

Estonia / Estonie

1. What are the general official measures taken for reacting to and implementing the decisions of international courts and treaty monitoring bodies?

As a rule, the Ministry of Foreign Affairs notifies the Ministry of Justice about the need to amend a legal regulation. The Ministry of Justice analyses in turn the decisions, by creating working groups in case of need, in order to involve persons concerned. As a result of this work, motions of elaboration of legislative amendments are prepared and further on, already the drafts that will become the acts in the Riigikogu (*Parliament*) of the Republic of Estonia.

2. Based on your answer to the 1st question, what are the measures taken particularly for the practical independence of the prosecution services and individual prosecutors? Can you give examples?

In the Republic of Estonia, prosecutors' salary system was connected to the will of the Ministry of Justice for years. Only the principle that the salaries of the prosecutors should be equal to those of the judges was said in the Prosecutor's Office Act earlier. Actually, it was not like this as the Ministry of Justice had other priorities for years (for example, prisons, courts). After long negotiations, the Prosecutor's Office managed to achieve the amendment to law in 2018, by which the prosecutors' salaries were bound with the salary system of the higher state servants that was not linked to the budget of the Ministry of Justice any more. This has secured independence of prosecutors significantly.

3. Are these measures reflected in the law or in the prosecution policy or debate?

Yes, please see the answer in previous point.

4. If yes, then were there any changes in the prosecution system as a consequence of such measures?

Yes, please see the answer in point 2. In recent years, the Prosecutor's Office has always been involved in the process of amendment of legislation related to the Prosecutor's Office.

5. Are there also national decisions of the Supreme or Constitutional Courts, or any other highest judicial body at national level, dealing with the question of independence of prosecutors?

To a small extent, the Supreme Court has handled the issue of independence of the prosecutors in its judgments. This primarily from perspective of assessment criteria of independence and impartiality of the prosecutors.

6. Does the prosecution system in your country belong to the judiciary?

The Prosecutor's Office of the Republic of Estonia does not belong to the judicial system. The prosecutor's office is a separate two-stage government agency within the area of government of the Ministry of Justice, that consists of the Office of the Prosecutor General as a superior prosecutor's office and four district prosecutor's offices subordinate to it.

7. Are prosecutors and prosecution services independent or autonomous from the executive and legislative branches of state power?

The Prosecutor's Office of the Republic of Estonia is a government agency within the area of government of the Ministry of Justice that is independent in the performance of its functions arising from law, and it acts pursuant to this Act, other Acts, and legislation issued on the basis thereof. Although the prosecutor's office is a part of executive power in its nature, it is

independent from implementing power by performing its main tasks and shall not be subordinate to any inappropriate instructions that originate from other national authorities, from social interest groups or elsewhere.

8. Is there a Council of Prosecutors or a similar equivalent body which can be considered as a mechanism to monitor and ensure prosecutorial independence, including in the way in which the prosecution services operate?

There have been introduced several mechanisms in the Republic of Estonia for ensuring the independence of the prosecutors. For example, there is operating the Prosecutors' Assembly that has adopted *inter alia*, the Code of Ethics of the prosecutors where bases for independence of the prosecutors and mechanisms of ensuring this have been provided. Thus, on the one hand, the quality of decisions of the prosecutors has been subordinated to the Ethics Board, but also to the disciplinary committee. Every prosecutor has also his or her superior prosecutor who is entitled to control legality of the decisions of prosecutors. In addition, also the Surveillance Department of the Office of the Prosecutor General exercises control over the activities of prosecutors.

9. How many of its members are elected by their peers, and does the prosecution policy or the debate within the judiciary produce any impact on the election of the members of the Council of Prosecutors?

Members to the top of such bodies are elected by the prosecutors themselves. For example, five experienced prosecutors are elected to the Prosecutors' Ethics Board from among the prosecutors of the district prosecutor's offices and Office of the Prosecutor General by themselves, etc. It is possible to elect such prosecutors, who have worked as a prosecutor for at least ten years, to the board.

10. Who has the initiative of disciplinary proceedings?

Disciplinary proceedings can be initiated on the basis of the request of the interested person or on one's own initiative, whether the Minister responsible for the field in relation to the Prosecutor General, the Chief State Prosecutor or Chief Prosecutor; the Prosecutor General in relation to all prosecutors or the Chief Prosecutor in relation to prosecutors of the District Prosecutor's Office subordinate to him or her.

11. Are prosecutors appointed for life or do they have to fulfil successive terms? Of how many years?

Prosecutors are not appointed to their posts for lifetime. The Chief State Prosecutor, the State Prosecutor, the Senior Prosecutor, the Special Prosecutor, District Prosecutor and Assistant Prosecutor are appointed for unspecified period of time. The Prosecutor General and the Chief Prosecutor are appointed for five years.

