⁴⁶ See the *Thematic study of the CCPE “On management practices of prosecution services in member states in connection with prosecutorial independence and impartiality”* of 29.10.2024, CCPE(2024)3, para. 99: “In Portugal, the appointment and dismissal of the Prosecutor General are within the responsibility of the President of the Republic, upon recommendation of the Prime Minister. While there are no specific recruitment areas or training requirements prescribed for this position, precedent indicates that appointees have typically been judges from the Supreme Court of Justice or members of the Public Prosecution Service

24. How has the appointment procedure and the relevant criteria for the Prosecutor General functioned over time? What weaknesses have been identified? How were they assessed by international institutions, primarily the Council of Europe and the EU?

The appointment and dismissal of the Prosecutor General are within the responsibility of the President of the Republic, upon recommendation of the Prime Minister. While there are no specific recruitment areas or training requirements prescribed for this position, precedent indicates that appointees have typically been judges from the Supreme Court of Justice or members of the Public Prosecution Service (Assistants to the Prosecutor).²⁴⁷ Neither the reports of GRECO,²⁴⁸ nor the 2025 Rule of Law Report of the European Union²⁴⁹ point at any shortcomings in this procedure.

25. Are general grounds for disciplinary liability applicable to the Prosecutor General? If not, are there special grounds or procedures for holding the Prosecutor General accountable, including through dismissal?

According to Article 219.5. of the Constitution: “The competences to appoint, assign, transfer and promote agents of the Public Prosecution Service and exercise discipline over them pertain to the Prosecutor General’s Office.”

This competence is exercised by way of the SCPP. Article 21.2 Law MP when listing the Powers of the SCPP excludes expressly the possibility to exercise disciplinary action against the GPP.

Article 21.2 a) Law MP

“The Superior Council of the Public Prosecutor's Office is responsible for:

- 1. Appointing, placing, transferring, promoting, dismissing, assessing professional merit, exercising disciplinary action and, in general, performing all acts of the same nature relating to magistrates of the Public Prosecutor's Office, **with the exception of the General Public Prosecutor;**”*

26. What are the grounds for early dismissal of the Prosecutor General, and under which legal act are they defined?

(Assistants to the Prosecutor).” The study is available at: <https://rm.coe.int/thematic-study-of-the-ccpe/1680b27b0a#:~:text=While%20there%20are%20no%20specific,s%20office%20of%20the%20Confederation.&text=appoint/elect%20the%20prosecutor%20general,same%20persons%20for%20this%20position.>

²⁴⁷ See CONSULTATIVE COUNCIL OF EUROPEAN PROSECUTORS (CCPE), CCPE(2024)3, “Thematic study of the CCPE on management practices of prosecution services in member states in connection with prosecutorial independence and impartiality”, of 29.10.2024, p. 16, available at: <https://rm.coe.int/thematic-study-of-the-ccpe/1680b27b0a>.

²⁴⁸ See GrecoRC4(2025)1, FOURTH EVALUATION ROUND, Corruption prevention in respect of members of parliament, judges and prosecutors, adopted on 19 March 2025, published: 30 July 2025, available at: <https://www.coe.int/en/web/greco/evaluations/round-4>

²⁴⁹ 2025 Rule of Law Report. Country Chapter on the rule of law situation in Portugal. The rule of law situation in the European Union, COM(2025) 900 final, available at: https://commission.europa.eu/document/download/5a482f87-1f24-47bd-8595-d25f1ca29c6a_en?filename=2025%20Rule%20of%20Law%20Report%20-%20Country%20Chapter%20Portugal.pdf

The appointment of the GPP is a pure political act made under no specific conditions. As mentioned above, the mandate lasts for six years to ensure minimum conditions of stability and exempt the GPP from eventual external pressure. This type of appointment is envisaged in order to assure the holder a relative autonomy from the executive power and, therefore, while facing political changes in government. However, it is a fragile regime of legitimation, without constitutional or legal guarantees, that only the political tradition of appointing a magistrate as GPP has balanced.²⁵⁰

27. What are the stages in the early dismissal procedure for the Prosecutor General? Which entities are involved, and what is their role? Who holds de facto veto power over dismissal?

See above under question 22. The same procedure would apply to dismissal as described for appointment.

28. How has the early dismissal procedure and relevant grounds for the Prosecutor General functioned over time? What weaknesses have been identified? How were they assessed by international institutions, primarily the Council of Europe and the EU?