12. Are the rules regarding appointment, transfer, promotion and discipline of prosecutors similar to those of judges?

The rules handling promotion and discipline of prosecutors are relatively similar to those of the judges. There are however differences in appointment as well as in transfer of the prosecutors. Namely, the judges in the Republic of Estonia are appointed for life, whereas the prosecutors for indefinite period of time, except for the Prosecutor General and the Chief Prosecutor who are appointed for five years. By transfer of judges, the Supreme Court *en banc* may appoint the judge with his or her consent and to a proposal of the Minister responsible for the field, to the position of judge in the court of another similar level or lower court, and the judges at first instance may be appointed, at his or her consent, permanently to service in another court house of the same court. But by transfer of prosecutors, the Minister responsible for the field may transfer the Prosecutor General, The Chief Prosecutor or State Prosecutor on the basis of his or her application without an open competition to a post of the prosecutor at a lower level being filled by way of public competition. Also, the Prosecutor General may transfer the Senior Prosecutor, Special Prosecutor

or District Prosecutor on the basis of his or her written application without an open competition to a post of prosecutor at a lower level being filled by way of public competition, or the Special Prosecutor, District Prosecutor or Assistant Prosecutor with his or her consent without an open competition to the same post in another Prosecutor's Office.

13. May the government instruct the prosecution services, for instance, to prosecute or not? to prosecute? Are instructions general or specific in nature? Are they given in writing? Can the prosecution challenge them?

In the Republic of Estonia, the principle of mandatory character of criminal proceedings is applied that means that in case of occurrence of the circumstances of crime, the investigative authority and the prosecutor's office are obliged to carry out criminal proceedings, if the circumstances excluding criminal proceedings are missing or if the basis to terminate criminal proceedings is missing. On the basis of the Code of Criminal Procedure, the authority of a prosecutor's office in criminal proceedings shall be exercised independently by the prosecutor and the prosecutor is governed only by law. Hence, although the prosecutor's office is a part of executive power by its nature, it is independent from implementing power by performing its main tasks and shall not be subordinate to any inappropriate instructions that originate from other national authorities, social interest groups or elsewhere. Hence, the Government cannot give orders to the Prosecutor's Office for bringing charges.

14. Are the instructions of superior prosecutors given in writing to those under their supervision? Can these instructions be challenged or refused?

Highest ranking prosecutors can give instructions to prosecutors under their surveillance. So, the superior prosecutor may require oral and/or written explanations from prosecutors for the circumstances of the procedure and may overrule by his or her regulation any unlawful or unjustified rulings, orders or claims of prosecutors. The standpoints presented in the ruling of the superior prosecutor for interpretation and application of any legal provisions are mandatory for the prosecutor in the criminal proceedings in question. The Prosecutor General may also give general instructions to the Prosecutor's Office and investigative authorities for ensuring legality and performance of the pre-trial procedure.

If a prosecutor hesitates over legality of the given recommendations in-house, he or she must inform the provider of the recommendation or the Prosecutor General about it. Prosecutors are entitled to require provision of the given recommendations internally in-house in written form.

15. Which are, if any, the main initiatives in terms of training to strengthen the awareness about the *de facto* dimension of the prosecutorial independence?

With regard to actual measure of the independence of the prosecutor's office and prosecutors to strengthen awareness, the prosecutor's office explains, if necessary, to the Legal Affairs Committee of the Riigikogu (*Parliament*) as well as to wider public, the grounds underlying the independence of the prosecutor's office, incl. how and by means of which measures the independence of the prosecutor's office is ensured.

16. To what extent the media cover the decisions of international courts and treaty bodies as regards the practical independence of prosecutors?

Most important judgments of international courts as well as of treaty bodies are reflected in the media. However, primarily regarding issues related and concerning Estonia.

17. To what extent the prosecutor offices interact with the broad public as regards the decisions of international courts and treaty bodies related to the practical independence of prosecutors?

If it is dealt with an important issue about independence of the prosecutors that could concern also wider public, then, as a rule, also media is notified about it, whether through speeches made by prosecutors or via press releases prepared by the prosecutor's office.

MAIN QUESTION

Do you know about any judgments or decisions of the European Court of Human Rights or of the Court of Justice of the European Union, or of any other international court which refer to or in any way touch upon the independence (and preferably went on to highlight its elements):

- a) of prosecutors;
- b) of the judiciary or the justice system as a whole;
- c) of judges.

If you know about any such judgments or decisions, the CCPE Bureau and the Working Group will be very grateful to you if you indicate their titles and also, if possible, the numbers of paragraphs or sections in these judgments and decisions where such references or indications are made. These judgments and decisions may concern any country, not only your country.