This specific issue has not been addressed by the international institutions, and it seems that it has not been problematic so far.

D. Prosecutorial Self-Government Bodies

29. List the prosecutorial self-governing bodies, their legal status, and their relationship with each other and with the prosecution service.

The Public Prosecution Office is structured by an internal or functional hierarchy, which ultimately depends on the GPP; the Prosecutor General's Office - a complex body that also integrates the SCPP, exercises its own competences as the superior body for the management, discipline and functional lead of prosecutors. Therefore, it can be affirmed that the prosecutorial self-governing body is the SCCP.

The SCPP works in plenary (composed of all members of the SCPP and convenes ordinarily, once a month) or in sections. For the validity of the decisions of the SCPP a quorum of 13 members is required for decisions in plenary; 7 members for the disciplinary and 3 members for the permanent section.²⁵¹ In the case of the disciplinary section or the professional merit evaluation section, when it is not possible to validly deliberate

²⁵⁰ As expressed by J. P. Ribeiro de Albuquerque (Senior Prosecutor) "The Portuguese public prosecution service: institutional concept and magistracy. Competences and principles (constitutional, organizational and interventional principles, and related guarantees), conference presented in Florence 28.2.2020: "We know how much the PG appointment system and other prosecutors is a decisive aspect in ensuring the independence of the PPS. In this particular regard Portugal seems not to be in line with the recommendations of the Venice Commission", see p.8, available at: https://medelnet.eu/wp-content/uploads/2021/01/2_Jose_Albuquerque.pdf

²⁵¹ In the case of the disciplinary section or the professional merit evaluation section, when it is not possible to validly deliberate due to a lack of a quorum, the member prevented from participating under the terms of the previous paragraph shall be replaced by a member of the same status or category.

due to a lack of a quorum, the member prevented from participating under the terms of the previous paragraph shall be replaced by a member of the same status or category.

The Inspection service operates within the SCCP (art. 39 Law MP).

The Inspection service is competent to carry out investigations and disciplinary proceedings and also to collect information on the performance and merits of public prosecutors, (article 35 Law MP). It is composed of public prosecutors, in a number approved by the SCPP (article 41(1) Law MP).

The Inspectors are appointed, on a temporary assignment, from among PP with no less than fifteen years of service and who have been evaluated with "Very Good". The coordinating inspector appointed by the SCPP is responsible for: collaborating in the preparation of the annual inspection plan; submit a report on Inspection activity; submit proposals for improving the inspection service and its regulations, as well as training proposals for inspectors and prosecutors; propose measures to harmonize inspection criteria and evaluation criteria; propose appropriate measures for the systematic treatment of management indicators and other relevant information on the activity of the PP (article 42 Law MP).

30. Describe their composition, terms of office, and the procedures for selecting their members.

As described already under question 2 (see above), the SCPP is composed of:

- a) The General PP, who presides it;
- b) All the General Regional PPs;
- c) An adjunct GPP (*Procurador-geral-adjunto*), elected from among them;
- d) Six public prosecutors elected from among and by the public prosecutors, ensuring representation of the area of jurisdiction of the four regional territorial prosecution offices;
- e) Five members elected by the Legislative Assembly from among individuals of recognized merits;
- f) Two members appointed by the member of the Government responsible for the area of justice, from among individuals of recognized merits. (Article 22 Law MP).

Article 23 Law MP establishes how the elected members of the SCPP are voted, all of them by secret ballot. The deputies among the deputies (adjuncts), and the 6 public prosecutors, based on four electoral colleges (one for each region (Porto, Lisboa, Coimbra and Evora), and the GPPO elaborates the census. The conversion of votes into seats is carried out according to the highest average d'Hondt method (para.4). Each voter is granted the option of exercising their right to vote in person, electronically, or by mail, under terms to be defined by the electoral regulations (para. 6).

The **electoral process** is announced in the Official Journal of Portugal and is controlled by an electoral commission, made of the GPP and the Regional GPPs, and a representative from each candidate list in the electoral process has the right to be part of the elections committee. Any irregularities can be challenged before the Supreme Administrative Court.

The non-PP members of the SCPP are elected for the same period as the legislative Assembly or the government, thus they cease in their functions when there are new elections. As to the PP members of the SCPP, they are elected for 3 years, renewable for another term. With the election of each member there are also 2 substitutes elected, who will occupy the vacancy in case the member cannot continue in office.

As to **the status** of the members of the SCPP, they are all subject to the duties, rights, and guarantees of the PPs, with the necessary adjustments for the non-PP members. All the members of the SCPP are subject to the safeguards to ensure impartiality provided for in the Code of Administrative Procedure. The SCPP will determine which members are serving full time, ensuring as much as possible the overall representation of the Council. Those members who serve full-time receive a remuneration corresponding to that of the highest-ranking PP member. The members of the SCPP who are not serving full time may benefit from a reduction in service hours in their PP office (Article 31 Law MP).

The elected PPs to the SCPP by PPs and among PPs may not refuse to serve as a member of the SCPP. They are elected for a term of 3 years, renewable for another 3 years. In cases where, during the term of office, the member of the PP ceases to belong to the category of origin, is transferred to a district other than the election district, or is prevented from serving, the next member of the same list, if any, shall be called, followed by the first alternate, and in the absence of such alternate, the second alternate. In the absence of the second alternate referred to in the previous paragraph, a vacancy shall be declared, and a new election shall be held in accordance with the previous articles (art. 32 Regulation 530/2020 On the Internal Rules of the SCPP).²⁵² Alternates and subsequently elected members shall hold their respective positions until the end of the term held by the original member.

The suspension of a member's term shall be determined by:

- a) The indictment or the setting of a trial date for a willful crime committed in the performance of duties or punishable by a prison sentence of more than three years;
- b) Preventive suspension due to disciplinary proceedings.

Members may request temporary suspension of their mandate in the event of illness or to take maternity or paternity leave for a period not exceeding 180 days.

The loss of a member's position at the SCPP shall occur by:

- a) Resignation;
- b) Permanent impediment, especially that resulting from an illness that incapacitates the performance of duties;
- c) The absence of any member of the Council, not justified by the plenary, from three consecutive or five interpolated meetings of the sections to which he or she is required to attend;
- d) The application of a sanction resulting in removal from service.

The resignation becomes effective upon submission of the corresponding written declaration to the President of the Superior Council of the Public Prosecutor's Office and is published in the Official Gazette of the Union.

The mandate of the members elected by the Assembly of the Republic and of the members appointed by the member of the Government responsible for the area of justice expires, respectively, with the first meeting of

²⁵² **Regulamento n.º 530/2020, of 16 June**, *Regulamento interno da procuradoria-geral da república* (Internal Rules of the Public Prosecution Office), available at: https://www.pgdlisboa.pt/leis/lei_print_articulado.php?tabela=leis&artigo_id=&nid=3293&nversao=&tabela=leis

the Assembly of the Republic subsequently elected or with the inauguration of a new member of the Government responsible for the area of justice, who must confirm them or make a new appointment.

31. What are the eligibility criteria for candidates for self-governing bodies? Which entities assess compliance, and how?

Any PP can be appointed to become member of the SCPP and thus no additional eligibility requirements are set out. For those members who are not members of the PP service, art. 32 of the Law MP does not set out specific eligibility requirements. They are usually acting lawyers, members of Parliament or University professors, all of them with experience in the legal field, usually close to one of the political parties. It is interesting to see that more specific requirements are set out under art. 170 for members of the Consultative Council of PPs.

32. How has the procedure for selecting members of self-governing bodies and the relevant criteria functioned over time? What weaknesses have been identified? How were they assessed by international institutions, primarily the Council of Europe and the EU?

The members elected by Parliament (Assembly of the Republic) usually reflect the political scene in Parliament. It can be affirmed that political representation is a factor in the selection of the members of the SCPP.

33. Provide a comprehensive list of powers of self-governing bodies regarding:

Powers of the SCPP:

Following Article 21 Law MP, the SCPP approves the budget, adopts the decisions on internal organization of the service as well as staff management, and can propose to the Ministry of Justice legislative measures aimed at increasing the efficiency of the PPO and the justice system. The Council is also responsible for ensuring compliance with legal standards regarding the monitoring of income and asset declarations for PPs. In cases of refusal to submit a declaration, without prejudice to the application of criminal and tax sanctions provided for by law for failure to comply with reporting obligations, the SCPP shall initiate a disciplinary procedure.