Followingly we mark some judicial decisions where independence of the prosecutors, but also of judges have been handled:

1. ECHR case of KOLEVI v. BULGARIA (Application no. 1108/02), para 142, 148-149;
2. ECHR case of GUJA v. MOLDOVA (Application no. 14277/04), para 86;
3. ECHR case of Mustafa Tunç and Fecire Tunç v. Turkey, no 24014/05;
4. ECHR, case of AFFAIRE MOULIN c. FRANCE (Requête no 37104/06), para 57;
5. CJEU - A.K. (C-585/18) v Krajowa Rada Sądownictwa and CP (C-624/18), DO (C-625/18) v Sąd Najwyższy (C-624/18 and C-625/18) joined party: Prokurator Generalny zastępowany przez Prokuraturę Krajową.

Questions

IN YOUR COUNTRY:

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6bis Are there any parallels between the independence of judges and independence of prosecutors, or the latter is considered separately, if considered at all?

In the Republic of Estonia, there are quite a lot of parallels between the independence of the prosecutors as well as of judges. Namely, both judges as well as a prosecutor are independent by performing their tasks and they act only on the basis of law and one's own conviction. Similarly to prosecutors. Also the judges have their own Code of Ethics where a separate section is specified regarding independence of prosecutors. However, there is present difference related to fundamental guarantee of independence of judges, insofar as the judges are appointed for life, whereby the prosecutors are appointed for indefinite term.

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subordinate to any inappropriate instructions that originate from other national authorities, from social interest groups or elsewhere.

7bis Is the interaction of prosecutor offices with courts, police, investigation authorities and other actors in criminal procedure based on the principle of prosecutorial independence and how?

Interaction of prosecutors with courts, police, investigation authorities and other actors in criminal procedure relies naturally on the principle of prosecutorial independence. Prosecutors are independent and unbiased by performing their tasks, incl. by interacting with courts, police, investigative authorities and other parties to the procedure, by acting solely on the basis of law and according to one's own conviction.

8. Is there a Council of Prosecutors or a similar equivalent body which can be considered as a mechanism to monitor and ensure prosecutorial independence, including in the way in which the prosecution services operate?

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If a prosecutor hesitates over legality of the given recommendations in-house, he or she must inform the provider of the recommendation or the Prosecutor General about it. Prosecutors are entitled to require provision of the given recommendations internally in-house in written form.

14bis What is the system of allocation, re-allocation and management of cases and is it based on objective and transparent criteria respecting the independence of prosecutors?

The system of allocation, re-allocation and management of cases proceeds from the plan of division of duties. Namely, the Prosecutor General of the state determines the plan of division of duties of the prosecutors following hearing of opinions of prosecutors. Division of duties of district prosecutors is determined by Leading Prosecutor, following hearing of prosecutors of the District Prosecutor's Office. Work is divided between the prosecutors, proceeding from types of crimes, subjects or other general criteria. Also, replacement procedure is determined in the plan of division of duties that means, inter alia, the order of re-division of work. Independence of prosecutors is honoured by preparing of the plan of division of duties and by re-division of tasks.

15. Which are, if any, the main initiatives in terms of training to strengthen the awareness about the de facto dimension of the prosecutorial independence?

With regard to actual measure of the independence of the prosecutor's office and prosecutors to strengthen awareness, the prosecutor's office explains, if necessary, to the Legal Affairs Committee of the Riigikogu (Parliament) as well as to wider public, the grounds underlying the independence of the prosecutor's office, incl. how and by means of which measures the independence of the prosecutor's office is ensured.

15bis Is the concept of prosecutorial independence reflected in the code of ethics and professional conduct of prosecutors? If such code exists in your country, could you please inform how it was prepared and adopted, and provide its copy in English or French if available.

Conception of independence of prosecutors is reflected in the Republic of Estonia, also in the Code of Ethics of the Prosecutors, the latest and updated version has been adopted by the Prosecutors' General Assembly on 12 April 2013. But the first code of ethics that furnished the ethical standards with professional ethics and behaviour, entered into force already in on 23 December 2003, having been adopted also by the Prosecutors' General Assembly. The Prosecutors' General Assembly is a meeting of all prosecutors that is convened at least once a year. Necessity of preparing of the Code of Ethics was conditioned by the circumstance that the rules of ethical behaviour of prosecutors would be determined also in written, proceeding from general development of the prosecutor's office.

There is no version available in English and/or French of the Code of Ethics of the prosecutors of the Republic of Estonia.

16. To what extent the media cover the decisions of international courts and treaty bodies as regards the practical independence of prosecutors?

Most important judgments of international courts as well as of treaty bodies are reflected in the media. However, primarily regarding issues related and concerning Estonia.

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