Article 2.21 Law MP: The SCPP is responsible for:

- a) Appointing, placing, transferring, promoting, dismissing, assessing professional merit, exercising disciplinary action, and, in general, performing all acts of a similar nature related to magistrates of the Public Prosecutor's Office, with the exception of the GPP of the Republic;
- b) Approving the electoral regulations of the SCPP, the internal regulations of the General PP's Office, the regulations of the PPs Internal Affairs Office, the regulations for competitive examinations for positions of PPs and other regulations assigned to it by the law;
- c) Approve the proposed budget of the GPP Office, within the scope set forth in paragraph 1 of article 18;²⁵³

²⁵³ Article 18 Administrative and Financial Autonomy:

1 - The General PP Office, with the composition established in Article 15, §2, is endowed with administrative and financial autonomy, having its own budget, included in the general expenses of the State, with respect to the budgetary framework rules and other terms to be defined by decree-law.

2 - The provisions of the previous paragraph, and under the conditions defined therein, extend to the scope of Article 15, §3.

3 - The budget proposal under the terms set forth in the previous items shall be submitted to the Executive Branch, through the Justice Department, by the GPP.

- d) Deliberating and issuing directives on internal organization and staff management, within the scope of its authority; e) Propose to the Attorney General of the Republic the issuance of directives to be followed by the Public Prosecutor's Office;
- f) Propose to the member of the Government responsible for the area of justice, through the GPPI, legislative measures aimed at increasing the efficiency of the PPs Office and improving judicial institutions;
- g) Review, within the scope of its powers, complaints and appeals provided for by law;
- h) Approve the annual inspection plan and determine the conduct of inquiries, inspections, investigations, inquiries, and disciplinary proceedings;
- i) Issue opinions on matters of judicial organization and, in general, the administration of justice;
- j) Prepare, in accordance with the objectives and strategy defined for each body of the PP's Office, a forecast of the staffing needs of PPs Office;
- k) Perform other functions assigned to it by law.

3rd - The Council shall also be responsible for:

- a) Ensuring compliance with legal standards regarding the issuance and monitoring of income and asset declarations for PPs and approving, in accordance with the law, the necessary enforcement instruments;
- b) Regarding the provisions of the previous paragraph, initiating appropriate disciplinary proceedings in cases of refusal to submit a declaration, without prejudice to the application of criminal and tax sanctions provided for by law for failure to comply with reporting obligations.

4th - At the request of at least one-third of the members of the Superior Council, the submission of issues inherent to the P's Office to the Advisory Council (*Conseho Consultivo*) for consideration may be proposed for the GPP consideration, with an emphasis on compliance with democratic legality and the realization of citizens' rights, freedoms, and guarantees.

34. Do prosecutorial self-governing bodies have formal procedures (beyond legislation) and/or soft tools (guidelines, methodologies, best practices) that structure the execution of powers listed above in point 33? If yes, list and briefly describe them, indicating who adopted them and for what purpose.

The legal provisions are developed by the already mentioned internal Rules of the SCPP of 16 June 2020, which amended the prior one of 2002 in order to adjust the internal rules to newly adopted Law MP. This Regulation mainly addresses those matters that, under the Law 68/2019 Law MP required regulation, such as the composition and functioning of the section(s) for assessing the professional merit of the SCPP or the distribution of cases among the members of this body.

As mentioned earlier, there are several Regulations providing for rules on evaluation, training, transfers, etc.

35. Do other institutions assist the self-governing bodies in executing the powers listed in point 33? If yes, list them and explain their status, relationship with the self-governing bodies and prosecution, and their role.

See above the references to the Inspection service, which is integrated within the SCPP.

4 - The GPP may propose, or be proposed to present, within the scope of the competent committee of the Legislative Assembly, the guidelines contained in the GPP Office budget.

36. Do the prosecutorial self-governing bodies have separate funding and a secretariat staffed with personnel outside the prosecution service?

No, the self-governing bodies of the PP service, namely the SCPP, do not have separate funding from the state. The budget is included within the Ministry of Justice and is subject to ministerial oversight, particularly.

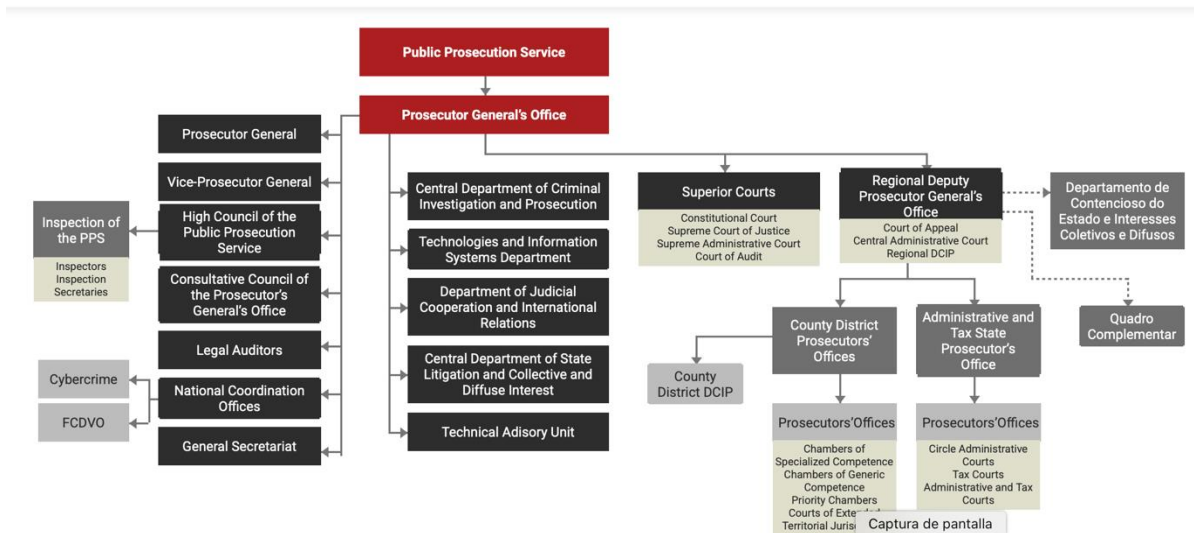
PPS, with the exception to its central services, do not have budgetary autonomy. In first instance courts, the management of human and material resources, which are provided by the Ministry of Justice, falls within the responsibility of a Management Council of the county, composed by the Judge President, the Public Prosecutor Coordinator and a Judicial Administrator, a clerk in whose appointment and exoneration the Judge President has a significant role to play. Decisions are taken by a majority vote, so one can easily find out who the weakest link in this equation is. It is often noted, in this regard, that PPS, in first instance courts, are frequently disregarded in the allocation of resources. Regarding the Appeal Courts, the respective budget is managed by the Judge President, who can take substantial decisions about human resources' needs and, in consequence, about the Prosecutors that work in the Appeal Court. PPS should thus be able to have and run their own budget, to be negotiated with Parliament, having in mind the constitutional mission of the Public Prosecution and namely the priorities set down in the Crime Policy Act passed by the Parliament on a triennial basis, thus allowing for the effective accountability of PPS before the people's representatives.²⁵⁴

37. Who approves the structure of the secretariat and selects its personnel? What units comprise the secretariat, and what are their functions?

The administrative staff and the structure of the secretariat is organized by the General Public Prosecution Office.

38. Do self-governing bodies have a unit responsible for interaction with the parliament, government, or president? If yes, briefly describe its role and functions.

E. Annex



²⁵⁴ <https://rm.coe.int/portugal-en-ccpe-reply/16809fc129>

Rules on assignment of cases to PPs in the Law MP:

Article 78

Assignment of Cases

The assignment of cases corresponds to the redistribution, either randomly or by assignment, of groups of cases or investigations to a judge other than their original incumbent, under terms to be regulated by the Superior Council of the Public Prosecutor's Office.

Article 79.

Accumulation

1 - Accumulation consists of the exercise of magistrate duties in more than one court, prosecutor's office, or department section within the same district.

2 - Accumulation is determined by the Superior Council of the Public Prosecutor's Office, is preceded by a hearing with the magistrate, is exceptional, and presupposes an assessment of the existing caseload and the needs of the service.

3 - The regional attorney general shall evaluate, on a semi-annual basis, the justification for maintaining the accumulation status, transmitting it to the Superior Council of the Public Prosecutor's Office through the Attorney General.

Article 80

Aggregation

1 - Accumulation consists of the placement, by the Superior Council of the Public Prosecutor's Office, within the scope of the annual movement, of magistrates exercising more than one function or exercising functions in more than one court, section, or department within the same district.

2 - The aggregation of positions or functions is publicized in the announcement of the movement. 3 - Placement in aggregation presupposes consideration of the service needs, procedural reference values and the proximity and accessibility of the places to be aggregated.